



Broadcasting Services Act 1992

Act No. 110 of 1992 as amended

This compilation was prepared on 16 February 2009
taking into account amendments up to Act No. 158 of 2008

Volume 1 includes: Table of Contents
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Schedules 1 and 2

The text of any of those amendments not in force
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be
affected by application provisions that are set out in the Notes section

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

Part 1—Preliminary

1 Short title [see Note 1]

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

2 Commencement [see Note 1]

- (1) Section 1, this section, sections 3 and 6 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (3) If those provisions do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

3 Objects of this Act

- (1) The objects of this Act are:
 - (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
 - (aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and
 - (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and

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- (ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and
- (c) to encourage diversity in control of the more influential broadcasting services; and
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and
- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- (fa) to promote the provision of high quality and innovative content by providers of datacasting services; and
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and
- (h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and
- (ha) to ensure designated content/hosting service providers respect community standards in relation to content; and
- (i) to encourage the provision of means for addressing complaints about broadcasting services; and
- (j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and
- (ja) to ensure that international broadcasting services are not provided contrary to Australia's national interest; and
- (k) to provide a means for addressing complaints about certain Internet content; and
- (l) to restrict access to certain Internet content that is likely to cause offence to a reasonable adult; and
- (m) to protect children from exposure to Internet content that is unsuitable for children; and

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

(2) In this section:

designated content/hosting service provider has the same meaning as in Schedule 7.

Internet content has the same meaning as in Schedule 5.

4 Regulatory policy

- (1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and Internet services according to the degree of influence that different types of broadcasting services, datacasting services and Internet services are able to exert in shaping community views in Australia.
- (2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of broadcasting technologies and datacasting technologies, and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.
- (3) The Parliament also intends that Internet carriage services supplied to end-users in Australia, be regulated in a manner that:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on Internet service providers; and
 - (b) will readily accommodate technological change; and

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- (c) encourages:
 - (i) the development of Internet technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community; and
 - (iii) the supply of Internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.
- (3AA) The Parliament also intends that designated content/hosting services be regulated in a manner that:
 - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services; and
 - (b) will readily accommodate technological change; and
 - (c) encourages:
 - (i) the development of communications technologies and their application; and
 - (ii) the provision of services made practicable by those technologies to the Australian community.
- (3A) This section does not apply to Part 8B (which deals with international broadcasting services).
- (4) In this section:
 - designated content/hosting service* has the same meaning as in Schedule 7.
 - Internet carriage service* has the same meaning as in Schedule 5.
 - Internet content* has the same meaning as in Schedule 5.
 - Internet service provider* has the same meaning as in Schedule 5.

5 Role of the ACMA

- (1) In order to achieve the objects of this Act in a way that is consistent with the regulatory policy referred to in section 4, the Parliament:
 - (a) charges the ACMA with responsibility for monitoring the broadcasting industry, the datacasting industry, the Internet industry and the commercial content service industry; and
 - (b) confers on the ACMA a range of functions and powers that are to be used in a manner that, in the opinion of the ACMA, will:
 - (i) produce regulatory arrangements that are stable and predictable; and
 - (ii) deal effectively with breaches of the rules established by this Act.
- (2) Where it is necessary for the ACMA to use any of the powers conferred on it by this Act to deal with a breach of this Act or the regulations, the Parliament intends that the ACMA use its powers, or a combination of its powers, in a manner that, in the opinion of the ACMA, is commensurate with the seriousness of the breach concerned.
- (3) This section does not, by implication, limit the functions and powers of:
 - (b) the Australian Competition and Consumer Commission; or
 - (c) any other body or person who has regulatory responsibilities in relation to the Internet industry.
- (4) In this section:

commercial content service has the same meaning as in Schedule 7.

6 Interpretation

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

ACMA means the Australian Communications and Media Authority.

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

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

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

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

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

- (a) the person's spouse or a parent, child, brother or sister of the person; or
- (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
- (d) a person (whether a company or not) who:
 - (i) acts, or is accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or
- (e) if the person is a company—another company if:
 - (i) the other company is a related body corporate of the person for the purposes of the *Corporations Act 1990*; or

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

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

Note 1: *Licence* is given an extended meaning by this subsection.

Note 2: See also subsection (3).

associate member means an associate member of the ACMA.

authorised infringement notice officer means:

- (a) the Chair of the ACMA; or
- (b) a member of the staff of the ACMA appointed under section 205ZE.

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

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or
- (c) a service, or a class of services, that the Minister determines, by notice in the *Gazette*, not to fall within this definition.

broadcasting services bands means:

- (a) that part of the radiofrequency spectrum that:
 - (i) is designated under subsection 31(1) of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes; and
 - (ii) is referred by the Minister under that subsection to the ACMA for planning; and

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- (b) that part of the radiofrequency spectrum that:
- (i) is designated under subsection 31(1A) of the *Radiocommunications Act 1992* as being partly for the purpose of digital radio broadcasting services and restricted datacasting services; and
 - (ii) is referred by the Minister under that subsection to the ACMA for planning.

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

business day means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

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

CER Trade in Services Protocol:

- (a) means the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement (being that Protocol as in force from time to time); and
- (b) includes an instrument under that Protocol (being that instrument as in force from time to time).

Chair means the Chair of the ACMA.

channel B datacasting transmitter licence has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

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

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

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

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

commercial broadcasting service has the meaning given by section 14.

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

- (a) in the case of a licence allocated under subsection 40(1)—a commercial radio broadcasting service; or
- (b) in any other case—the commercial radio broadcasting service or services that, under section 41D, are authorised by the licence.

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

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

- (a) in the case of a licence allocated under subsection 40(1)—a commercial television broadcasting service; or
- (b) in any other case—the commercial television broadcasting services that, under section 41B or 41C, are authorised by the licence.

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

community broadcasting licence means:

- (a) a community radio broadcasting licence; or
- (b) a community television broadcasting licence.

community broadcasting service has the meaning given by section 15.

community radio broadcasting licence means:

- (a) a licence under Part 6 to provide:
 - (i) in the case of a licence allocated under subsection 82(1)—a community radio broadcasting service; or
 - (ii) in the case of a designated community radio broadcasting licence—the community radio broadcasting service or services that, under section 85A, are authorised by the licence; or

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- (iii) in any other case—a community radio broadcasting service; or
- (b) a licence under Part 6A to provide a community radio broadcasting service.

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

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

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

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

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

core commercial television broadcasting service, in relation to a commercial television broadcasting licence, has the meaning given by whichever of paragraph 41A(1)(b) or (2)(a) is applicable.

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

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

datacasting service means a service that delivers content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or

- (e) whether in any other form; or
- (f) whether in any combination of forms;

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

datacasting transmitter licence has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

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

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

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

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

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

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

- (a) in the form of text; or
- (b) in the form of still visual images; or
- (c) if a form is specified in a legislative instrument made by the Minister—in that form; or
- (d) in any combination of the above forms;

where:

- (e) the content is transmitted using a digital modulation technique; and
- (f) both the content and the radio program are intended to be received by the same reception equipment; and

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(g) if:

- (i) the reception equipment is capable of receiving both the content and the radio program; and
- (ii) the reception equipment is set to receive the radio program;

the reception equipment will also receive the content.

digital radio moratorium period for a licence area has the meaning given by subsection 35C(3).

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

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

domestic digital television receiver has the same meaning as in the *Radiocommunications Act 1992*.

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

Federal Court means the Federal Court of Australia.

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

infringement notice means an infringement notice under section 205Y.

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

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

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

legislature of a Territory means:

- (a) the Legislative Assembly for the Australian Capital Territory; or
- (b) the Legislative Assembly of the Northern Territory; or

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

licence means:

- (a) in the definition of *associate*, section 7, Part 5 and Schedule 1:
 - (i) a licence allocated by the ACMA under this Act (other than a class licence); or
 - (ii) a datacasting transmitter licence; and
- (b) in any other provision of this Act—a licence allocated by the ACMA under this Act (other than a class licence).

licence area means an area designated by the ACMA under section 29, 40 or 92G.

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

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

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

MDS system means a system for transmitting radiocommunications on a frequency or frequencies within:

- (a) the frequency band from 2076 Megahertz up to and including 2111 Megahertz; or
- (b) the frequency band from 2300 Megahertz up to and including 2400 Megahertz.

member means a member of the ACMA.

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

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

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

national broadcasting service has the meaning given by section 13.

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

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

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

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

open narrowcasting service has the meaning given by section 18.

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

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

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

Parliament means:

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

penalty unit has the meaning given by section 4AA of the *Crimes Act 1914*.

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

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

program, in relation to a broadcasting service, means:

- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
- (b) advertising or sponsorship matter, whether or not of a commercial kind.

program standards means standards determined by the ACMA relating to the content or delivery of programs.

radio program has a meaning affected by section 8AB.

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

- (a) section 123; or
- (b) clause 62 of Schedule 5; or
- (c) clause 28 of Schedule 6; or
- (d) clause 85 of Schedule 7.

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

restricted datacasting licence means a datacasting licence allocated as a result of an application for a restricted datacasting licence.

restricted datacasting service means a datacasting service provided under, and in accordance with the conditions of, a restricted datacasting licence.

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

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

spouse of a person includes a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*.

subscription broadcasting service has the meaning given by section 16.

subscription fee includes any form of consideration.

subscription narrowcasting service has the meaning given by section 17.

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

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

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

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

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

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

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

temporary community broadcasting licence means a community broadcasting licence that:

- (a) is a broadcasting services bands licence; and
- (b) is allocated under Part 6A.

transaction includes:

- (a) arrangements under which a person becomes a director of a company; and
 - (b) the acquisition of things by gift or inheritance.
- (2) A determination under paragraph (c) of the definition of **broadcasting service** in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) For the purposes of paragraph (a) of the definition of **associate** in subsection (1), if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.

7 Interpretation—meaning of control

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

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

Note: *Licence* is given an extended meaning by subsection 6(1).

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

- (1) For the purposes of this Act:
 - (a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and
 - (b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company.
- (2) For the purposes of this Act:
 - (a) a person has a voting interest in a company if the person is in a position to exercise control of votes cast on a poll at a meeting of the company; and
 - (b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.
- (3) For the purposes of this Act:
 - (a) a person has a dividend interest in a company if:
 - (i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or
 - (ii) under the memorandum and articles of association of the company, a share of any profits of the company is to

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be, or may be, paid or credited to the person otherwise than as dividends on shares; and

- (b) the percentage of the interest is:
 - (i) if subparagraph (a)(i) applies—the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a percentage of the total of all dividends to which members of the company become entitled at that time; or
 - (ii) if subparagraph (a)(ii) applies—the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.
- (4) For the purposes of this Act:
 - (a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members of the company if property of the company were distributed among members, whether as a result of a winding-up or otherwise; and
 - (b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.
- (5) A person may have a voting interest, a dividend interest or a winding-up interest in a company even if the person does not have a beneficial entitlement to, or to an interest in, shares in the company.

8A Captioning taken to be part of program

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

8AA Designated community radio broadcasting licence

- (1) For the purposes of this Act, a community radio broadcasting licence is a *designated community radio broadcasting licence* if:
- (a) the community radio broadcasting licence was allocated under Part 6 (other than under subsection 82(1)); and
 - (b) the licence area of the community radio broadcasting licence is the same as the licence area of a commercial radio broadcasting licence; and
 - (c) the community radio broadcasting service or services provided under the community radio broadcasting licence satisfy such conditions (if any) as are set out in a legislative instrument made by the ACMA.

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

- (2) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by paragraph (1)(c).
- (3) The ACMA must comply with a direction under subsection (2).

8AB Digital program enhancement content taken to be a radio program*Commercial radio broadcasting services*

- (1) For the purposes of this Act and any other law of the Commonwealth, if a commercial radio broadcasting licensee provides:
- (a) a digital commercial radio broadcasting service; and
 - (b) digital program enhancement content in relation to a radio program delivered by that service;
- the digital program enhancement content is taken to be a radio program delivered by that service.

Community radio broadcasting services

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

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- (b) digital program enhancement content in relation to a radio program delivered by that service;
the digital program enhancement content is taken to be a radio program delivered by that service.

National radio broadcasting services

- (3) For the purposes of this Act and any other law of the Commonwealth, if a national broadcaster provides:
 - (a) a digital national radio broadcasting service; and
 - (b) digital program enhancement content in relation to a radio program delivered by that service;
the digital program enhancement content is taken to be a radio program delivered by that service.

8AC Digital radio start-up day

- (1) If the ACMA is satisfied that:
 - (a) the ACMA has taken sufficient action under:
 - (i) Part 3 of this Act; and
 - (ii) Part 2.3 of the *Radiocommunications Act 1992*; to facilitate the provision of the following services in a licence area:
 - (iii) digital commercial radio broadcasting services;
 - (iv) digital community radio broadcasting services;
 - (v) digital national radio broadcasting services; and
 - (b) one or more foundation digital radio multiplex transmitter licences have been issued for the licence area; and
 - (c) the multiplex capacity, or the combined multiplex capacities, of those licences are sufficient to fulfil the standard access entitlements that are likely to come into existence under subsection 118NQ(2) of the *Radiocommunications Act 1992* in its application to the licence area; and
 - (d) an access undertaking under Division 4B of Part 3.3 of the *Radiocommunications Act 1992* is in force for the licence or licences referred to in paragraph (b);the ACMA may, by writing, declare a specified day to be the ***digital radio start-up day*** for the licence area.

- (2) A day specified in a declaration under subsection (1) must not be earlier than the day on which the declaration is made.
- (3) The ACMA must ensure that:
 - (a) the digital radio start-up day for a metropolitan licence area is not later than 1 July 2009; and
 - (b) the digital radio start-up day for a regional licence area is the day specified for the regional licence area in a legislative instrument made by the Minister.
- (4) A copy of a declaration under subsection (1) must be made available on the ACMA's Internet site.
- (5) A declaration under subsection (1) is not a legislative instrument.

ACMA to give notice of intention to make a declaration

- (6) Before making a declaration under subsection (1), the ACMA must, by notice published on the ACMA's Internet site, give at least 30 days' written notice of its intention to make the declaration.
- (7) A notice under subsection (6) is not a legislative instrument.

Definitions

- (8) In this section:

licence area means:

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

metropolitan licence area means a licence area in which is situated the General Post Office of the capital city of:

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia.

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regional licence area means a licence area that is not a metropolitan licence area.

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

8AD Deemed radio broadcasting licence areas

Western Suburbs Sydney RA1

- (1) For the purposes of:
- (a) section 8AC of this Act; and
 - (b) the definition of **designated BSA radio area** in section 5 of the *Radiocommunications Act 1992*; and
 - (c) the application of:
 - (i) any other provision of this Act; or
 - (ii) any other provision of the *Radiocommunications Act 1992*; or
 - (iii) any other law of the Commonwealth;to digital commercial radio broadcasting services;
- the licence area known as Western Suburbs Sydney RA1 is taken to be the same as the commercial radio broadcasting licence area in which is situated the General Post Office of Sydney.

Hobart RA2 and Hobart RA4

- (2) For the purposes of:
- (a) sections 8AA and 8AC of this Act; and
 - (b) the definition of **designated BSA radio area** in section 5 of the *Radiocommunications Act 1992*; and
 - (c) paragraph 9C(1)(i) and subparagraph 9C(1)(j)(ii) of the *Radiocommunications Act 1992*; and
 - (d) the application of:
 - (i) any other provision of this Act; or
 - (ii) any other provision of the *Radiocommunications Act 1992*; or
 - (iii) any other law of the Commonwealth;to digital community radio broadcasting services;
- the licence areas known as Hobart RA2 and Hobart RA4 are taken to be the same as the commercial radio broadcasting licence area in which is situated the General Post Office of Hobart.

Other licence areas

- (3) The ACMA may, by legislative instrument, determine that, for the purposes of:
- (a) sections 8AA and 8AC of this Act; and
 - (b) the definition of *designated BSA radio area* in section 5 of the *Radiocommunications Act 1992*; and
 - (c) paragraph 9C(1)(i) and subparagraph 9C(1)(j)(ii) of the *Radiocommunications Act 1992*; and
 - (d) the application of:
 - (i) any other provision of this Act; or
 - (ii) any other provision of the *Radiocommunications Act 1992*; or
 - (iii) any other law of the Commonwealth;to digital community radio broadcasting services;
- a specified licence area of a community radio broadcasting licence is taken to be the same as a specified licence area of a commercial radio broadcasting licence.
- (4) The Minister may, by legislative instrument, give the ACMA a direction about the exercise of the power conferred by subsection (3).
- (5) The ACMA must comply with a direction under subsection (4).

8B Remote Indigenous community

- (1) An Indigenous community is a *remote Indigenous community* for the purposes of this Act if the ACMA so determines in writing.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

9 Act to bind the Crown

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

10 Extension of Act to the external Territories

This Act extends to all the external Territories.

10A Application of the *Criminal Code*

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.

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

- (2) Despite subsection (1), Part 2.5 of the *Criminal Code* does not apply to an offence against Schedule 5 to this Act.

Part 2—Categories of broadcasting services

11 Categories of broadcasting services

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

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

11A Dual categorisation of international broadcasting services

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

12 Method of regulating particular services

- (1) Commercial broadcasting services, community broadcasting services, subscription television broadcasting services and international broadcasting services require individual licences.
- (2) Other broadcasting services (other than national broadcasting services) are to be provided under the relevant class licence.

Dual categorisation of international broadcasting services

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

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

13 National broadcasting services

- (1) National broadcasting services are:
- (a) broadcasting services provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
 - (b) broadcasting services provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or
 - (c) broadcasting services provided under the *Parliamentary Proceedings Broadcasting Act 1946*.
- (2) National broadcasting services do not include subscription broadcasting services or subscription or open narrowcasting services provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.
- (3) Subsection (2) does not apply to services specified by the Minister by notice in the *Gazette*.
- (4) A specification under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) Except as expressly provided by this Act, the regulatory regime established by this Act does not apply to national broadcasting services.

14 Commercial broadcasting services

Commercial broadcasting services are broadcasting services:

- (a) that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (c) that are usually funded by advertising revenue; and
- (d) that are operated for profit or as part of a profit-making enterprise; and
- (e) that comply with any determinations or clarifications under section 19 in relation to commercial broadcasting services.

15 Community broadcasting services

Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
 - (i) are able to be received by commonly available equipment; and
 - (ii) are made available free to the general public; and
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

16 Subscription broadcasting services

Subscription broadcasting services are broadcasting services that:

- (a) provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and
- (c) comply with any determinations or clarifications under section 19 in relation to subscription broadcasting services.

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17 Subscription narrowcasting services

Subscription narrowcasting services are broadcasting services:

- (a) whose reception is limited:
 - (i) by being targeted to special interest groups; or
 - (ii) by being intended only for limited locations, for example, arenas or business premises; or
 - (iii) by being provided during a limited period or to cover a special event; or
 - (iv) because they provide programs of limited appeal; or
 - (v) for some other reason; and
- (b) that are made available only on payment of subscription fees (whether periodical or otherwise); and
- (c) that comply with any determinations or clarifications under section 19 in relation to subscription narrowcasting services.

18 Open narrowcasting services

(1) Open narrowcasting services are broadcasting services:

- (a) whose reception is limited:
 - (i) by being targeted to special interest groups; or
 - (ii) by being intended only for limited locations, for example, arenas or business premises; or
 - (iii) by being provided during a limited period or to cover a special event; or
 - (iv) because they provide programs of limited appeal; or
 - (v) for some other reason; and
- (b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.

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

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

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

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

18A International broadcasting services

- (1) International broadcasting services are broadcasting services that are targeted, to a significant extent, to audiences outside Australia, where:
 - (a) the means of delivering the services involves the use of a radiocommunications transmitter in Australia (whether alone or in combination with any other means); and
 - (b) the services comply with any determinations or clarifications under section 19 in relation to international broadcasting services.
- (2) A broadcasting service is not an international broadcasting service if the broadcasting service is:
 - (a) provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
 - (b) provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or
 - (c) an exempt broadcasting service (as defined by subsection (3)).
- (3) For the purposes of this section, a broadcasting service is an ***exempt broadcasting service*** if:
 - (a) the service delivers only programs packaged outside Australia (which may include programs produced in Australia); and

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- (b) all relevant programming decisions are made outside Australia; and
 - (c) the service is transmitted from a place outside Australia to an earth station in Australia for the sole purpose of being immediately re-transmitted to a satellite; and
 - (d) the satellite is a means of delivering the service (whether alone or in combination with any other means).
- (4) The references in this section to localities do not, by implication, affect the application of paragraph 21(b) of the *Acts Interpretation Act 1901* and section 10 of this Act to a provision of this Act that deals with a category of broadcasting services other than international broadcasting services.

- (5) In this section:

Australia includes the external Territories.

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

19 ACMA may determine additional criteria or clarify existing criteria

- (1) The ACMA may, by notice in the *Gazette*:
- (a) determine additional criteria to those specified in sections 14 to 18A; or
 - (b) clarify the criteria specified in sections 14 to 18A; for the purpose of distinguishing between categories of broadcasting services.
- (2) Different criteria or clarifications may be determined or made for radio services and television services.
- (3) The Minister may give specific directions to the ACMA as to the making of determinations and clarifications, and the ACMA must observe those directions.

20 Determinations and clarifications to be disallowable by the Parliament

Determinations and clarifications under section 19 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

- (1) A person who is providing, or who proposes to provide, a broadcasting service may apply to the ACMA for an opinion as to which category, or categories, of broadcasting services the service falls into.
- (2) An application must be in accordance with a form approved in writing by the ACMA, and must state the applicant's opinion as to which category, or categories, of broadcasting services the service falls into.
- (3) If the ACMA considers that additional information is required before an opinion can be given, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must, as soon as practicable after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into.
- (5) If the ACMA has given an opinion under this section to the provider of a broadcasting service, neither the ACMA nor any other Government agency may, while the circumstances relating to the broadcasting service remain substantially the same as those advised to the ACMA in relation to the application for the opinion:
 - (a) take any action against the provider of the service during the period of 5 years commencing on the day on which the opinion is given on the basis that the service falls into a different category, or different categories, of broadcasting services than that advised in the opinion; or

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- (b) unless the ACMA has made a determination or clarification under section 19 after that opinion was given that places the broadcasting service in a different category or different categories—take any action against the provider of the service after the end of that period on the basis that the service falls into a different category, or different categories, of broadcasting services.
- (6) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into, the ACMA is taken to have given an opinion at the end of that period that accords with the applicant's opinion.
- (7) The ACMA may charge a fee for providing an opinion under this section.
- (8) The ACMA must not give an opinion under this section that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.
- (9) A person must not, in an application under this section, state an opinion that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.

22 Matters to be considered by ACMA

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

- (a) the geographic coverage of those services; and
- (b) the number of persons who receive or are able to receive those services; and
- (c) the accessibility of those services, including:
 - (i) whether those services are encrypted; and

- (ii) whether their availability is otherwise restricted, whether because of the high cost of the equipment required to receive those services, the controlled supply of that equipment or otherwise; and
- (iii) whether their comprehensibility is otherwise restricted; and
- (d) the duration and frequency of the provision of those services, including whether those services are provided for a set period only; and
- (e) the nature of the audience to which those services are targeted; and
- (f) the nature of the programs being provided by those services, including:
 - (i) the level of interest in the subject matter of those programs; and
 - (ii) whether those programs are directed at a specialised audience; and
 - (iii) the social and cultural impact of those programs; and
- (g) such other matters as the ACMA thinks fit.

Part 3—Planning of the broadcasting services bands

23 Planning criteria

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

- (a) demographics; and
- (b) social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and
- (c) the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and
- (d) developments in technology; and
- (e) technical restraints relating to the delivery or reception of broadcasting services; and
- (f) the demand for radiofrequency spectrum for services other than broadcasting services; and
- (g) such other matters as the ACMA considers relevant.

24 ACMA to determine priorities

- (1) Before preparing frequency allotment plans or licence area plans, the ACMA must, by notice in writing, determine priorities, as between particular areas of Australia and as between different parts of the broadcasting services bands, for the preparation of those plans.
- (2) The ACMA may, by notice in writing, vary priorities.

25 Preparation of frequency allotment plans

- (1) Where the Minister has, under subsection 31(1) of the *Radiocommunications Act 1992*, referred a part of the radiofrequency spectrum to the ACMA for planning, the ACMA must prepare in writing a frequency allotment plan that determines the number of channels that are to be available in particular areas of Australia to provide broadcasting services or restricted datacasting services, or both, using that part of the radiofrequency spectrum.
- (2) The ACMA may, by notice in writing, vary a frequency allotment plan prepared under subsection (1).
- (2A) If the Minister has, under subsection 31(1A) of the *Radiocommunications Act 1992*, referred a part of the radiofrequency spectrum to the ACMA for planning, the ACMA must, by legislative instrument, prepare a frequency allotment plan that determines the number of channels that are to be available in particular areas of Australia to provide the following services using that part of the radiofrequency spectrum:
 - (a) digital commercial radio broadcasting services;
 - (b) digital community radio broadcasting services;
 - (c) digital national radio broadcasting services;
 - (d) restricted datacasting services.
- (2B) The ACMA may, by legislative instrument, vary a frequency allotment plan prepared under subsection (2A).
- (3) In preparing or varying a frequency allotment plan, the ACMA must comply with any directions, whether of a general or specific nature, given to the ACMA in writing by the Minister.
- (4) Sections 23, 24 and 27 do not apply in relation to the preparation or variation of a frequency allotment plan to the extent to which the frequency allotment plan or the variation, as the case may be, relates to any of the following services:
 - (a) digital commercial radio broadcasting services;
 - (b) digital community radio broadcasting services;
 - (c) digital national radio broadcasting services;
 - (d) restricted datacasting services.

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26 Preparation of licence area plans

- (1) The ACMA must, by legislative instrument, prepare licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands, and those plans must be consistent with the relevant frequency allotment plan.
- (1A) To the extent to which a licence area plan deals with:
 - (a) digital commercial radio broadcasting services; or
 - (b) digital community radio broadcasting services; or
 - (c) digital national radio broadcasting services;the licence area plan is not required to determine the technical specifications of those services.
- (2) The ACMA may, by legislative instrument, vary a licence area plan.
- (3) If:
 - (a) a review is conducted under section 35A; and
 - (b) after the completion of the report of the review, the Minister is satisfied that a licence area plan should be varied in accordance with the recommendations in the report;the Minister may give the ACMA a written direction requiring the ACMA to vary the licence area plan as specified in the direction.
- (4) Subsection (3) does not limit subsection (2).
- (5) The ACMA must comply with a direction under subsection (3).
- (6) Sections 23 and 27 do not apply in relation to anything done by the ACMA in compliance with a direction under subsection (3).

26A Licence area plans—multi-channelled commercial television broadcasting services

- (1) If:
 - (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and

- (b) the licence authorises the licensee to provide a HDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the HDTV multi-channelled commercial television broadcasting service.

(1A) If:

- (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and
- (b) the licence authorises the licensee to provide a SDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the SDTV multi-channelled commercial television broadcasting service.

(2) Subsections (1) and (1A) cease to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the licence area concerned.

(3) In this section:

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

26B Licence area plans—multi-channelled national television broadcasting services

(1) Licence area plans are not required to deal with SDTV multi-channelled national television broadcasting services.

(1A) Licence area plans are not required to deal with HDTV multi-channelled national television broadcasting services.

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(2) Subsections (1) and (1A) cease to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the coverage area concerned.

(3) In this section:

HDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.

SDTV multi-channelled national television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

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

Commercial radio broadcasting services

(1) If:

- (a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and
 - (b) the licence authorises the licensee to provide digital commercial radio broadcasting services in the licence area;
- the relevant licence area plan is not required to deal with those services.

(2) If:

- (a) the ACMA allocates a digital commercial radio broadcasting licence in accordance with subsection 35D(3); and
 - (b) the licence authorises the licensee to provide digital commercial radio broadcasting services in the licence area;
- the relevant licence area plan is not required to deal with those services.

Community radio broadcasting services

(3) If:

- (a) a designated community radio broadcasting licence was in force immediately before the digital radio start-up day for the licence; and
 - (b) the licence authorises the licensee to provide digital community radio broadcasting services in the licence area;
- the relevant licence area plan is not required to deal with those services.

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

- (1) This section applies if a licence area plan deals with:
 - (a) digital commercial radio broadcasting services; or
 - (b) digital community radio broadcasting services; or
 - (c) digital national radio broadcasting services.
- (2) The licence area plan is not required to identify:
 - (a) individual digital commercial radio broadcasting services; or
 - (b) individual digital community radio broadcasting services; or
 - (c) individual digital national radio broadcasting services.
- (3) It is sufficient if the licence area plan deals collectively with:
 - (a) the digital commercial radio broadcasting services; and
 - (b) the digital community radio broadcasting services; and
 - (c) the digital national radio broadcasting services;that, from time to time, are, or are to be, transmitted under the digital radio multiplex transmitter licence or licences issued, or to be issued, in relation to the area concerned.

27 Processes to be public

- (1) In performing its functions under sections 24, 25 and 26, the ACMA must make provision for wide public consultation.
- (2) The ACMA is to keep a record of, and make available for public inspection, all advice received by the ACMA, and all assumptions made by the ACMA, in performing its functions under sections 24, 25 and 26.

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29 Designation of licence areas

- (1) Before allocating a new commercial television broadcasting licence, commercial radio broadcasting licence or community broadcasting licence (other than a temporary community broadcasting licence) that is a broadcasting services bands licence, the ACMA is to designate one of the areas referred to in section 26 as the licence area of the licence.
- (2) If the ACMA varies a licence area plan, the ACMA may vary the designation of the relevant licence areas.

30 ACMA may determine population figures

- (1) The ACMA may, by notice in writing, determine the licence area population of a licence area.
- (2) The ACMA may, by notice in writing, determine a number that is to be the population of Australia for the purposes of this Act.
- (3) In making a determination, the ACMA is to have regard to the most recently published census count prepared by the Australian Statistician.
- (4) The ACMA is to make a new determination of the licence area population of a licence area if the licence area is changed.
- (5) The ACMA is to specify, in a determination of the licence area population of a licence area:
 - (a) the percentage of the population of Australia constituted by that licence area population; and
 - (b) the percentage of that licence area population that is attributable to an overlap area.

31 Minister may reserve capacity for national broadcasters or community broadcasters

- (1) The Minister may notify the ACMA in writing that capacity in the broadcasting services bands is to be reserved for a specified number of:
 - (a) national broadcasting services; or
 - (b) community broadcasting services (other than services provided by temporary community broadcasting licensees);

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

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

32 Reservations to be disallowable by the Parliament

A notice under section 31 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

33 Development of technical planning guidelines

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

34 Alternative uses of broadcasting services bands

- (1) If:
 - (a) the ACMA has advertised under section 38 for applications for the allocation of one or more commercial television broadcasting licences or commercial radio broadcasting licences that are broadcasting services bands licences and that licence is not allocated or not all of those licences are allocated; or
 - (b) broadcasting services bands spectrum is available in a licence area but has not been made available for commercial television broadcasting licences or commercial radio broadcasting licences; or
 - (c) broadcasting services bands spectrum has been reserved under section 31 but has not been made available for the purpose for which it was reserved; or
 - (d) broadcasting services bands spectrum is available but the ACMA has not commenced or completed planning and allocation processes in relation to that spectrum;

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

- (e) for the temporary transmission or the re-transmission of programs; or
 - (ea) to temporary community broadcasting licensees; or
 - (f) to providers of subscription broadcasting services, subscription narrowcasting services or open narrowcasting services; or
 - (fa) for the transmission of datacasting services on a temporary basis; or
 - (g) for other purposes.
- (2) In making a determination under subsection (1), the ACMA is to have regard to:
- (a) the possible future demand for the use of that part of the radiofrequency spectrum; and
 - (b) such other matters as the ACMA considers relevant.
- (3) The ACMA may, by written instrument, determine that a part or parts of the broadcasting services bands spectrum is or are available for allocation for the purposes of the transmission of datacasting services.
- (4) In making a determination under subsection (3), the ACMA is to have regard to:
- (a) the possible future demand for the use of that part of the radiofrequency spectrum for the provision of commercial television broadcasting services; and
 - (b) such other matters as the ACMA considers relevant.
- (4A) Each part determined under subsection (3) must be 7 MHz. However, this rule does not prevent a particular part from being determined even if it adjoins:
- (a) another part that is also specified in the determination; or
 - (b) 2 other parts that are also specified in the determination.
- (5) For the purposes of the application of this section to the availability of the spectrum before 1 January 2007, a *datacasting service* is a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

- (6) For the purposes of the application of this section to the availability of the spectrum on or after 1 January 2007, a *datacasting service* is:
- (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
 - (b) a datacasting service provided under any other licence allocated by the ACMA under this Act; or
 - (c) a datacasting service provided in accordance with a class licence.

35 Notification of decisions under this Part

If the ACMA makes an instrument under this Part, the ACMA must publish in the *Gazette* a notice stating:

- (a) that the instrument has been made; and
- (b) the places where copies of the instrument can be purchased.

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

35A Reviews about the allocation of new commercial television broadcasting licences

Initial review

- (1) Before 1 January 2012, the Minister must cause to be conducted a review of:
 - (a) whether one or more commercial television broadcasting licences that are broadcasting services bands licences should be allocated under section 36 for a particular area or areas of Australia; and
 - (b) if so, what variations (if any) should be made to any licence area plans in force under section 26.

Subsequent reviews

- (2) The Minister may cause to be conducted a review of:
 - (a) whether one or more commercial television broadcasting licences that are broadcasting services bands licences should be allocated under section 36 for a particular area or areas of Australia; and
 - (b) if so, what variations (if any) should be made to any licence area plans in force under section 26.
- (3) Subsection (2) does not authorise the conduct of a review before the completion of the report of a review conducted under subsection (1).

Conduct of a review

- (4) The following matters must be taken into account in conducting a review under subsection (1) or (2):
 - (a) the objects of this Act;

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- (b) the matters referred to in paragraphs 23(a) to (f) in so far as they are relevant;
 - (c) the availability of radiofrequency spectrum;
 - (d) any other relevant matters.
- (5) A review under subsection (1) or (2) must be conducted in a manner that provides for wide public consultation.
 - (6) The ACMA must make available such information as is reasonably necessary for the conduct of a review under subsection (1) or (2).

Report of a review

- (7) The Minister must cause to be prepared a report of a review under subsection (1) or (2).
- (8) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

35B Allocation of new commercial television broadcasting licences

- (1) If:
 - (a) a review is conducted under section 35A; and
 - (b) after the completion of the report of the review, the Minister is satisfied that a commercial television broadcasting licence should be allocated under section 36 for a particular area of Australia;the Minister may, within 3 years after the completion of the report of the review, give the ACMA a written direction requiring the ACMA to allocate the licence under section 36 within a specified period.
- (2) The ACMA must comply with a direction under subsection (1).
- (3) The ACMA must not allocate a licence under section 36 unless the ACMA is directed to do so under subsection (1) of this section.
- (4) If:
 - (a) a direction is given under subsection (1); and
 - (b) as a result, the ACMA allocates a commercial television broadcasting licence under section 36;

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the licence is subject to the condition that the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4).

35C Digital radio moratorium

- (1) During the digital radio moratorium period for a licence area, the ACMA must not allocate, under subsection 36(1), a commercial radio broadcasting licence to provide digital commercial radio broadcasting services in the licence area.
- (2) Subsection (1) has effect subject to section 35D.
- (3) For the purposes of this Act, the *digital radio moratorium period* for a licence area is the 6-year period beginning at the start of the digital radio start-up day for the licence area.

35D Exception to the digital radio moratorium—failure to provide a digital commercial radio broadcasting service

Scope

- (1) This section applies to a commercial radio broadcasting licence if:
 - (a) the licence was in force immediately before the digital radio start-up day for the licence area; and
 - (b) the licence authorises the licensee to provide any digital commercial radio broadcasting services in the licence area; and
 - (c) at a particular time (the *relevant time*) during the digital radio moratorium period for the licence area, the ACMA is satisfied that the licensee is not providing at least one digital commercial radio broadcasting service under the licence in the licence area.

Licence ceases to authorise the provision of digital commercial radio broadcasting services etc.

- (2) As soon as practicable after the relevant time, the ACMA must, by written notice given to the licensee, determine that:
 - (a) the licence ceases to authorise the licensee to provide one or more digital commercial radio broadcasting services in the licence area; and

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- (b) the licence is taken, for the purposes of this Act, to have been allocated as a licence to provide an analog commercial radio broadcasting service; and
- (c) despite subsection 36A(5), the licence is subject to the condition that the licensee may only provide an analog commercial radio broadcasting service under the licence.

ACMA must allocate a new commercial radio broadcasting licence for the licence area

- (3) As soon as practicable after a notice under subsection (2) is given to a licensee of a commercial radio broadcasting licence (the **first licence**), the ACMA must:
 - (a) allocate, under subsection 36(1), a single commercial radio broadcasting licence for the licence area of the first licence; and
 - (b) allocate the licence as a licence to provide digital commercial radio broadcasting services in that licence area.

ACMA may specify circumstances in which a licensee is taken to be providing a digital commercial radio broadcasting service

- (4) The ACMA may, by legislative instrument, specify circumstances in which a commercial radio broadcasting licensee is taken, for the purposes of paragraph (1)(c), to be providing a digital commercial radio broadcasting service under the licence in the licence area.
- (5) A copy of an instrument under subsection (4) must be made available on the ACMA's Internet site.

36 ACMA to determine system for allocating licences

- (1) The ACMA is to determine in writing a price-based system for allocating:
 - (a) commercial television broadcasting licences that are broadcasting services bands licences; and
 - (b) commercial radio broadcasting licences that are broadcasting services bands licences.
- (2) The Minister may give specific directions to the ACMA for the purpose of a determination.

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- (3) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.
- (4) If a commercial television broadcasting licence or a commercial radio broadcasting licence referred to in subsection (1) is allocated, the ACMA must, unless the allocation system adopted was public, publish in the *Gazette* the name of the successful applicant and the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.

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

Licences in force immediately before the commencement of this section

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

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

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

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

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

Licence conditions

- (4) Subject to subsection (5), if a commercial radio broadcasting licence is or was allocated as a licence to provide an analog commercial radio broadcasting service, the licence is subject to the condition that the licensee may only provide an analog commercial radio broadcasting service under the licence.
- (5) If:
 - (a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and
 - (b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;subsection (4) ceases to apply in relation to the licence at the start of the digital radio start-up day for the licence area.
- (6) If a commercial radio broadcasting licence is allocated as a licence to provide digital commercial radio broadcasting services, the licence is subject to the condition that the licensee may only provide digital commercial radio broadcasting services under the licence.

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- (7) This section has effect subject to section 35D.

Subsection 40(1) licences

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

37 When licences must not be allocated

- (1) A licence is not to be allocated to an applicant if:
 - (a) the applicant is not a company that is formed in Australia or in an external Territory and has a share capital; or
 - (b) the ACMA decides that subsection 41(2) applies to the applicant.
- (2) Paragraph (1)(b) does not require the ACMA to consider the application of section 41 in relation to an applicant before allocating a licence to the applicant.

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38 ACMA to advertise for applications for certain licences

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

38A Additional commercial television licences in single markets

Circumstances in which existing licensee may apply for additional licence

- (1) If:
 - (a) a particular licence area is the licence area of only one commercial television broadcasting licence (the **parent licence**) that is in force; and
 - (b) additional commercial television broadcasting licences can be allocated for the licence area;the existing licensee may apply in writing to the ACMA for an additional commercial television broadcasting licence for the licence area.

ACMA must grant additional licence

- (2) As soon as practicable, the ACMA must allocate an additional commercial television broadcasting licence to the existing licensee for the licence area, so long as:
- (a) all of the following conditions are satisfied:
 - (i) no licence for the licence area previously allocated under this section to the existing licensee has been cancelled because of a breach of the condition set out in paragraph 7(1)(i) of Schedule 2;
 - (ii) no licence for the licence area previously held by the existing licensee has been cancelled because of a breach of the condition set out in subsection (9);
 - (iii) no licence for the licence area previously held by the existing licensee has been surrendered; or
 - (b) both:
 - (i) paragraph (a) does not apply; and
 - (ii) the ACMA is satisfied that there are exceptional circumstances.

Amalgamation of licence areas in some cases

- (7) If:
- (a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or
 - (b) a licence area is entirely within another licence area;
- this section applies as if the 2 licence areas were one.

Fee for additional licence

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

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Licence conditions

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

Restrictions on transfer of licences

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

Section 37 restrictions apply

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

38B Additional commercial television licences in 2-station markets

- (1) If:
- (a) a particular licence area is the licence area of only 2 commercial television broadcasting licences (the ***parent licences***) that are in force; and
 - (b) neither of those licences was allocated under section 38A; and
 - (c) an additional commercial television broadcasting licence can be allocated for the licence area;
- then, within 90 days after the designated time for the licence area:
- (d) the existing licensees may give the ACMA a joint written notice stating that:
 - (i) a company specified in the notice (the ***joint-venture company***) will apply for an additional commercial television broadcasting licence for the licence area; and
 - (ii) the joint-venture company is jointly owned by the existing licensees; and
 - (iii) the joint-venture company is formed in Australia or an external Territory and has a share capital; or

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- (e) each existing licensee may give the ACMA a written notice stating that the licensee will apply separately for an additional commercial television broadcasting licence for the licence area.

Application by joint-venture company

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

Separate applications by existing licensees

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

Allocation of additional licence to joint-venture company

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

Allocation of additional licence to existing licensee

- (6) If the ACMA has received applications from both of the existing licensees under subsection (3), the ACMA must allocate an additional commercial television broadcasting licence to one of those licensees for the licence area in accordance with a price-based system determined under subsection (10).
- (7) If:
- (a) each existing licensee gives a notice under paragraph (1)(e); and
 - (b) by the end of the 12-month period beginning at the designated time for the licence area:
 - (i) the ACMA has received an application from only one existing licensee (the *first licensee*) under subsection (3); and

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

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

(8) If:

- (a) each existing licensee gives a notice under paragraph (1)(e); and
- (b) before the end of the 12-month period beginning at the designated time for the licence area, the ACMA receives:
 - (i) an application from one existing licensee (the *first licensee*) under subsection (3); and
 - (ii) a notice from the other existing licensee stating that it will not be applying under subsection (3);

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

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

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

- (10) The ACMA may determine in writing a price-based system for allocating commercial television broadcasting licences under subsection (6).
- (11) The Minister may give specific directions to the ACMA for the purpose of a determination.
- (12) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.

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- (13) If a commercial television broadcasting licence is allocated under subsection (6), the ACMA must, unless the allocation system adopted was public, publish in the *Gazette*:
- (a) the name of the successful applicant; and
 - (b) the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.

Amalgamation of licence areas in some cases

- (14) The ACMA may, by writing, determine that, if:
- (a) more than 30% of the licence area population of a specified licence area is attributable to a specified overlap area; or
 - (b) a specified licence area is entirely within another specified licence area;
- this section applies as if the 2 licence areas were one.

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

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

- (16) A determination under subsection (14) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Fee for additional licence

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

Licence conditions

- (18) Each additional licence allocated under this section is subject to the following conditions:
- (a) the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4); and

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- (b) if the licence area for the licence is wholly outside a remote licence area (within the meaning of Schedule 4)—the licensee will commence to provide at least one commercial television broadcasting service in SDTV digital mode (within the meaning of Schedule 4) by whichever is the earlier of the following times:
 - (i) the time that is notified in writing to the licensee by the ACMA;
 - (ii) the start of 1 January 2004; and
 - (c) if the licence area for the licence is not of the kind mentioned in paragraph (b)—the licensee will commence to provide at least one commercial television broadcasting service in SDTV digital mode (within the meaning of Schedule 4) within 1 year of being allocated the licence or within such longer period as is notified in writing by the ACMA.
- (19) Paragraphs 7(1)(i), 7(1)(l) and 7(1)(m) of Schedule 2 do not apply to an additional licence allocated under this section.
- (20) On the allocation of an additional licence under subsection (5), it becomes a condition of:
- (a) the additional licence; and
 - (b) each parent licence;
- that the licensee concerned will continue to provide at least one service under the licence concerned for at least 2 years after the earliest occasion on which the licensee of the additional licence commences to provide a commercial television broadcasting service under the additional licence.
- (21) On the allocation of an additional licence under subsection (6), (7), (8) or (9), it becomes a condition of:
- (a) the additional licence; and
 - (b) the parent licence concerned;
- that the licensee will continue to provide at least one service under the licence concerned for at least 2 years after the earliest occasion on which the licensee of the additional licence commences to provide a commercial television broadcasting service under the additional licence.

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- (21A) The condition specified in subsection (21B) applies if:
- (a) a commercial television broadcasting licence is allocated to a joint-venture company under subsection (5); and
 - (b) the licence is transferred to another company (the *transferee company*); and
 - (c) an election is in force under subclause 6(7B) of Schedule 4 in relation to any or all of the commercial television broadcasting services provided under the licences referred to in subsection (1) as the parent licences.
- (21B) The licence held by the transferee company is subject to the condition that the transferee company will continue to transmit at least one commercial television broadcasting service provided under a parent licence in relation to which that election is in force.

Restrictions on transfer of licences

- (22) During the period of 2 years after the date of allocation of an additional licence under subsection (5), any attempt by any person to transfer the additional licence is of no effect.
- (23) During the period of 2 years after the date of allocation of an additional licence under subsection (6), (7), (8) or (9), any attempt by any person to transfer either:
- (a) the additional licence; or
 - (b) the parent licence concerned;
- is of no effect unless both of those licences are transferred at the same time by the same person to the same transferee.

Section 37 restrictions apply

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

Jointly owned company

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

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Designated time

(26) In this section:

designated time, in relation to a licence area, means:

- (a) if the licence area is wholly outside a remote licence area (within the meaning of Schedule 4)—the commencement of this section; or
 - (b) in any other case—the time determined by the ACMA in relation to the licence area under subsection (27).
- (27) The ACMA may, by writing, determine a time in relation to a licence area for the purposes of the definition of ***designated time*** in paragraph (26)(b).
- (28) For a licence area that is not a remote licence area (within the meaning of Schedule 4), the time determined under subsection (27) must be no later than 1 January 2006.

39 Additional commercial radio licences in single markets

Conditions for allocation of additional licence

(1) If:

- (a) a particular licence area is the licence area of only one commercial radio broadcasting licence (the ***parent licence***) that is in force; and
- (b) a service is being provided under the parent licence; and
- (c) the licence area for the parent licence does not have an excessive overlap area, as determined under subsection (5); and
- (d) the licensee requests the ACMA, in writing, to allocate to the licensee, for the same licence area, another commercial radio broadcasting licence that is a broadcasting services bands licence; and
- (e) in the opinion of the ACMA, suitable broadcasting services bands spectrum is available for providing another commercial radio broadcasting service in the same licence area;

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

Time limit for applications

- (2) An application under subsection (1) must be made within 60 days after:
 - (a) the commencement of this section; or
 - (b) the time when paragraphs (1)(a), (b) and (c) are first satisfied in relation to the parent licence;whichever is later.
- (3) If the conditions in paragraphs (1)(a), (b), (c) and (e) are not all satisfied at the time when the application is made, but at a later time they are all satisfied, then the ACMA is under an obligation at that later time to allocate the additional licence (unless the application has been withdrawn).

Matters that ACMA must take into account

- (4) The matters that the ACMA must take into account in forming an opinion for the purposes of paragraph (1)(e) include the following:
 - (a) any relevant plan under section 25;
 - (b) any relevant plan under section 26;
 - (c) any relevant capacity that has been reserved under section 31.

Excessive overlap area

- (5) The licence area for the parent licence has an excessive overlap area if:
 - (a) more than 30% of the licence area population of the licence area of the parent licence is attributable to an area that overlaps with the licence area of another commercial radio broadcasting licence; and
 - (b) at least one of the following situations exists:
 - (i) more than 30% of the licence area population of the licence area of that other licence is also attributable to the area that overlaps with the licence area of the parent licence;
 - (ii) more than one commercial radio broadcasting licence is in force with the same licence area as that other licence.

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Technical specifications for additional licence

- (6) The ACMA must make a determination in writing setting out the technical specifications that apply to the additional licence. The ACMA is not required to make the determination if a plan under section 26 applies to the licence area of the additional licence.
- (7) For the purposes of this Act and section 109 of the *Radiocommunications Act 1992*, the technical specifications are taken to have been determined under section 26 of this Act.

Fee for additional licence

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

Licence conditions

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

Restrictions on transfer of licences

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

Section 37 restrictions apply

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

Section 29 does not apply in some cases

- (12) If the licence area of the parent licence is not provided for under a licence area plan under section 26, then section 29 does not apply to the allocation of the additional licence.

40 Allocation of other licences

- (1) Subject to section 28, the ACMA may allocate to a person, on application in writing by the person, a commercial television broadcasting licence or a commercial radio broadcasting licence that is not a licence referred to in subsection 36(1).
- (1A) Licences under subsection (1) are to be allocated on the basis of one licence per service.
- (2) Before allocating a licence referred to in subsection (1), the ACMA is to designate a particular area in Australia as the licence area of the licence.
- (3) Applications must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined in writing by the ACMA.
- (4) If the ACMA makes a decision under subsection (1) or (2), the ACMA must publish in the *Gazette* details of the allocation or the designation of a licence area.

Referral of application to the Minister

- (5) Before allocating a commercial television broadcasting licence under subsection (1), the ACMA must refer the application to the Minister.
- (6) If an application for a commercial television broadcasting licence is referred to the Minister under subsection (5), the ACMA must not make a decision about the application until the Minister:
 - (a) gives a direction under subsection (7) in relation to the application; or
 - (b) gives a notice under subsection (9) in relation to the application.
- (7) If:
 - (a) an application for a commercial television broadcasting licence is referred to the Minister under subsection (5); and

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- (b) the Minister is of the opinion that the proposed commercial television broadcasting service is likely to be contrary to the public interest;
- the Minister must, by written notice given to the ACMA, direct the ACMA not to allocate the licence to the applicant.
- (8) The ACMA must comply with a direction under subsection (7).
- (9) If:
- (a) an application for a commercial television broadcasting licence is referred to the Minister under subsection (5); and
- (b) the Minister is not of the opinion that the proposed commercial television broadcasting service is likely to be contrary to the public interest;
- the Minister must, by written notice given to the ACMA, inform the ACMA that he or she has no objection to the allocation of the licence to the applicant.

Minister may request additional information

- (10) If an application is referred to the Minister under subsection (5), and the Minister considers that additional information is required before the Minister can decide whether to:
- (a) give a direction under subsection (7) in relation to the application; or
- (b) give a notice under subsection (9) in relation to the application;
- the Minister may, by written notice given to the applicant within 30 days after the day on which the application is referred to the Minister, request the applicant to provide that information.
- (11) If the Minister requests additional information under subsection (10), the Minister must give the ACMA a copy of the request.

Decision to be made within 60 days

- (12) If the Minister does not, within 60 days after the day on which:
- (a) an application is referred to the Minister under subsection (5); or
- (b) if the Minister requests additional information under subsection (10)—that additional information is received;

do either of the following:

- (c) give a direction under subsection (7) in relation to the application;
- (d) give a notice under subsection (9) in relation to the application;

then the Minister is taken to have given a notice under subsection (9) in relation to the application.

Licence condition

- (13) If the ACMA allocates a commercial television broadcasting licence under subsection (1), the licence is subject to the condition that the licensee may only provide the commercial television broadcasting service concerned in digital mode (within the meaning of Schedule 4).

41 When persons are regarded as suitable

- (1) For the purposes of this Part, a company is a suitable licensee or a suitable applicant for a licence if the ACMA has not decided that subsection (2) applies to the company.
- (2) The ACMA may, if it is satisfied that allowing a particular company to provide or continue to provide commercial broadcasting services under a licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;decide that this subsection applies to the company.
- (3) In deciding whether such a risk exists, the ACMA is to take into account:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of each person who is, or would be, if a licence were allocated to the applicant, in a position to control the licence; and

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- (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

41A Services authorised by commercial television broadcasting licences before 1 January 2009

Licences in force immediately before 1 January 2007

- (1) If:
- (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and
 - (b) the licence authorised the licensee to provide a commercial television broadcasting service (the ***core commercial television broadcasting service***) in the licence area;
- the licence is taken to authorise the licensee to provide the following 2 services in the licence area:
- (c) the core commercial television broadcasting service;
 - (d) a HDTV multi-channelled commercial television broadcasting service;
- during the period ending immediately before 1 January 2009.

Licences allocated on or after 1 January 2007

- (2) If a commercial television broadcasting licence for a licence area is allocated on or after 1 January 2007 but before 1 January 2009, the licence authorises the licensee to provide the following 2 services in the licence area:

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- (a) a commercial television broadcasting service (the *core commercial television broadcasting service*) transmitted in SDTV digital mode;
 - (b) a HDTV multi-channelled commercial television broadcasting service;
- during the period ending immediately before 1 January 2009.

Licences allocated under subsection 40(1)

- (3) This section does not apply to a commercial television broadcasting licence allocated under subsection 40(1).

Definitions

- (4) In this section:

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

SDTV digital mode has the same meaning as in Schedule 4.

41B Services authorised by commercial television broadcasting licences during so much of the simulcast period etc. as occurs on or after 1 January 2009

Licences in force immediately before 1 January 2009

- (1) If:
 - (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2009; and
 - (b) the licence authorised the licensee to provide the following 2 services in the licence area:
 - (i) the core commercial television broadcasting service;
 - (ii) a HDTV multi-channelled commercial television broadcasting service;
- the licence is taken to authorise the licensee to provide the following 3 services in the licence area:
- (c) the core commercial television broadcasting service;
 - (d) the HDTV multi-channelled commercial television broadcasting service;

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- (e) a SDTV multi-channelled commercial television broadcasting service;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Licences allocated on or after 1 January 2009

- (2) If a commercial television broadcasting licence for a licence area is allocated on or after 1 January 2009 but before the end of whichever of the following periods is applicable:
 - (a) the simulcast period for the licence area;
 - (b) the simulcast-equivalent period for the licence area;the licence authorises the licensee to provide the following 3 services in the licence area:
 - (c) a HDTV multi-channelled commercial television broadcasting service;
 - (d) 2 SDTV multi-channelled commercial television broadcasting services;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Licences allocated under subsection 40(1)

- (3) This section does not apply to a commercial television broadcasting licence allocated under subsection 40(1).

Definitions

- (4) In this section:

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

**41C Services authorised by commercial television broadcasting
licences after the end of the simulcast period etc.**

*Licences in force immediately before the end of the simulcast
period etc.*

- (1) If a commercial television broadcasting licence for a licence area was in force immediately before the end of whichever of the following periods is applicable:
- (a) the simulcast period for the licence area;
 - (b) the simulcast-equivalent period for the licence area;
- then, after the end of the applicable period, the licence is taken to authorise the licensee to provide the following services in the licence area:
- (c) one or more HDTV multi-channelled commercial television broadcasting services;
 - (d) one or more SDTV multi-channelled commercial television broadcasting services.

Licences allocated after the end of the simulcast period etc.

- (2) If a commercial television broadcasting licence for a licence area is allocated after the end of whichever of the following periods is applicable:
- (a) the simulcast period for the licence area;
 - (b) the simulcast-equivalent period for the licence area;
- the licence authorises the licensee to provide the following services in the licence area:
- (c) one or more HDTV multi-channelled commercial television broadcasting services;
 - (d) one or more SDTV multi-channelled commercial television broadcasting services.

Licences allocated under subsection 40(1)

- (3) This section does not apply to a commercial television broadcasting licence allocated under subsection 40(1).

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Definitions

(4) In this section:

HDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

SDTV multi-channelled commercial television broadcasting service has the same meaning as in Schedule 4.

simulcast-equivalent period has the same meaning as in Schedule 4.

simulcast period has the same meaning as in Schedule 4.

41D Services authorised by commercial radio broadcasting licences

Licences in force immediately before the commencement of this section

(1) If:

- (a) a commercial radio broadcasting licence was in force immediately before the commencement of this section; and
- (b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;

then, during the period:

- (c) beginning at the start of the day on which this section commences; and
- (d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

Licences allocated on or after the commencement of this section

(2) If:

- (a) a commercial radio broadcasting licence is allocated on or after the commencement of this section but before the digital radio start-up day for the licence area; and
- (b) the licence is allocated as a licence to provide an analog commercial radio broadcasting service in the licence area;

then, during the period:

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- (c) beginning at the start of the day on which the licence is allocated; and
- (d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

Licences in force immediately before the digital radio start-up day for the licence area

- (3) If:
- (a) a commercial radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and
 - (b) the licence authorised the licensee to provide an analog commercial radio broadcasting service in the licence area;
- then, on and after the digital radio start-up day for the licence area, the licence is taken to authorise the licensee to provide the following services in the licence area:
- (c) the analog commercial radio broadcasting service;
 - (d) one or more digital commercial radio broadcasting services.

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

- (4) If:
- (a) a commercial radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and
 - (b) the licence is allocated as a licence to provide an analog commercial radio broadcasting service in the licence area;
- the licence is taken to authorise the licensee to provide that service in the licence area.
- (5) If:
- (a) a commercial radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and
 - (b) the licence is allocated as a licence to provide digital commercial radio broadcasting services in the licence area;
- the licence is taken to authorise the licensee to provide one or more digital commercial radio broadcasting services in the licence area.

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- (6) This section has effect subject to section 35D.

Subsection 40(1) licences

- (7) This section does not apply to a commercial radio broadcasting licence allocated under subsection 40(1).

42 Conditions of commercial broadcasting licences

- (1) Each commercial television broadcasting licence is subject to:
- (a) the conditions set out in Part 3 of Schedule 2; and
 - (b) such other conditions as are imposed under section 43.
- (2) Each commercial radio broadcasting licence is subject to:
- (a) the conditions set out in Part 4 of Schedule 2; and
 - (b) such other conditions as are imposed under section 43.

43 ACMA may impose additional conditions

- (1) The ACMA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.
- (2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must:
- (a) give to the licensee written notice of its intention; and
 - (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
 - (c) publish the proposed changes in the *Gazette*.
- (3) This section does not allow the ACMA to vary or revoke a condition set out in Part 3 or 4 of Schedule 2.
- (4) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

- (5) Action taken under subsection (1) must not be inconsistent with:
- (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 3 or 4 of Schedule 2.

43A Material of local significance—regional aggregated commercial television broadcasting licences

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional aggregated commercial television broadcasting licence to broadcast to each local area, during such periods as are specified in the condition, at least a minimum level of material of local significance.
- (2) For the purposes of subsection (1), a *regional aggregated commercial television broadcasting licence* is a commercial television broadcasting licence for any of the following licence areas:
- (a) Northern New South Wales;
 - (b) Southern New South Wales;
 - (c) Regional Victoria;
 - (d) Eastern Victoria;
 - (e) Western Victoria;
 - (f) Regional Queensland;
 - (g) Tasmania.
- (3) The condition must define *local area* and *material of local significance* for the purposes of the condition. The definition of *material of local significance* must be broad enough to cover news that relates directly to the local area concerned.
- (4) To avoid doubt, this section does not:
- (a) prevent the condition from setting out different requirements for different types of material; or
 - (b) prevent the condition from specifying periods that recur (for example, the hours between 7 am and 10 am Monday to Friday); or
 - (c) prevent the condition from setting out different requirements for different periods; or

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- (d) create any obligations under subsection 43(2) that would not exist apart from this section.
- (5) Subsection 43(5) does not apply to the condition.
- (6) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

43B Local presence—regional commercial radio broadcasting licences

- (1) The ACMA must ensure that, at all times after the commencement of this section, there is in force under section 43 a condition that has the effect of requiring that, if a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the event, the licensee must maintain at least the existing level of local presence.
- (2) The condition must define *existing level of local presence* for the purposes of the condition.
- (3) The definition must deal with:
 - (a) staffing levels; and
 - (b) studios and other production facilities.
- (4) Subsection (3) does not limit subsection (2).
- (5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.
- (6) Subsection 43(5) does not apply to the condition.
- (7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.
- (8) The Minister may give the ACMA a written direction about the fulfilment of the obligation imposed on the ACMA by this section.
- (9) The ACMA must comply with a direction under subsection (8).
- (10) In this section:

regional commercial radio broadcasting licence has the same meaning as in Division 5C of Part 5.

staff includes individuals engaged as independent contractors.

trigger event has the same meaning as in Division 5C of Part 5.

43C Local content—regional commercial radio broadcasting licences

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

Material of local significance

- (2) The condition must define *material of local significance* for the purposes of the condition. If a regional commercial radio broadcasting licensee is required to comply with section 61CD, the definition of *material of local significance* must be broad enough to cover material that the licensee must broadcast in order to comply with that section.

Applicable number

- (3) For the purposes of the application of subsection (1) to a regional commercial radio broadcasting licence, the *applicable number* is:
 - (a) 4.5; or
 - (b) if the Minister, by legislative instrument, declares that another number is the applicable number for regional commercial radio broadcasting licences generally—the other number; or
 - (c) if:
 - (i) the Minister, by legislative instrument, declares that another number is the applicable number for a specified class of regional commercial radio broadcasting licences; and
 - (ii) the regional commercial radio broadcasting licence is included in that class;the other number.

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- (4) Before 30 June 2007, the Minister must cause to be conducted a review of:
- (a) whether:
 - (i) a declaration should be made under paragraph (3)(b); or
 - (ii) one or more declarations should be made under subparagraph (3)(c)(i); and
 - (b) the number or numbers that should be specified in the declaration or declarations concerned; and
 - (c) in the case of a declaration or declarations under subparagraph (3)(c)(i)—the class or classes that should be specified in the declaration or declarations concerned.
- (4A) The Minister must cause to be prepared a report of a review under subsection (4).
- (4B) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.
- (4C) Before the end of whichever of the following periods ends first:
- (a) the period of 15 sitting days of the House of Representatives after the completion of the report;
 - (b) the period of 15 sitting days of the Senate after the completion of the report;
- the Minister must:
- (c) either:
 - (i) make a declaration under paragraph (3)(b); or
 - (ii) make one or more declarations under subparagraph (3)(c)(i); and
 - (d) cause a copy of each such declaration to be laid before each House of the Parliament in accordance with section 38 of the *Legislative Instruments Act 2003*.

Section 43 powers etc.

- (5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.
 - (6) Subsection 43(5) does not apply to the condition.
 - (7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.
-

Definitions

(8) In this section:

daytime hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 6 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
 - (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or
 - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

regional commercial radio broadcasting licence means a commercial radio broadcasting licence that has a regional licence area.

regional licence area means a licence area that is not a metropolitan licence area.

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

Scope

- (1) This section applies to a commercial radio broadcasting licence (the ***first licence***) if:
 - (a) the first licence authorises the licensee to provide one or more digital commercial radio broadcasting services; and
 - (b) the first licence was not allocated under subsection 40(1).

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Transmission by multiplex transmitter

- (2) The first licence is subject to the condition that the licensee must not provide a digital commercial radio broadcasting service under the first licence unless:
- (a) the service is transmitted using a multiplex transmitter; and
 - (b) the operation of the multiplex transmitter is authorised by a digital radio multiplex transmitter licence.

Use of more than one-ninth of multiplex capacity

- (3) If there is only one digital radio multiplex transmitter licence for the licence area of the first licence, the first licence is subject to the condition that the licensee of the first licence must not use more than one-ninth of multiplex capacity under the digital radio multiplex transmitter licence for the purpose of providing, under the first licence, a digital commercial radio broadcasting service that passes the shared content test in relation to an analog commercial radio broadcasting service provided under:
- (a) the first licence; or
 - (b) another commercial radio broadcasting licence that has the same licence area as the first licence.
- (4) If there are 2 or more digital radio multiplex transmitter licences for the licence area of the first licence, the first licence is subject to the condition that the licensee of the first licence must not use more than the designated fraction of the total multiplex capacities under those digital radio multiplex transmitter licences for the purpose of providing, under the first licence, a digital commercial radio broadcasting service that passes the shared content test in relation to an analog commercial radio broadcasting service provided under:
- (a) the first licence; or
 - (b) another commercial radio broadcasting licence that has the same licence area as the first licence.
- (5) For the purposes of subsection (4), the ***designated fraction*** of the total multiplex capacities under those digital radio multiplex transmitter licences is as follows:

1

Number of digital radio multiplex transmitter licences \times 9

Shared content test

- (6) For the purposes of subsections (3) and (4), a digital commercial radio broadcasting service *passes the shared content test* at a particular time in relation to an analog commercial radio broadcasting service if:
- (a) the program content of at least 50% of the total number of hours of programs broadcast by the first-mentioned service during daytime/evening hours during the 6-month period ending at that time;
- were the same as:
- (b) the program content of at least 50% of the total number of hours of programs broadcast by the other service during daytime/evening hours during the 6-month period ending at that time.
- (7) For the purposes of subsection (6), ignore the following:
- (a) advertising or sponsorship material (whether or not of a commercial kind);
 - (b) a promotion for a radio program or a radio broadcasting service;
 - (c) any digital program enhancement content in relation to a radio program;
 - (d) community information material or community promotional material;
 - (e) a news break or weather bulletin;
 - (f) any other similar material.

Definitions

- (8) In this section:

category 1 digital radio multiplex transmitter licence has the same meaning as in the *Radiocommunications Act 1992*.

category 2 digital radio multiplex transmitter licence has the same meaning as in the *Radiocommunications Act 1992*.

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daytime/evening hours means the hours:

- (a) beginning at 6 am each day; and
- (b) ending at midnight on the same day.

digital radio multiplex transmitter licence means:

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

44 Matters to which conditions may relate

- (1) Conditions of commercial television broadcasting licences and commercial radio broadcasting licences must be relevant to the broadcasting services to which those licences relate.
- (2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a commercial television broadcasting licensee or a commercial radio broadcasting licensee:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.

45 Duration of licences

Subject to Part 10, commercial television broadcasting licences and commercial radio broadcasting licences remain in force for 5 years.

46 Applications for renewal

- (1) The ACMA may renew a commercial television broadcasting licence or a commercial radio broadcasting licence if:
 - (a) the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ACMA, at least 20 weeks but not more than one year before the licence is due to expire; and
 - (b) the application is accompanied by the renewal fee determined in writing by the ACMA.
- (2) If the ACMA receives an application for renewal, the ACMA must notify in the *Gazette* the fact that the application has been made.

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

- (1) Subject to subsection (2), if the ACMA receives an application under section 46, the ACMA must, by notice in writing given to the licensee, renew the licence for a period of 5 years.
- (2) The ACMA must refuse to renew a licence if the ACMA decides that subsection 41(2) applies to the licensee.
- (3) The ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

48 Transfer of commercial broadcasting licences

A commercial television broadcasting licensee or a commercial radio broadcasting licensee may transfer the licence to another person.

49 Surrender of commercial broadcasting licences

A commercial television broadcasting licensee or a commercial radio broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

Part 5—Control of commercial broadcasting licences and datacasting transmitter licences

Division 1—Preliminary

50A This Part does not apply in relation to licences allocated under subsection 40(1)

This Part does not apply in relation to:

- (a) a commercial television broadcasting licence; or
 - (b) a commercial radio broadcasting licence;
- if the licence was allocated under subsection 40(1).

50 Interpretation—knowledge of company

- (1) For the purposes of this Part, if a director, the chief executive or a secretary of a company has knowledge of a matter, the company is taken to have knowledge of the matter.
- (2) Subsection (1) does not limit the ways in which knowledge of a company can be established.

51 Means of dealing with overlapping licence areas

If:

- (a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or
 - (b) a licence area is entirely within another licence area;
- the rules in this Part apply to the 2 licence areas, but not between those licence areas and other licence areas, as if the 2 licence areas were one.

51A This Part does not apply to certain channel B datacasting transmitter licences

This Part does not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant

transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

52 Changes in licence area populations not to put persons in breach of this Part

If:

- (a) the ACMA makes a new determination of the licence area population of a licence area or of the population of Australia; and
- (b) as a result of the determination, a person would be in breach of subsection 53(1) or 55(1) or (2);

those subsections continue to apply to the person as if the previous determination remained in force.

52A Newspapers—additional constitutional basis

- (1) Without limiting its effect apart from this section, this Act also has effect as provided by this section.
- (2) This Act also has the effect it would have if each reference in this Part to a newspaper were, by express provision, confined to a newspaper where:
 - (a) the publisher of the newspaper is a constitutional corporation; or
 - (b) at least part of the circulation of the newspaper is:
 - (i) in 2 or more States; or
 - (ii) in a Territory; or
 - (iii) in a foreign country.

Division 2—Limitation on control

Subdivision A—Commercial broadcasting licences

53 Limitation on control of commercial television broadcasting licences

- (1) A person must not be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.
- (2) A person must not be in a position to exercise control of more than one commercial television broadcasting licence in the same licence area.

54 Limitation on control of commercial radio broadcasting licences

A person must not be in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area.

Subdivision B—Commercial television broadcasting licences and datacasting transmitter licences

54A Limitation on control of commercial television broadcasting licences and datacasting transmitter licences

A person must not be in a position to exercise control of:

- (a) a commercial television broadcasting licence; and
- (b) a datacasting transmitter licence.

Subdivision C—Commercial radio broadcasting licences and restricted datacasting licences

54B Limitation on control of commercial radio broadcasting licences and restricted datacasting licences during the digital radio moratorium period

- (1) This section applies in relation to a commercial radio broadcasting licence if the licence was in force immediately before the digital radio start-up day for the licence area.
- (2) During the digital radio moratorium period for the licence area, a person must not be in a position to exercise control of:
 - (a) the commercial radio broadcasting licence; and
 - (b) a restricted datacasting licence.

Division 3—Limitation on directorships

Subdivision A—Television and radio

55 Limitation on numbers of directorships—television

- (1) A person must not be a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.
- (2) A person must not be:
 - (a) in a position to exercise control of a commercial television broadcasting licence; and
 - (b) a director of a company that is in a position to exercise control of another commercial television broadcasting licence;whose combined licence area populations exceed 75% of the population of Australia.
- (3) A person must not be:
 - (a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
 - (b) a director of a company that is in a position to exercise control of another commercial television broadcasting licence;if each of those licences have the same licence area.
- (4) A person must not be:
 - (a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
 - (b) in a position to exercise control of another commercial television broadcasting licence;if each of those licences have the same licence area.

56 Limitation on numbers of directorships—radio

A person must not be:

- (a) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area; or
- (b) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and in a position to exercise control of another commercial radio broadcasting licence in the same licence area; or
- (c) in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and a director of a company that is in a position to exercise control of another commercial radio broadcasting licence in the same licence area.

Subdivision B—Television and datacasting

56A Limitation on directorships—television and datacasting

(1) A person must not be a director of:

- (a) a company that is in a position to exercise control of a commercial television broadcasting licence; and
- (b) a company that is in a position to exercise control of a datacasting transmitter licence.

(2) A person must not:

- (a) be in a position to exercise control of a commercial television broadcasting licence; and
- (b) be a director of a company that is in a position to exercise control of a datacasting transmitter licence.

(3) A person must not:

- (a) be a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
- (b) be in a position to exercise control of a datacasting transmitter licence.

Division 5—Newspapers associated with licence areas

59 Newspapers associated with commercial television or radio broadcasting licence areas

- (1) The ACMA is to maintain an Associated Newspaper Register.
- (2) For the purposes of this Part, a newspaper is associated with the licence area of a licence if the name of the newspaper is entered in the Register as being associated with the licence area of the licence.
- (3) If the ACMA is satisfied that at least 50% of the circulation of a newspaper is within the licence area of a commercial television broadcasting licence, the ACMA is to enter the name of the newspaper in the Register in relation to that licence area.
- (4) If the ACMA is satisfied that less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial television broadcasting licence is within the licence area of that licence, the ACMA is to remove the name of the newspaper from the Register in relation to that licence area.
- (4A) If the ACMA is satisfied that:
 - (a) at least 50% of the circulation of a newspaper is within the licence area of a commercial radio broadcasting licence; and
 - (b) the circulation of the newspaper within that licence area is at least 2% of the licence area population;the ACMA must enter the name of the newspaper in the Register in relation to the licence area.
- (4B) If the ACMA is satisfied that:
 - (a) less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial radio broadcasting licence is within the licence area of that licence; or
 - (b) the circulation of the newspaper within that licence area is less than 2% of the licence area population;the ACMA must remove the name of the newspaper from the Register in relation to the licence area.

- (4C) Despite subsections (3) and (4A), if the ACMA is satisfied that:
- (a) a person (either alone or together with one or more other persons) has entered into, begun to carry out or carried out a scheme to publish a newspaper; and
 - (b) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;

the ACMA may refuse to enter the name of the newspaper in the Register.

(4D) If:

- (a) a newspaper is entered in the Register; and
- (b) the ACMA is satisfied that:
 - (i) a person (either alone or together with one or more other persons) entered into, began to carry out or carried out a scheme to publish the newspaper; and
 - (ii) the person did so for the sole or dominant purpose of ensuring that the number of points in the licence area of a commercial radio broadcasting licence would be increased or maintained;

the ACMA may remove the name of the newspaper from the Register.

- (5) The Register may be maintained by electronic means.
- (6) The Register is to be made available for inspection on the Internet.
- (7) The ACMA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.
- (8) In this section:

points has the same meaning as in Division 5A.

scheme has the same meaning as in Division 5A.

Division 5A—Media diversity

Subdivision A—Introduction

61AA Definitions

In this Division:

commencement day means the day on which Schedule 2 to the *Broadcasting Services Amendment (Media Ownership) Act 2006* commences.

controller of a media group means a person who is in a position to exercise control of each media operation in the media group.

core/primary commercial television broadcasting service, in relation to a commercial television broadcasting licence, means:

- (a) if a core commercial television broadcasting service is provided under the licence—that service; or
- (b) if a primary commercial television broadcasting service is provided under the licence—that service.

daytime/evening hours means the hours:

- (a) beginning at 6 am each day; and
- (b) ending at midnight on the same day.

engage in conduct means:

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

interest in a share means a legal or equitable interest in the share.

media group means a group of 2 or more media operations.

media operation means:

- (a) a commercial television broadcasting licence; or
- (b) a commercial radio broadcasting licence; or
- (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

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metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
 - (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or
 - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

name of a commercial television broadcasting licence or a commercial radio broadcasting licence means the service licence number of the licence.

points, in relation to the licence area of a commercial radio broadcasting licence, has the meaning given by section 61AC.

primary commercial television broadcasting service has the same meaning as in Schedule 4.

regional licence area means a licence area that is not a metropolitan licence area.

Register means the Register of Controlled Media Groups maintained under section 61AU.

registered controller of a registered media group means a person whose name is entered in the Register as a controller of the media group.

registered media group means a media group that is entered in the Register.

registrable media group, in relation to the licence area of a commercial radio broadcasting licence, means a media group covered by item 1 of the table in subsection 61AC(1) in its application to that licence area. For this purpose, disregard subsection 61AC(2).

scheme means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not

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enforceable, or intended to be enforceable, by legal proceedings; and

- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether unilateral or otherwise.

shared content test has the meaning given by section 61AE.

statutory control rules has the meaning given by section 61AD.

unacceptable 3-way control situation has the meaning given by section 61AEA.

unacceptable media diversity situation has the meaning given by section 61AB.

61AB Unacceptable media diversity situation

Metropolitan licence area

- (1) For the purposes of this Division, an *unacceptable media diversity situation* exists in relation to a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 5.

Regional licence area

- (2) For the purposes of this Division, an *unacceptable media diversity situation* exists in relation to a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 4.

61AC Points

- (1) Use the table to work out the number of points in the licence area of a commercial radio broadcasting licence (the *first radio licence area*):

Section 61AC

Points		
Item	This ...	is worth ...
1	a group of 2 or more media operations, where: <ul style="list-style-type: none"> (a) a person is in a position to exercise control of each of those media operations; and (b) each of those media operations complies with the statutory control rules; and (c) if a commercial television broadcasting licence is in the group—more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (d) if a commercial radio broadcasting licence is in the group—the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and (e) if a newspaper is in the group—the newspaper is associated with the first radio licence area 	1 point.
2	a commercial radio broadcasting licence, where: <ul style="list-style-type: none"> (a) the licence complies with the statutory control rules; and (b) the licence area of the licence is, or is the same as, the first radio licence area; and (c) item 1 does not apply to the licence 	1 point.
3	a newspaper, where: <ul style="list-style-type: none"> (a) the newspaper complies with the statutory control rules; and (b) the newspaper is associated with the first radio licence area; and (c) item 1 does not apply to the newspaper 	1 point.

Part 5 Control of commercial broadcasting licences and datacasting transmitter licences

Division 5A Media diversity

Section 61AC

Points		
Item	This ...	is worth ...
4	a group of 2 or more commercial television broadcasting licences, where: (a) each of those licences complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of each of those commercial television broadcasting licences; and (c) the core/primary commercial television broadcasting services to which those commercial television broadcasting licences relate pass the shared content test in relation to each other; and (d) item 1 does not apply to any of those commercial television broadcasting licences	1 point.
5	a commercial television broadcasting licence, where: (a) the licence complies with the statutory control rules; and (b) more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and (c) none of the commercial television broadcasting services provided under the licence passes the shared content test in relation to any of the commercial television broadcasting services provided under another commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the other commercial television broadcasting licence; and (d) item 1 does not apply to the first-mentioned licence	1 point.
	(2) If, apart from this subsection, all the media operations in a group of media operations mentioned in an item of the table are also in one or more other groups mentioned in an item of the table, then, for the purposes of subsection (1), ignore the existence of: (a) if one of the groups has the highest number of media operations—the remaining group or groups; or	

Section 61AD

- (b) if 2 or more of the groups have an equal highest number of media operations:
 - (i) all but one of the groups that have an equal highest number of media operations; and
 - (ii) the remaining group or groups; or
- (c) if the groups have an equal number of media operations—all but one of those groups.

61AD Statutory control rules

For the purposes of this Division, a media operation *complies with the statutory control rules* if, and only if:

- (a) no person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation; or
- (b) a person is in breach of a prohibition in Division 2 or 3 that relates directly or indirectly to the media operation, but the ACMA has approved the breach under section 67.

Note: Section 67 is about approval of temporary breaches.

61AE Shared content test

- (1) For the purposes of this Division, a commercial television broadcasting service *passes the shared content test* at a particular time in relation to another commercial television broadcasting service if:
 - (a) the program content of at least 50% of the total number of hours of programs broadcast by the first-mentioned service during daytime/evening hours during the 6-month period ending at that time;
were the same as:
 - (b) the program content of at least 50% of the total number of hours of programs broadcast by the other service during daytime/evening hours during the 6-month period ending at that time.
- (2) For the purposes of subsection (1), ignore the following:
 - (a) advertising or sponsorship material (whether or not of a commercial kind);
 - (b) a promotion for a television program or a television broadcasting service;

Section 61AEA

- (c) community information material or community promotional material;
 - (d) a news break or weather bulletin;
 - (e) any other similar material.
- (3) For the purposes of subsection (1), ignore any material covered by paragraph 6(8)(b), (c) or (d) of Schedule 4.

61AEA Unacceptable 3-way control situation

For the purposes of this Division, an *unacceptable 3-way control situation* exists in relation to the licence area of a commercial radio broadcasting licence (the *first radio licence area*) if a person is in a position to exercise control of:

- (a) a commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and
- (b) a commercial radio broadcasting licence, where the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and
- (c) a newspaper that is associated with the first radio licence area.

61AF Overlapping licence areas

Section 51 does not apply to this Division.

Note: Section 51 is about overlapping licence areas.

Subdivision B—Prohibition of transactions that result in an unacceptable media diversity situation coming into existence etc.

61AG Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—offence

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and

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- (b) the transactions have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
- (c) the person was:
 - (i) a party to the transactions; or
 - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AJ.

Penalty: 20,000 penalty units.

61AH Prohibition of transactions that result in an unacceptable media diversity situation coming into existence—civil penalty

- (1) This section applies if:
 - (a) one or more transactions take place on or after the commencement day; and
 - (b) the transactions have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
 - (c) the ACMA has not approved the transactions under section 61AJ.
- (2) A person must not be:
 - (a) a party to the transactions; or
 - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

Section 61AJ

61AJ Prior approval of transactions that result in an unacceptable media diversity situation coming into existence etc.

- (1) A person may, before a transaction takes place that would place a person in breach of section 61AG or 61AH, make an application to the ACMA for an approval of the transaction.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
 - (a) if the transaction took place, it would place a person in breach of section 61AG or 61AH; and
 - (b) either:
 - (i) the applicant; or
 - (ii) another person;will take action, within a period of not longer than 2 years, to ensure that:
 - (iii) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (iv) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned;the ACMA may, by written notice given to the applicant:
 - (c) approve the transaction; and
 - (d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that:
 - (i) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned; and

Section 61AK

- (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.
- (5) The period specified in the notice must be at least one month, but not longer than 2 years.
- (6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that:
 - (a) an unacceptable media diversity situation does not exist in relation to the licence area concerned; or
 - (b) if an unacceptable media diversity situation already exists in relation to the licence area concerned—there is not a reduction in the number of points in the licence area concerned.
- (7) In deciding whether to approve a transaction, the ACMA may have regard to:
 - (a) any relevant undertakings that:
 - (i) have been accepted by the ACMA under section 61AS; and
 - (ii) have not been withdrawn or cancelled; and
 - (b) such other matters (if any) as the ACMA considers relevant.
- (8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.
- (9) The ACMA must deal with applications under subsection (1) in order of receipt.
- (10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

61AK Extension of time for compliance with prior approval notice

- (1) A person who has been given a notice under section 61AJ may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.

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- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
 - (a) the period originally specified in the notice; or
 - (b) one year;whichever is the lesser period.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties that the applicant experienced in attempting to comply with the notice;but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
 - (c) the period originally specified in the notice; or
 - (d) one year;whichever is the lesser period.
- (7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AL Breach of prior approval notice—offence

- (1) A person commits an offence if:
 - (a) the person has been given a notice under section 61AJ; and
 - (b) the person engages in conduct; and
-

Section 61AM

(c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AM Breach of prior approval notice—civil penalty

- (1) A person must comply with a notice under section 61AJ.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision BA—Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence etc.

61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and
- (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
- (c) the person was:
- (i) a party to the transactions; or
 - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

Section 61AMB

61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty

- (1) This section applies if:
 - (a) one or more transactions take place on or after the commencement day; and
 - (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
 - (c) the ACMA has not approved the transactions under section 61AMC.
- (2) A person must not be:
 - (a) a party to the transactions; or
 - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

61AMC Prior approval of transactions that result in an unacceptable 3-way control situation coming into existence etc.

- (1) A person may, before a transaction takes place that would place a person in breach of section 61AMA or 61AMB, make an application to the ACMA for an approval of the transaction.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
 - (a) if the transaction took place, it would place a person in breach of section 61AMA or 61AMB; and
 - (b) either:
 - (i) the applicant; or
 - (ii) another person;

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will take action, within a period of not longer than 12 months, to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned;

the ACMA may, by written notice given to the applicant:

- (c) approve the transaction; and
 - (d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned; and
 - (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.
- (5) The period specified in the notice must be at least one month, but not longer than 12 months.
- (6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned.
- (7) In deciding whether to approve a transaction, the ACMA may have regard to:
- (a) any relevant undertakings that:
 - (i) have been accepted by the ACMA under section 61AS; and
 - (ii) have not been withdrawn or cancelled; and
 - (b) such other matters (if any) as the ACMA considers relevant.
- (8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.
- (9) The ACMA must deal with applications under subsection (1) in order of receipt.
- (10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

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61AMD Extension of time for compliance with prior approval notice

- (1) A person who has been given a notice under section 61AMC may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
 - (a) the period originally specified in the notice; or
 - (b) 6 months;whichever is the lesser period.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties that the applicant experienced in attempting to comply with the notice;but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
 - (c) the period originally specified in the notice; or
 - (d) 6 months;whichever is the lesser period.

Section 61AME

- (7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AME Breach of prior approval notice—offence

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 61AMC; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AMF Breach of prior approval notice—civil penalty

- (1) A person must comply with a notice under section 61AMC.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision C—Remedial directions

61AN Remedial directions—unacceptable media diversity situation

- (1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable media diversity situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

Section 61AN

- (2) The ACMA's directions may include:
- (a) a direction requiring the disposal of shares or interests in shares; or
 - (b) a direction restraining the exercise of any rights attached to:
 - (i) shares; or
 - (ii) interests in shares; or
 - (c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
 - (d) a direction that any exercise of rights attached to:
 - (i) shares; or
 - (ii) interests in shares;be disregarded.
- (3) Subsection (2) does not limit subsection (1).
- (4) The ACMA must not give a direction under subsection (1) if the direction would have the effect of requiring a registered controller of a registered media group to cease to be in a position to exercise control of any of the media operations in the group.
- (4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) the registered controller failed to comply with a notice under section 61AJ; and
 - (b) the notice related, to any extent, to the media operation.
- (4B) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and
 - (b) the person failed to take the action within that period.

(4C) If:

- (a) the ACMA made any of the following decisions (the *original decision*) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:
 - (i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);
 - (ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;
 - (iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;
 - (iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and
- (b) any of the following subparagraphs applies:
 - (i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;
 - (ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;
 - (iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and
- (c) the original decision was set aside or revoked; and
- (d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in relation to that licence area in the Register; and
- (e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of that other group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of any media operation in that other group.

Section 61ANA

(5) A direction under subsection (1) must specify a period within which the person must comply with the direction.

(6) The period must not be longer than 2 years.

(6A) If:

(a) the ACMA gives a direction under subsection (1) in the circumstances referred to in subsection (4C); and

(b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

(7) If the ACMA is satisfied that the person:

(a) acted in good faith; and

(b) took reasonable precautions, and exercised due diligence, to avoid:

(i) the unacceptable media diversity situation coming into existence; or

(ii) if the unacceptable media diversity situation already existed—a reduction in the number of points in the licence area concerned;

the period specified in the direction must be 2 years.

(8) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AG or 61AH, the period specified in the direction must be one month.

(9) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AG and 61AH.

61ANA Remedial directions—unacceptable 3-way control situation

(1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.

Section 61ANA

- (2) The ACMA's directions may include:
- (a) a direction requiring the disposal of shares or interests in shares; or
 - (b) a direction restraining the exercise of any rights attached to:
 - (i) shares; or
 - (ii) interests in shares; or
 - (c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
 - (d) a direction that any exercise of rights attached to:
 - (i) shares; or
 - (ii) interests in shares;be disregarded.
- (3) Subsection (2) does not limit subsection (1).
- (4) A direction under subsection (1) must specify a period within which the person must comply with the direction.
- (5) The period must not be longer than 12 months.
- (6) If the ACMA is satisfied that the person:
- (a) acted in good faith; and
 - (b) took reasonable precautions, and exercised due diligence, to avoid the unacceptable 3-way control situation coming into existence;
- the period specified in the direction must be 12 months.
- (7) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AMA or 61AMB, the period specified in the direction must be one month.
- (8) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AMA and 61AMB.

Section 61AP

61AP Extension of time for compliance with remedial direction

- (1) A person who has been given a direction under section 61AN or 61ANA may, within 3 months before the end of the period specified in the direction but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) An application for an extension cannot be made if the period specified in the direction was one month.
- (3) In the case of a direction under section 61AN, the ACMA may grant an extension if it is of the opinion that:
 - (a) an unacceptable media diversity situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61AN; and
 - (b) the applicant acted in good faith; and
 - (c) an extension is appropriate in all the circumstances.
- (3A) In the case of a direction under section 61ANA, the ACMA may grant an extension if it is of the opinion that:
 - (a) an unacceptable 3-way control situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61ANA; and
 - (b) the applicant acted in good faith; and
 - (c) an extension is appropriate in all the circumstances.
- (4) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (5) The ACMA must not grant more than one extension, and the period of any extension must not exceed 3 months.
- (6) In deciding whether to grant an extension to a person, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the direction; and

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- (b) the difficulties experienced by the applicant in attempting to comply with the direction; and
 - (c) the seriousness of the situation that led to the giving of the direction under section 61AN or 61ANA, as the case may be; but the ACMA must not have regard to any financial disadvantage that compliance with the direction may cause.
- (7) If the ACMA does not, within 45 days after:
- (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;
- extend the period or refuse to extend the period originally specified in the direction, the ACMA is to be taken to have extended that period by 3 months.
- (8) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

61AQ Breach of remedial direction—offence

- (1) A person commits an offence if:
- (a) the person has been given a direction under section 61AN or 61ANA; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the direction.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

61AR Breach of remedial direction—civil penalty

- (1) A person must comply with a direction under section 61AN or 61ANA.
- (2) Subsection (1) is a civil penalty provision.

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- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Subdivision D—Enforceable undertakings

61AS Acceptance of undertakings

- (1) The ACMA may accept any of the following undertakings:
- (a) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable media diversity situation does not exist in relation to the licence area of a commercial radio broadcasting licence;
 - (b) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—a written undertaking given by a person that the person will take specified action to ensure that there is not a reduction in the number of points in the licence area;
 - (c) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence.
- (2) The undertaking must be expressed to be an undertaking under this section.
- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA.
- (4) The ACMA may, by written notice given to the person, cancel the undertaking.
- (5) The ACMA may publish the undertaking on its Internet site.

61AT Enforcement of undertakings

- (1) If:
- (a) a person has given an undertaking under section 61AS; and
 - (b) the undertaking has not been withdrawn or cancelled; and

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- (c) the ACMA considers that the person has breached the undertaking;
- the ACMA may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
- (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Subdivision E—Register of Controlled Media Groups

61AU Register of Controlled Media Groups

- (1) The ACMA is to maintain a register, to be known as the Register of Controlled Media Groups.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.
- (4) The Register is not a legislative instrument.
- (5) The ACMA must begin to comply with subsection (1) as soon as practicable after the start of 1 February 2007.

61AV How a media group is to be entered in the Register

- (1) For the purposes of this Subdivision, the ACMA is to enter a media group in the Register by entering in the Register, under a heading for the group:
 - (a) the names of the media operations in the group; and
 - (b) the name of the controller, or the names of each of the controllers, of the media operations in the group.

Section 61AW

- (2) A media group is to be identified in the Register by a unique number assigned by the ACMA.

61AW Explanatory notes may be included in the Register

- (1) The ACMA may include explanatory notes in the Register.
- (2) Explanatory notes do not form part of a media group's entry in the Register.

61AX Continuity of media group

- (1) For the purposes of this Subdivision, a change in the controller, or any of the controllers, of a media group does not affect the continuity of the group.
- (2) For the purposes of this Subdivision, a change in the composition of the media operations in a media group results in the group ceasing to exist.
- (3) However, the rule in subsection (2) does not apply to a change in the composition of the media operations in a media group if:
 - (a) one or more media operations cease to be in the group; and
 - (b) at least 2 media operations remain in the group; and
 - (c) there is no increase in the number of media operations that remain in the group.

61AY Initial registration of media groups

- (1) If the ACMA is satisfied that a particular media group was a registrable media group in relation to the licence area of a commercial radio broadcasting licence at the start of 1 February 2007, the ACMA must enter the group in the Register.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.

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- (4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.
- (5) An entry under subsection (1) is taken to have been made at the start of 1 February 2007.

61AZ Registration of newly-formed media group

- (1) If:
 - (a) the ACMA is satisfied that:
 - (i) a registrable media group has come into existence on or after 1 February 2007; and
 - (ii) the media group is not already entered in the Register; and
 - (b) the ACMA is satisfied that the coming into existence of the media group does not have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
 - (c) the ACMA is satisfied that the coming into existence of the media group does not have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence;the ACMA must enter the group in the Register.
 - (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
 - (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant entry within 2 business days after receiving the notification or the last of the notifications.
 - (4) If the ACMA makes an entry under subsection (1), the ACMA is to include in the Register a note to the effect that the entry is unconfirmed.
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Register frozen while ACMA reconsideration is pending or AAT/court proceedings are pending

(5) If:

- (a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and
- (b) any of the following subparagraphs applies:
 - (i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;
 - (ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;
 - (iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;

then:

- (c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the *pending period*) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:
 - (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
 - (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and
- (d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the case may be, had been received on the first day after the end of the pending period.

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- (6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:
- (a) if, because of the operation of subsection 61AZF(9), the decision is taken to be affirmed—the day on which the decision is taken to have been affirmed; or
 - (b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.
- (7) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
 - (b) the Administrative Appeals Tribunal makes a decision on the application;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.
- (8) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
 - (b) the Administrative Appeals Tribunal made a decision on the application; and
 - (c) a person appeals from the decision to the Federal Court; and
 - (d) the Court makes a decision on the appeal;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.
- (9) For the purposes of subsection (5), if:
- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
 - (b) the court makes a decision on the application;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

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- (10) For the purposes of subsection (5), if:
- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
 - (b) the court made a decision on the application; and
 - (c) the decision became the subject of an appeal; and
 - (d) the court or another court makes a decision on the appeal; and
 - (e) the decision mentioned in paragraph (d) could be the subject of an appeal;
- the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.
- (11) The regulations may provide that, in specified circumstances, an application is taken, for the purposes of subsection (5), not to have been finalised during a period ascertained in accordance with the regulations.
- (12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or (10).

61AZA De-registration of media group that has ceased to exist

- (1) If the ACMA is satisfied that a registered media group has ceased to exist on or after 1 February 2007, the ACMA must remove the group's entry from the Register.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must remove the relevant entry within 2 business days after receiving the notification or the last of the notifications.
- (4) If, under subsection (1), the ACMA removes a group's entry from the Register, the ACMA must include in the Register a note to the effect that the removal is unconfirmed.

61AZB Registration of change of controller of registered media group

- (1) If the ACMA is satisfied that:
 - (a) a person who is not a registered controller of a registered media group has become a controller of the group on or after 1 February 2007; or
 - (b) a registered controller of a registered media group has ceased to be a controller of the group on or after 1 February 2007;the ACMA must:
 - (c) if paragraph (a) applies—alter the group’s entry in the Register by adding the name of the controller concerned; or
 - (d) if paragraph (b) applies—alter the group’s entry in the Register by omitting the name of the controller concerned.
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.
- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.
- (4) If the ACMA makes an alteration under subsection (1), the ACMA must include in the Register a note to the effect that the alteration is unconfirmed.

61AZC Registration of change of composition of media group

- (1) If the ACMA is satisfied that:
 - (a) one or more of the media operations in a registered media group have ceased to be in that group on or after 1 February 2007; and
 - (b) the group continues in existence;the ACMA must alter the group’s entry in the Register by omitting the name or names of the media operations referred to in paragraph (a).
- (2) For the purposes of subsection (1), the ACMA may rely on one or more notifications given, or purportedly given, under Division 6 on or after 1 February 2007.

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- (3) If the ACMA relies on a notification or notifications given, or purportedly given, under Division 6, the ACMA must make the relevant alteration within 2 business days after receiving the notification or the last of the notifications.
- (4) If the ACMA makes an alteration under subsection (1), the ACMA is to include in the Register a note to the effect that the alteration is unconfirmed.

61AZCA ACMA must deal with notifications in order of receipt

- (1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must deal with notifications given, or purportedly given, under Division 6 in order of receipt.
- (2) Subsection (1) has effect subject to subsection 61AZ(5).

61AZD Conditional transactions

Entry of media group

- (1) If:
 - (a) a person is a party to a proposed transaction; and
 - (b) the proposed transaction is subject to the condition that the ACMA enters a proposed media group in the Register; and
 - (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
 - (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group were to be entered in the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant entry in the Register;then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Removal of entry of media group

(2) If:

- (a) a person is a party to a proposed transaction; and
- (b) the proposed transaction is subject to the condition that the ACMA removes a media group's entry from the Register; and
- (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
- (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group's entry were to be removed from the Register on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the removal of the relevant entry from the Register;

then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Alteration of entry of media group

(3) If:

- (a) a person is a party to a proposed transaction; and
- (b) the proposed transaction is subject to the condition that the ACMA alters a media group's entry in the Register; and
- (c) the person requests the ACMA to assume, for the purposes of this Subdivision, that the proposed transaction:
 - (i) had been completed; and
 - (ii) were not subject to that condition; and
- (d) the ACMA is satisfied that:
 - (i) the parties to the proposed transaction are acting in good faith; and
 - (ii) if the media group's entry in the Register were to be altered on the basis of the assumption mentioned in paragraph (c)—the proposed transaction will be completed within 5 business days after the making of the relevant alteration in the Register;

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then, for the purposes of this Subdivision, the ACMA may make the assumption mentioned in paragraph (c).

Requests

- (4) A request under subsection (1), (2) or (3) must be:
 - (a) in a form approved in writing by the ACMA; and
 - (b) accompanied by such information as the ACMA requires.
- (5) An approved form of a request may provide for verification by statutory declaration of information accompanying requests.

61AZE Review and confirmation of entries and alterations etc.

Review

- (1) If the ACMA:
 - (a) enters a media group in the Register under subsection 61AY(1) or 61AZ(1); or
 - (b) removes a media group's entry from the Register under subsection 61AZA(1); or
 - (c) makes an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1);the ACMA must review the entry, removal or alteration, and make a decision:
 - (d) confirming the relevant entry, removal or alteration; or
 - (e) cancelling the relevant entry, removal or alteration.

Confirmation

- (2) If the ACMA confirms the relevant entry, removal or alteration, the ACMA must remove from the Register the note stating that the entry, removal or alteration is unconfirmed.

Cancellation

- (3) If the ACMA cancels an entry, the ACMA must:
 - (a) remove the entry from the Register; and
 - (b) remove from the Register the note stating that the entry is unconfirmed.

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- (4) If the ACMA cancels the removal of an entry, the ACMA must:
- (a) restore the entry to the Register; and
 - (b) remove from the Register the note stating that the removal is unconfirmed.
- (5) If the ACMA cancels an alteration, the ACMA must:
- (a) reverse the alteration; and
 - (b) remove from the Register the note stating that the alteration is unconfirmed.

ACMA not required to rely on notifications

- (6) To avoid doubt, in exercising its powers under subsection (1), the ACMA is not required to rely on a notification given, or purportedly given, under Division 6.

Conditional transactions

- (7) If:
- (a) under subsection (1), the ACMA reviews an entry or alteration; and
 - (b) the entry or alteration was made on the assumption that a proposed transaction had been completed (see section 61AZD); and
 - (c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the making of the entry or alteration;
- the ACMA must make a decision under subsection (1) cancelling the entry or alteration.
- (8) If:
- (a) under subsection (1), the ACMA reviews a removal of an entry; and
 - (b) the removal was done on the assumption that a proposed transaction had been completed (see section 61AZD); and
 - (c) the ACMA is not satisfied that the proposed transaction was completed within 5 business days after the removal;
- the ACMA must make a decision under subsection (1) to cancel the removal.

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ACMA may request additional information

- (9) If:
- (a) under subsection (1), the ACMA reviews an entry, removal or alteration; and
 - (b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (1);
- the ACMA may, within 14 days after the relevant entry, removal or alteration, by written notice given to a person, request the person to provide that information.

Deadline

- (10) If the ACMA does not, within 28 days after:
- (a) doing whichever of the following is applicable:
 - (i) entering a media group in the Register under subsection 61AY(1) or 61AZ(1);
 - (ii) removing a media group's entry from the Register under subsection 61AZA(1);
 - (iii) making an alteration to a media group's entry in the Register under subsection 61AZB(1) or 61AZC(1); or
 - (b) if the ACMA has requested further information—receiving that further information;
- make a decision under subsection (1):
- (c) confirming the relevant entry, removal or alteration; or
 - (d) cancelling the relevant entry, removal or alteration;
- the ACMA is taken to have made a decision under subsection (1) at the end of that 28-day period confirming the relevant entry, removal or alteration.

61AZF Reconsideration of decisions

Applications for reconsideration of decisions

- (1) A person:
- (a) whose interests are affected by a decision under subsection 61AZE(1); and
 - (b) who is dissatisfied with the decision;
- may apply to the ACMA for the ACMA to reconsider the decision.

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- (2) The application must:
 - (a) be in a form approved in writing by the ACMA; and
 - (b) set out the reasons for the application.
- (3) The application must be made within 7 days after the taking of the action required by subsection 61AZE(2), (3), (4) or (5) to give effect to the decision.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

Reconsideration of decisions—application

- (5) Upon receiving an application under subsection (1), the ACMA must:
 - (a) reconsider the decision; and
 - (b) affirm or revoke the decision.
- (6) The ACMA's decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).
- (7) The ACMA must give to the applicant a notice stating its decision on the reconsideration.

ACMA may request additional information

- (8) If:
 - (a) an application is made under subsection (1); and
 - (b) the ACMA considers that additional information is required before the ACMA can make a decision under subsection (5);the ACMA may, within 14 days after receiving the application, by written notice given to:
 - (c) the applicant; or
 - (d) any other person;request the applicant or other person to provide that information.
- (9) If the ACMA does not, within 28 days after:
 - (a) receiving an application under subsection (1); or
 - (b) if the ACMA has requested further information—receiving that further information;

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make a decision under subsection (5), the ACMA is taken to have made a decision under subsection (5) at the end of that 28-day period affirming the original decision.

Reconsideration of decisions—ACMA’s own initiative

- (10) The ACMA may, at any time:
 - (a) reconsider a decision made under subsection 61AZE(1); and
 - (b) affirm or revoke the decision.
- (11) The ACMA’s decision on reconsideration of a decision has effect as if it had been made under subsection 61AZE(1).

61AZG Corrections of clerical errors or obvious defects

The ACMA may alter the Register for the purposes of correcting a clerical error or an obvious defect in the Register.

61AZH Regulations

The regulations may make further provision about the operation of the Register.

Division 5B—Disclosure of cross-media relationships

61BA Definitions

In this Division:

media operation means:

- (a) a commercial television broadcasting licence; or
- (b) a commercial radio broadcasting licence; or
- (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence.

prime-time hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

set of media operations means:

- (a) a commercial television broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or
- (b) a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence; or
- (c) a commercial radio broadcasting licence and a newspaper that is associated with the licence area of the licence.

61BB Disclosure of cross-media relationship by commercial television broadcasting licensee

Scope

- (1) This section applies if:
 - (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial television broadcasting licence is in the set; and

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- (c) the licensee broadcasts matter that is wholly or partly about:
 - (i) the business affairs of a commercial radio broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of the publisher of a newspaper that is in the set.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the commercial radio broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the commercial television broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial television broadcasting licensee and the publisher of the newspaper.
- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial television broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have viewed the broadcast mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

61BC Choice of disclosure method—commercial radio broadcasting licensee

Notice of choice may be given to the ACMA

- (1) A commercial radio broadcasting licensee may give the ACMA a written notice making a choice that section 61BE apply to the licensee with effect from a Sunday specified in the notice.

Note: If a notice is not given, section 61BD applies to the licensee.

When notice must be given

- (2) A notice under subsection (1) must be given at least 5 business days before the Sunday specified in the notice.

Duration of notice

- (3) A notice under subsection (1):
- (a) comes into force at the beginning of the Sunday specified in the notice; and
 - (b) unless sooner revoked, remains in force indefinitely.

Revocation of notice

- (4) If a notice under subsection (1) is in force in relation to a commercial radio broadcasting licensee, the licensee may, by written notice given to the ACMA, revoke the subsection (1) notice with effect from the end of a Saturday specified in the revocation notice.
- (5) A notice under subsection (4) must be given at least 5 business days before the Saturday specified in the notice.

Notices to be available on the Internet

- (6) If a notice is in force under subsection (1), the ACMA must make a copy of the notice available on the Internet.

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61BD Disclosure of cross-media relationship by commercial radio broadcasting licensee—business affairs disclosure method

Scope

- (1) This section applies if:
 - (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial radio broadcasting licence is in the set; and
 - (c) the licensee broadcasts matter that is wholly or partly about:
 - (i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of the publisher of a newspaper that is in the set; and
 - (d) a notice under subsection 61BC(1) is not in force in relation to the commercial radio broadcasting licensee.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the commercial radio broadcasting licensee must also broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.
- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) A statement under subsection (2) or (4) must be broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is broadcast in the manner, and at the time, specified in, or ascertained in accordance with, the regulations.

61BE Disclosure of cross-media relationship by commercial radio broadcasting licensee—regular disclosure method

Scope

- (1) This section applies if:
 - (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a commercial radio broadcasting licence is in the set; and
 - (c) a notice under subsection 61BC(1) is in force in relation to the commercial radio broadcasting licensee.

Requirement to disclose cross-media relationship

- (2) If a commercial television broadcasting licence is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee.
- (4) If a newspaper is in the set, the commercial radio broadcasting licensee must regularly broadcast a statement describing (whether in summary form or otherwise) the relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

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- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.

How statement is to be broadcast

- (6) Statements under subsection (2) or (4) are to be broadcast in a way, and with a frequency, that is reasonably likely to ensure that the audience of the commercial radio broadcasting service during prime-time hours is aware that:
- (a) in the case of statements under subsection (2)—there is a relationship between the commercial radio broadcasting licensee and the commercial television broadcasting licensee; or
 - (b) in the case of statements under subsection (4)—there is a relationship between the commercial radio broadcasting licensee and the publisher of the newspaper.
- (7) A commercial radio broadcasting licensee is taken to have complied with subsection (6) if:
- (a) the statement is broadcast at least once each day during prime-time hours; and
 - (b) the statement is broadcast in a way that will adequately bring it to the attention of a reasonable person who may have listened to the broadcast of the statement.
- (8) The regulations may provide that a commercial radio broadcasting licensee is taken to have complied with subsection (6) if the statement is broadcast in the manner, and at the times, ascertained in accordance with the regulations.

61BF Disclosure of cross-media relationship by publisher of newspaper

Scope

- (1) This section applies if:
- (a) a person is in a position to exercise control of each media operation in a set of media operations; and
 - (b) a newspaper is in the set; and

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- (c) material published in a particular edition of the newspaper is wholly or partly about:
- (i) the business affairs of a commercial television broadcasting licensee whose licence is in the set; or
 - (ii) the business affairs of a commercial radio broadcasting licensee whose licence is in the set.

Note: For *business affairs*, see section 61BH.

Requirement to disclose cross-media relationship

- (2) If subparagraph (1)(c)(i) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial television broadcasting licensee.
- (3) It is sufficient if the statement under subsection (2) is to the effect that there is a cross-media relationship between the publisher and the commercial television broadcasting licensee.
- (4) If subparagraph (1)(c)(ii) applies, the publisher of the newspaper must cause to be published in the same edition of the newspaper a statement describing (whether in summary form or otherwise) the relationship between the publisher and the commercial radio broadcasting licensee.
- (5) It is sufficient if the statement under subsection (4) is to the effect that there is a cross-media relationship between the publisher and the commercial radio broadcasting licensee.

How statement is to be published

- (6) A statement under subsection (2) or (4) must be published in a way that will adequately bring it to the attention of a reasonable person who may have read the material mentioned in paragraph (1)(c).
- (7) The regulations may provide that subsection (6) is taken to have been complied with if the statement is published in the manner specified in, or ascertained in accordance with, the regulations.

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Offence

- (8) A person is guilty of an offence if:
- (a) the person is subject to a requirement under this section; and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection: 2,000 penalty units.

61BG Exception—political communication

Sections 61BB, 61BD, 61BE and 61BF do not apply to the extent (if any) that they would infringe any constitutional doctrine of implied freedom of political communication.

61BH Matter or material about the business affairs of a broadcasting licensee or newspaper publisher

Matter or material about business affairs—what is included and excluded

- (1) A reference in this Division to ***matter or material that is wholly or partly about the business affairs*** of a commercial television broadcasting licensee, a commercial radio broadcasting licensee or a newspaper publisher:
- (a) includes a reference to matter or material, where, having regard to:
 - (i) the nature of the matter or material; and
 - (ii) the way in which the matter or material is presented; it would be reasonable to conclude that the object, or one of the objects, of the broadcast of the matter or the publication of the material, as the case may be, was to:
 - (iii) promote; or
 - (iv) otherwise influence members of the public, or of a section of the public, to view, to listen to, or to read; matter broadcast, or to be broadcast, by the licensee, or material published, or to be published, in the newspaper, as the case may be; and

- (b) does not include a reference to:
 - (i) a journalistic acknowledgment of a program or article as being the source of particular information; or
 - (ii) advertising matter or advertising material, where a reasonable person would be able to distinguish the advertising matter or advertising material from other matter or material; or
 - (iii) a program guide (see subsection (2)); or
 - (iv) exempt matter or exempt material (see subsection (4)).

Program guide

- (2) For the purposes of this section, a **program guide** is matter or material that consists of no more than:
 - (a) a schedule of:
 - (i) the television programs provided by 2 or more television broadcasting services; or
 - (ii) the radio programs provided by 2 or more radio broadcasting services; or
 - (b) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief;

where the matter or material does not single out one of those services for special promotion.
- (3) For the purposes of subsection (2):
 - (a) a **television broadcasting service** is:
 - (i) a commercial broadcasting service that provides television programs; or
 - (ii) a national broadcasting service that provides television programs; and
 - (b) a **radio broadcasting service** is:
 - (i) a commercial broadcasting service that provides radio programs; or
 - (ii) a national broadcasting service that provides radio programs.

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Exempt matter or exempt material

- (4) The Minister may, by legislative instrument, determine that:
 - (a) matter included in a specified class of matter is ***exempt matter*** for the purposes of this section; and
 - (b) material included in a specified class of material is ***exempt material*** for the purposes of this section.
- (5) A determination under subsection (4) has effect accordingly.

Advertising

- (6) This section does not, by implication, affect the meaning of the expression ***advertising*** when used in any other provision of this Act.

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

Subdivision A—Introduction

61CA Definitions

In this Division:

approved local content plan means an approved local content plan under Subdivision C.

benchmark year means:

- (a) in relation to a regional commercial radio broadcasting licence where a single trigger event has occurred—the 52-week period ending on the Saturday before the day on which the trigger event occurred; and
- (b) in relation to a regional commercial radio broadcasting licence where 2 or more trigger events have occurred—the 52-week period ending on the Saturday before the day on which the most recent trigger event occurred.

community service announcement means community information, or community promotional material, for the broadcast of which the licensee does not receive any consideration in cash or in kind.

controller has the same meaning as in Division 5A.

designated local content program means a program about matters of local significance, other than:

- (a) a news bulletin; or
- (aa) a weather bulletin; or
- (b) a community service announcement; or
- (c) an emergency warning.

draft local content plan means a draft local content plan under Subdivision C.

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eligible local news bulletins means local news bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins broadcast on each of those days have a total duration of at least 12.5 minutes;
- (c) the bulletins are broadcast during prime-time hours;
- (d) the bulletins adequately reflect matters of local significance;
- (e) none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

eligible local weather bulletins means local weather bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins are broadcast during prime-time hours.

emergency service agency means:

- (a) a police force or service; or
- (b) a fire service; or
- (c) a body that runs an emergency service specified in the regulations.

local (except in sections 61CR and 61CS) has a meaning affected by section 61CC.

metropolitan licence area means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
 - (i) New South Wales; or
 - (ii) Victoria; or
 - (iii) Queensland; or
 - (iv) Western Australia; or
 - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

news bulletin means a regularly scheduled news bulletin.

prime-time hours means the hours:

- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and

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- (b) ending at 10 am on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

regional commercial radio broadcasting licence means a commercial radio broadcasting licence that has a regional licence area.

regional licence area means a licence area that is not a metropolitan licence area.

Register has the same meaning as in Division 5A.

registrable media group has the same meaning as in Division 5A.

trigger event has the meaning given by section 61CB.

weather bulletin means a regularly scheduled weather bulletin that is transmitted:

- (a) as a stand-alone bulletin; or
(b) in conjunction with a news bulletin.

week means a 7-day period that begins on a Sunday.

61CB Trigger event

Transfer of licence

- (1) For the purposes of this Division, if:
- (a) a regional commercial radio broadcasting licence is held by a person; and
- (b) the person transfers the licence to another person;
- the transfer of the licence is a ***trigger event*** for the licence.

Formation of new registrable media group

- (2) For the purposes of this Division, if:
- (a) a registrable media group comes into existence; and
- (b) the media group is not already entered in the Register; and
- (c) a regional commercial radio broadcasting licence is in the group;
- the coming into existence of the group is a ***trigger event*** for the licence.

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

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Change of controller of registrable media group

- (3) For the purposes of this Division, if:
- (a) either:
 - (i) a person who is not a controller of a registrable media group becomes a controller of the group; or
 - (ii) a controller of a registrable media group ceases to be a controller of the group; and
 - (b) a regional commercial radio broadcasting licence is in the group;
- the change of controller is a *trigger event* for the licence.

61CC What is local?

- (1) The ACMA may, by legislative instrument, define what is meant by the expression *local* for the purposes of the application of:
- (a) this Division (other than sections 61CR and 61CS); or
 - (b) a specified provision of this Division (other than sections 61CR and 61CS);
- to a specified licence area.
- (2) In making an instrument under subsection (1), the ACMA must have regard to:
- (a) the areas where separate programming is provided; and
 - (b) such other matters (if any) as the ACMA considers relevant.

Note: Program includes advertising or sponsorship matter—see the definition of *program* in subsection 6(1).

Subdivision B—Minimum service standards for local news and information

61CD Licensee must meet minimum service standards for local news and information

If a trigger event for a regional commercial radio broadcasting licence occurs, then, after the occurrence of the trigger event, the licensee must meet:

- (a) minimum service standards for local news; and
- (aa) minimum service standards for local weather; and

- (b) minimum service standards for local community service announcements; and
- (c) minimum service standards for emergency warnings; and
- (d) if a declaration is in force under subsection 61CE(6)—minimum service standards for designated local content programs.

61CE Minimum service standards for local news and information

Local news

- (1) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local news*** during a particular week if, during that week, the number of eligible local news bulletins broadcast by the licensee is at least:
 - (a) the local news target number; or
 - (b) if the average weekly number of eligible local news bulletins broadcast under the licence during the benchmark year is a number greater than the local news target number—the greater number.
- (2) For the purposes of subsection (1), the ***local news target number*** is:
 - (a) 5; or
 - (b) if the Minister, by legislative instrument, declares that a greater number is the local news target number—the greater number.

Local weather

- (2A) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local weather*** during a particular week if, during that week, the number of eligible local weather bulletins broadcast by the licensee is at least the local weather target number.
- (2B) For the purposes of subsection (2A), the ***local weather target number*** is:
 - (a) 5; or

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

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- (b) if the Minister, by legislative instrument, declares that a greater number is the local weather target number—the greater number.

Local community service announcements

- (3) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for local community service announcements*** during a particular week if, during that week, the number of local community service announcements broadcast by the licensee is at least the community service target number.
- (4) For the purposes of subsection (3), the ***community service target number*** is:
 - (a) 1; or
 - (b) if the Minister, by legislative instrument, declares that a greater number is the local community service target number—the greater number.

Emergency warnings

- (5) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the ***minimum service standards for emergency warnings*** during a particular week if:
 - (a) on one or more occasions during the week, one or more emergency service agencies asked the licensee to broadcast emergency warnings, and the licensee broadcast those warnings as and when asked to do so by those emergency service agencies; or
 - (b) there was no occasion during the week when an emergency service agency asked the licensee to broadcast an emergency warning.

Designated local content programs

- (6) For the purposes of this Subdivision, the Minister may, by legislative instrument, declare that a regional commercial radio broadcasting licence meets the ***minimum service standards for designated local content programs*** during a particular week if, during that week, the licensee meets such requirements in relation

to designated local content programs as are specified in the declaration.

Subdivision C—Local content plans

61CF Licensee must submit draft local content plan to the ACMA

- (1) If a trigger event for a regional commercial radio broadcasting licence occurs, the licensee must give the ACMA:
 - (a) a draft local content plan for the licence; and
 - (b) a statement setting out such information about the licensee's broadcasting operations as the ACMA requires;within 90 days after the day on which the trigger event occurs.
- (2) If the licensee does not comply with subsection (1), the ACMA may, by legislative instrument, determine that a plan in the terms specified in the determination is the approved local content plan for the licence.

Replacement of approved local content plan

- (3) If an approved local content plan (the *original plan*) for a commercial radio broadcasting licence is in force:
 - (a) a draft local content plan given under subsection (1) for the licence must be expressed to replace the original plan; and
 - (b) if the draft local content plan becomes an approved local content plan for the licence—the original plan ceases to be in force.
- (4) If:
 - (a) the ACMA makes a determination under subsection (2) in relation to a commercial radio broadcasting licence; and
 - (b) an approved local content plan (the *original plan*) for the licence was in force immediately before the determination takes effect;then:
 - (c) the approved local content plan as determined by the ACMA replaces the original plan; and
 - (d) the original plan ceases to be in force.

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

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61CG Content of draft or approved local content plan

A draft or approved local content plan for a regional commercial radio broadcasting licence must set out how the licensee will comply with section 61CD.

61CH Approval of draft local content plan

- (1) If a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF, the ACMA must:
 - (a) approve the plan; or
 - (b) refuse to approve the plan.

Approval of plan

- (2) In deciding whether to approve a draft local content plan, the ACMA must have regard to:
 - (a) whether the plan is adequate; and
 - (b) whether the plan is sufficiently detailed; and
 - (c) any relevant information set out in the paragraph 61CF(1)(b) statement; and
 - (d) such other matters (if any) as the ACMA considers relevant.
- (3) If the ACMA approves the draft local content plan, the plan becomes an approved local content plan for the licence.
- (4) If the ACMA approves the draft local content plan, the ACMA must give the licensee a written notice setting out the decision.

Refusal to approve plan

- (5) If the ACMA refuses to approve the draft local content plan, the ACMA may, by legislative instrument, determine that a plan in the terms specified in the determination is the approved local content plan for the licence.
- (6) If the ACMA refuses to approve the draft local content plan, the ACMA must give the licensee a written notice setting out the reasons for the refusal.

Occurrence of trigger event when ACMA's decision is pending

- (7) If:
- (a) a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF as the result of the occurrence of a trigger event for the licence; and
 - (b) another trigger event for the licence occurs before the ACMA makes a decision under subsection (1) in relation to the plan;
- then:
- (c) the ACMA is taken to have refused to approve the plan; and
 - (d) subsections (5) and (6) do not apply to that refusal.

61CJ Register of approved local content plans

- (1) The ACMA is to maintain a Register in which the ACMA includes approved local content plans as in force from time to time.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

61CK Approved local content plan must be varied if minimum service standards are imposed or increased

- (1) This section applies if:
 - (a) an approved local content plan (the *current plan*) for a regional commercial radio broadcasting licence is in force; and
 - (b) the Minister makes a declaration under:
 - (i) paragraph 61CE(2)(b); or
 - (ia) paragraph 61CE(2B)(b); or
 - (ii) paragraph 61CE(4)(b); or
 - (iii) subsection 61CE(6); and
 - (c) in the case of a declaration under paragraph 61CE(2)(b)—the effect of the declaration is to raise the licensee's minimum service standards for local news.
- (2) The licensee must give the ACMA:
 - (a) a draft variation of the current plan; and

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- (b) a statement setting out such information about the licensee's broadcasting operations as the ACMA requires; within 90 days after the day on which the declaration is made.
- (3) If the licensee does not comply with subsection (2), the ACMA may, by legislative instrument, vary the current plan.

61CL Approved local content plan may be varied by the licensee

If an approved local content plan (the *current plan*) for a regional commercial radio broadcasting licence is in force, the licensee may give the ACMA:

- (a) a draft variation of the current plan; and
- (b) a statement setting out such information about the licensee's broadcasting operations as the ACMA requires.

61CM Approval of draft variation

- (1) If, under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan (the *current plan*), the ACMA must:
 - (a) approve the variation; or
 - (b) refuse to approve the variation.

Approval of variation

- (2) The ACMA must not approve the variation unless the ACMA is satisfied that, if the licensee were to give the ACMA a draft local content plan in the same terms as the current plan as proposed to be varied, the ACMA would approve that draft.
- (3) If the ACMA approves the variation, the current plan is varied accordingly.
- (4) If the ACMA approves the variation, the ACMA must give the licensee a written notice setting out the decision.

Refusal to approve variation

- (5) If the ACMA refuses to approve the variation, the ACMA must give the licensee a written notice setting out the reasons for the refusal.

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- (6) If the ACMA refuses to approve the variation, the ACMA may, by legislative instrument, vary the current plan.

Occurrence of trigger event when ACMA's decision is pending

- (7) If:
- (a) under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan; and
 - (b) a trigger event for the licence occurs after the receipt of the variation but before the ACMA makes a decision under subsection (1) in relation to the variation;
- then:
- (c) the ACMA is taken to have refused to approve the variation; and
 - (d) subsections (5) and (6) do not apply to that refusal.

61CN ACMA may review approved local content plan

- (1) If an approved local content plan for a regional commercial radio broadcasting licence is in force, the ACMA must review the plan at least once every 3 years.
- (2) If, after such a review, the ACMA considers that the approved local content plan should be varied, the ACMA may, by legislative instrument, vary the plan.

61CP Compliance with approved local content plan

If an approved local content plan for a regional commercial radio broadcasting licence is in force, the licensee must take all reasonable steps to ensure that the plan is complied with.

61CPA Licensee must submit annual compliance report

- (1) This section applies if an approved local content plan for a regional commercial radio broadcasting licence was in force during the whole or a part of a financial year.
- (2) The regional commercial radio broadcasting licensee must, within 3 months after the end of the financial year, give the ACMA a

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report about the licensee's compliance with the approved local content plan during the whole or the part, as the case may be, of the financial year.

- (3) A report under subsection (2) must:
- (a) be in a form approved in writing by the ACMA; and
 - (b) set out such information as the ACMA requires.

61CQ Minister may direct the ACMA about the exercise of its powers

- (1) The Minister may give the ACMA a written direction about the exercise of the powers conferred on the ACMA by this Subdivision.
- (2) The ACMA must comply with a direction under subsection (1).

Subdivision D—Other local content requirements

61CR Minister may direct the ACMA to conduct an investigation about other local content requirements

- (1) The Minister may give the ACMA a written direction requiring the ACMA to conduct an investigation under section 170 into:
- (a) whether the ACMA should exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance; and
 - (b) if so, the content of those conditions.
- (2) The ACMA must comply with a direction under subsection (1).
- (3) This section does not limit the powers conferred on the ACMA by section 43 or 170.
- (4) This section does not limit the powers conferred on the Minister by section 61CS.

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

- (1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).
- (6) This section does not limit the powers conferred on the ACMA by section 43.

61CT Regular reviews of local content requirements

- (1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:
 - (a) the operation of sections 43B and 43C;
 - (b) the operation of this Division;
 - (c) the operation of paragraph 8(2)(c) of Schedule 2;
 - (d) whether sections 43B and 43C should be amended;
 - (e) whether this Division should be amended;

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- (f) whether paragraph 8(2)(c) of Schedule 2 should be amended.
- (2) For the purposes of facilitating the conduct of a review under subsection (1), the ACMA must make available information about regional commercial radio broadcasting licensees' compliance with:
 - (a) licence conditions imposed as a result of section 43B or 43C; and
 - (b) licence conditions imposed as a result of an investigation directed under section 61CR; and
 - (c) licence conditions imposed as a result of a direction under section 61CS; and
 - (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (4) The ACMA must comply with a direction under subsection (3).
- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

Division 6—Notification provisions

62 Requirement to notify control and directorships

Notification by licensee—general

- (1) Each commercial television broadcasting licensee, commercial radio broadcasting licensee and datacasting transmitter licensee must, within 3 months after the end of each financial year, give to the ACMA in writing:
 - (a) details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the end of that financial year; and
 - (b) the name of each person who was a director of the licensee at the end of that financial year.
- (2) The details are to be provided in a form approved in writing by the ACMA.

Notification by restricted datacasting licensee

- (2A) Each restricted datacasting licensee must, within 3 months after the end of each financial year that ends during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, give to the ACMA in writing:
 - (a) details of the persons who, to the knowledge of the restricted datacasting licensee, were in a position to exercise control of the restricted datacasting licence at the end of that financial year; and
 - (b) the name of each person who was a director of the restricted datacasting licensee at the end of that financial year.
- (2B) The details are to be provided in a form approved in writing by the ACMA.

Notification by publisher of newspaper

- (3) Each publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence must, within 3 months after the end of each financial year, give to the ACMA in writing:

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- (a) details of the persons who, to the knowledge of the publisher, were in a position to exercise control of the newspaper at the end of that financial year; and
 - (b) if the publisher is a company—the name of each person who was a director of the company at the end of that financial year.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2A) or (3); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

63 Requirement to notify changes in control

Notification by licensee—general

- (1) If a commercial television broadcasting licensee, commercial radio broadcasting licensee or datacasting transmitter licensee becomes aware that:
- (a) a person who was not in a position to exercise control of the licence has become in a position to exercise control of the licence; or
 - (b) a person who was in a position to control the licence has ceased to be in that position;
- the licensee must, within 5 days after becoming so aware, notify the ACMA in writing of that event.

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- (2) The details are to be provided in a form approved in writing by the ACMA.

Notification by restricted datacasting licensee

- (2A) If, during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, a restricted datacasting licensee becomes aware that:
- (a) a person who was not in a position to exercise control of the restricted datacasting licence has become in a position to exercise control of the restricted datacasting licence; or
 - (b) a person who was in a position to control the restricted datacasting licence has ceased to be in that position;
- the restricted datacasting licensee must, within 5 days after becoming so aware, notify the ACMA in writing of that event.
- (2B) The details are to be provided in a form approved in writing by the ACMA.

Notification by publisher of newspaper

- (3) If the publisher of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that:
- (a) a person who was not in a position to exercise control of the newspaper has become in a position to exercise control of the newspaper; or
 - (b) a person who was in a position to control the newspaper has ceased to be in that position;
- the publisher of the newspaper must, within 5 days after becoming so aware, notify the ACMA in writing of that event.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2A) or (3); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

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Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

64 Person who obtains control of a licence or newspaper must notify the ACMA

Notification by controller of licence—general

- (1) If a person who was not in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence or a datacasting transmitter licence becomes aware that that person is in a position to exercise control of the licence, the person must, within 5 days after becoming so aware, notify the ACMA in writing of that position.
- (2) The details are to be provided in a form approved in writing by the ACMA.

Notification by controller of restricted datacasting licence

- (2A) If, during the digital radio moratorium period for the licence area of a commercial radio broadcasting licence, a person who was not in a position to exercise control of a restricted datacasting licence becomes aware that that person is in a position to exercise control of the restricted datacasting licence, the person must, within 5 days after becoming so aware, notify the ACMA in writing of that position.
- (2B) The details are to be provided in a form approved in writing by the ACMA.

Notification by controller of newspaper

- (3) If a person who was not in a position to exercise control of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that the person is in a position to exercise control of the newspaper, the person must, within 5 days after becoming so aware, notify the ACMA in writing of that position.

- (4) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (5) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (2A) or (3); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence, a datacasting transmitter licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

65 Requirement to notify control and directorships as at 1 February 2007

Notification by licensee

- (1) Each commercial television broadcasting licensee and commercial radio broadcasting licensee must, within 5 days after 1 February 2007, give to the ACMA in writing:
- (a) details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the start of 1 February 2007; and
 - (b) the name of each person who was a director of the licensee at the start of 1 February 2007.

- (2) The details are to be provided in a form approved in writing by the ACMA.

Notification by publisher of newspaper

- (3) If, at the start of 1 February 2007, a newspaper is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence, the publisher of the newspaper must, within 5 days after 1 February 2007, give to the ACMA in writing:

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- (a) details of the persons who, to the knowledge of the publisher, were in a position to exercise control of the newspaper at the start of 1 February 2007; and
 - (b) if the publisher is a company—the name of each person who was a director of the company at the start of 1 February 2007.
- (4) The details are to be provided in a form approved in writing by the ACMA.

Notification by controller

- (5) If, at the start of 1 February 2007, a person is in a position to exercise control of:
- (a) a commercial television broadcasting licence; or
 - (b) a commercial radio broadcasting licence; or
 - (c) a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence;
- the person must, within 5 days after 1 February 2007, notify the ACMA in writing of that position.
- (6) The details are to be provided in a form approved in writing by the ACMA.

Offence

- (7) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1), (3) or (5); and
 - (b) the person omits to do an act; and
 - (c) the omission breaches the requirement.

Penalty for contravention of this subsection:

- (a) if the breach relates to a commercial television broadcasting licence or a newspaper—500 penalty units; or
- (b) otherwise—50 penalty units.

65A Strict liability offences

An offence against section 62, 63, 64 or 65 is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

65B Designated infringement notice provisions

Sections 62, 63, 64 and 65 are designated infringement notice provisions.

Division 7—Approval of temporary breaches

66 Offence for breaches without approval

- (1) If:
- (a) a transaction takes place that places a person in breach of a provision of Division 2 or 3; and
 - (b) the person knew, or ought reasonably to have known, that a result of the transaction would be to place the person in breach of a provision of Division 2 or 3; and
 - (c) the person was a party to the transaction or was in a position to prevent the transaction taking place; and
 - (d) the ACMA has not approved the breach under section 67;
- the person is guilty of an offence.

Penalty:

- (e) if the breach relates to a commercial television broadcasting licence or datacasting transmitter licence—20,000 penalty units; or
 - (f) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.
- (1A) In a prosecution for an offence against subsection (1), it is not necessary to prove that the defendant knew that the provision breached was a provision of Division 2 or 3.
- (2) A person who breaches subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this subsection or any subsequent day) during which the breach of Division 2 or 3 continues.
- (3) A prosecution for an offence under this section against a person in relation to a transaction cannot be commenced if the ACMA has given the person a notice under section 70 in relation to the transaction and the time for compliance with the notice has not expired.

67 Applications for prior approval of temporary breaches

- (1) A person may, before a transaction takes place or an agreement is entered into that would place a person in breach of a provision of Division 2 or 3, make an application to the ACMA for an approval of the breach.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
 - (a) if the transaction took place or the agreement was entered into, it would place a person in breach of a provision of Division 2 or 3; and
 - (b) the person will take action to ensure that the breach of that provision ceases; and
 - (c) the breach is incidental to the objectives of the transaction or agreement;the ACMA may, by notice in writing given to the applicant, approve the breach arising as a result of the transaction or agreement and specify a period during which action must be taken to ensure that the breach ceases, being a period that commences on the day on which the transaction takes place or the agreement is entered into.
- (5) The period specified in the notice must be 6 months, one year or 2 years.
- (6) The ACMA may specify in a notice the action that the ACMA considers the person is to take so that the person is no longer in breach of the relevant provision.
- (7) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;

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approve or refuse to approve the breach arising as a result of the transaction or agreement, the ACMA is to be taken to have approved the breach and allowed a period of 2 years before which the breach must cease.

68 Extension of time for compliance with notice

- (1) A person who has been given a notice under section 67 may, within 3 months before the end of the period specified in the notice, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
 - (a) the period originally specified in the notice; or
 - (b) one year;whichever is the lesser.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties that the applicant experienced in attempting to comply with the notice;but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;

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extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

- (c) the period originally specified in the notice; or
 - (d) one year;
- whichever is the lesser.

69 Breach of notice under section 67 to constitute an offence

A person who fails to comply with a notice under section 67 is guilty of an offence.

Penalty:

- (a) if the breach relates to a commercial television broadcasting licence or datacasting transmitter licence—20,000 penalty units; or
- (b) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.

Division 8—Action by the ACMA

70 Notices by the ACMA

- (1) If the ACMA is satisfied that a person is in breach of a provision of Division 2 or 3, the ACMA may, by notice in writing given to:
 - (a) the person; or
 - (b) if the person is not the licensee and the breach is one that can be remedied by the licensee—the licensee;direct the person or the licensee to take action so that the person is no longer in breach of that provision.
- (2) The ACMA is not to give a notice to a person under subsection (1) in relation to a breach if an approval under section 67 has been given in respect of the breach and the period specified under that section, or an extension of that period, has not expired.
- (3) The notice is to specify a period during which the person must take action to ensure that the person is no longer in that position.
- (4) The period must be one month, 6 months, one year or 2 years.
- (5) If the ACMA is satisfied that the breach was deliberate and flagrant, the period specified in the notice must be one month.
- (6) If the ACMA gives a notice under subsection (1) in respect of a breach that the ACMA had approved under section 67, the ACMA must specify a period of one month in the notice under subsection (1).
- (7) If the ACMA is satisfied that the person breached the relevant provision as a result of the actions of other persons none of whom is an associate of the person, a period of one year or 2 years must be specified, but such a period must not be specified in other circumstances.
- (8) The Parliament recognises that, if a period of one month is specified in a notice, the person to whom the notice is given or another person may be required to dispose of shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as

necessary in order to discourage deliberate and flagrant breaches of this Part.

71 Extension of time for compliance with notice

- (1) A person who has been given a notice under section 70 may, within 3 months before the end of the period specified in the notice, apply in writing to the ACMA for an extension of that period.
- (2) An application for an extension cannot be made if the period specified in the notice was one month.
- (3) The ACMA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances.
- (4) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (5) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
 - (a) the period originally specified in the notice; or
 - (b) one year;whichever is the lesser.
- (6) In deciding whether to grant an extension to a person, the ACMA is to have regard to:
 - (a) the endeavours that the applicant made in attempting to comply with the notice; and
 - (b) the difficulties experienced by the applicant in attempting to comply with the notice; and
 - (c) the seriousness of the breach that led to the giving of the notice;but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (7) If the ACMA does not, within 45 days after:
 - (a) receiving the application; or

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- (b) if the ACMA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:

- (c) the period originally specified in the notice; or
- (d) one year;

whichever is the lesser.

72 Breach of notice under section 70 to constitute an offence

A person who fails to comply with a notice under section 70 is guilty of an offence.

Penalty:

- (a) if the breach relates to a commercial television broadcasting licence or datacasting transmitter licence—20,000 penalty units; or
- (b) if the breach relates to a commercial radio broadcasting licence—2,000 penalty units.

Division 9—Special provision for small markets

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

- (1) If an additional licence has been allocated under section 38A to the holder of an existing licence, the existing licence and additional licence are to be treated, for the purposes of this Part, as being only one licence.
- (2) This section does not apply to the licences at any time after either of the licences is first held by a different person (whether or not it continues to be held by a different person).

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

- (1) If an additional licence is allocated under section 38B, then for the purposes of Divisions 2 and 3 of this Part:
 - (a) the licence is to be disregarded in relation to a person who is in a position to exercise control of that licence at the time it is allocated; and
 - (b) the licence is to be so disregarded until that person first ceases to be in a position to exercise control of that licence.
- (2) If, during the time a licence is disregarded in relation to a person under subsection (1), that person is in a position to exercise control of another person who is in a position to exercise control of the licence, then, for the purposes of Divisions 2 and 3 of this Part, the licence is also to be disregarded during that time in relation to that other person.

Division 10—Prior opinions by the ACMA

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

- (1) A person may apply to the ACMA for an opinion as to whether:
 - (a) the person is in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a datacasting transmitter licence, a newspaper or a company; or
 - (b) the person would, if a transaction took place or a contract, agreement or arrangement were entered into, being one details of which are given in the application, be in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a datacasting transmitter licence, a newspaper or a company.
- (2) An application must be in accordance with a form approved in writing by the ACMA, and must state the applicant's opinion as to whether the applicant is, or would be, in a position to exercise control of the commercial television broadcasting licence, the commercial radio broadcasting licence, the satellite subscription television broadcasting licence, the datacasting transmitter licence, the newspaper or the company.
- (3) If the ACMA considers that additional information is required before an opinion can be given, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must, as soon as practicable after:
 - (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company.

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- (5) If the ACMA has given an opinion under this section to a person that the person is not in a position to exercise control of a licence or newspaper, neither the ACMA nor any other Government agency may, while the circumstances relating to the applicant and the licence, a newspaper or a company remain substantially the same as those advised to the ACMA in relation to the application for the opinion, take any action against the person under this Act on the basis that the person is in a position to exercise control of the licence, newspaper or company.
- (6) If the ACMA does not, within 45 days after:
- (a) receiving the application; or
 - (b) if the ACMA has requested further information—receiving that further information;
- give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company, the ACMA is to be taken to have given an opinion at the end of that period that accords with the applicant's opinion.
- (7) The ACMA may charge a fee for providing an opinion under this section.

Division 11—Miscellaneous

75 Register of matters under this Part

- (1) The ACMA is to maintain a Register of:
 - (aa) licences granted under section 38A or 38B; and
 - (a) notifications under Division 6; and
 - (b) approvals given by the ACMA under section 67; and
 - (c) extensions granted by the ACMA under section 68; and
 - (d) notices given by the ACMA under section 70; and
 - (e) extensions granted by the ACMA under section 71.
- (2) The ACMA is not to include in the Register an approval under section 67 until the relevant transaction or agreement has taken place or been entered into.
- (3) The Register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.
- (4) The ACMA may charge fees for inspections of the Register or for the provision of copies of or extracts from the Register.
- (5) The ACMA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

76 Continuing offences

In order to avoid any doubt, it is declared that section 4K of the *Crimes Act 1914* applies to obligations under this Part to comply with a notice and other obligations under this Part to do things within a particular period.

77 Part has effect notwithstanding Trade Practices Act

The provisions of this Part have effect notwithstanding the *Trade Practices Act 1974*.

78 Part not to invalidate appointments

Nothing in this Part invalidates an appointment of a person as a director of a company.

Part 6—Community broadcasting licences

79 Interpretation

In this Part, *company* includes an incorporated association.

79A Application

This Part does not apply in relation to community broadcasting licences that are temporary community broadcasting licences.

Note: Part 6A deals with temporary community broadcasting licences.

80 ACMA to advertise for applications for BSB community broadcasting licences

- (1) Where the ACMA is going to allocate one or more community broadcasting licences that are broadcasting services bands licences, the ACMA is to advertise, in a manner determined by the ACMA, for applications from companies that:
 - (a) are formed in Australia or in an external Territory; and
 - (b) represent a community interest.
- (2) The advertisements are to include:
 - (a) the date before which applications must be received by the ACMA; and
 - (b) a statement specifying how details of:
 - (i) the conditions that are to apply to the licence; and
 - (ii) the licence area of the licence; and
 - (iii) any priorities that the Minister has, under subsection 84(1), directed the ACMA to observe in the allocation of that licence or those licences; can be obtained.
- (3) Applications must be in accordance with a form approved in writing by the ACMA.

81 When licences must not be allocated

- (1) A licence is not to be allocated to an applicant if:
 - (a) in the case of an applicant for a CTV licence—the applicant is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or
 - (b) the ACMA decides that subsection 83(2) applies to the applicant.
- (2) Paragraph (1)(b) does not require the ACMA to consider the application of subsection 83(2) in relation to an applicant before allocating a licence to the applicant.

82 Other community broadcasting licences

- (1) The ACMA may allocate to a person, on application in writing by the person, a community broadcasting licence that is not a broadcasting services bands licence.
- (1A) Licences under subsection (1) are to be allocated on the basis of one licence per service.
- (2) Applications must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined in writing by the ACMA.

83 When persons are regarded as suitable

- (1) For the purposes of this Part, a company is a suitable community broadcasting licensee or a suitable applicant for a community broadcasting licence if the ACMA has not decided that subsection (2) applies to the company.
- (2) The ACMA may, if it is satisfied that allowing a particular company to provide or continue to provide broadcasting services under a community broadcasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or

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- (b) a breach of the conditions of the licence occurring;
decide that this subsection applies to the company.
- (3) In deciding whether such a risk exists, the ACMA is to take into account:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of the chief executive and each director and secretary of the applicant; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

84 Allocation of community broadcasting licences

- (1) The Minister may give directions to the ACMA to give priority to a particular community interest or interests, whether generally or in a particular licence area, in allocating community licences that are broadcasting services bands licences.
- (2) In deciding whether to allocate a community broadcasting licence that is a broadcasting services bands licence to an applicant or to one of a group of applicants, the ACMA is to have regard to:
 - (a) the extent to which the proposed service or services would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and
 - (b) the nature and diversity of the interests of that community; and

- (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and
- (d) the capacity of the applicant to provide the proposed service or services; and
- (e) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
- (f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.

84A Designated community radio broadcasting licences to provide analog or digital services

Licences in force immediately before the commencement of this section

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

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

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

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

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

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- (b) a licence to provide digital community radio broadcasting services.

Licence conditions

- (4) Subject to subsection (5), if a designated community radio broadcasting licence is or was allocated as a licence to provide an analog community radio broadcasting service, the licence is subject to the condition that the licensee may only provide an analog community radio broadcasting service under the licence.
- (5) If:
 - (a) a designated community radio broadcasting licence was in force immediately before the digital radio start-up day for the licence area; and
 - (b) the licence authorised the licensee to provide an analog community radio broadcasting service in the licence area;subsection (4) ceases to apply in relation to the licence at the start of the digital radio start-up day for the licence area.
- (6) If a designated community radio broadcasting licence is allocated as a licence to provide digital community radio broadcasting services, the licence is subject to the condition that the licensee may only provide digital community radio broadcasting services under the licence.

85 ACMA not required to allocate community broadcasting licence to any applicant

The ACMA is not required to allocate a community broadcasting licence to any applicant.

85A Services authorised by designated community radio broadcasting licences

Licences in force immediately before the commencement of this section

- (1) If:
 - (a) a designated community radio broadcasting licence was in force immediately before the commencement of this section; and

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

then, during the period:

(c) beginning at the start of the day on which this section commences; and

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

Licences allocated on or after the commencement of this section

(2) If:

(a) a designated community radio broadcasting licence is allocated on or after the commencement of this section but before the digital radio start-up day for the licence area; and

(b) the licence is allocated as a licence to provide an analog community radio broadcasting service in the licence area;

then, during the period:

(c) beginning at the start of the day on which the licence is allocated; and

(d) ending immediately before the digital radio start-up day for the licence area;

the licence is taken to authorise the licensee to provide that service in the licence area.

Licences in force immediately before the digital radio start-up day for the licence area

(3) If:

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

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

then, after the digital radio start-up day for the licence area, the licence is taken to authorise the licensee to provide the following services in the licence area:

(c) the analog community radio broadcasting service;

(d) one or more digital community radio broadcasting services.

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

- (4) If:
- (a) a designated community radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and
 - (b) the licence is allocated as a licence to provide an analog community radio broadcasting service in the licence area;
- the licence is taken to authorise the licensee to provide that service in the licence area.
- (5) If:
- (a) a designated community radio broadcasting licence is allocated on or after the digital radio start-up day for the licence area; and
 - (b) the licence is allocated as a licence to provide digital community radio broadcasting services in the licence area;
- the licence is taken to authorise the licensee to provide one or more digital community radio broadcasting services in the licence area.

86 Conditions of community broadcasting licences

- (1) Each community broadcasting licence is subject to:
- (a) the conditions set out in Part 5 of Schedule 2; and
 - (b) such other conditions as are imposed under section 87.
- (2) In addition, CTV licences are subject to such other conditions as are imposed by or under section 87A.

87 ACMA may impose additional conditions on community broadcasting licences

- (1) The ACMA may, by notice in writing given to a community broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.
- (2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must give to the licensee:
- (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and

- (c) publish the proposed changes in the *Gazette*.
- (3) This section does not allow the ACMA to vary or revoke a condition set out in Part 5 of Schedule 2.
- (4) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.
- (5) Action taken under subsection (1) must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 of Schedule 2; or
 - (c) if the licence is a CTV licence—any conditions imposed on the licence by or under section 87A.

87A Additional conditions on CTV licences

Policy underlying additional conditions

- (1) It is the intention of the Parliament that services provided under CTV licences be regulated in a manner that causes them not to operate in the same way as commercial television broadcasting services.

Conditions relating to sale of access to air-time

- (2) Each CTV licence is subject to the condition that the licensee must not sell access to more than 2 hours of air-time in any day to a particular person who operates a business for profit or as part of a profit-making enterprise, unless the person is a company that has a sole or dominant purpose of assisting a person in education or learning.
- (3) Each CTV licence is subject to the condition that the licensee must not sell access to a combined total of more than 8 hours of air-time in any day to people who operate businesses for profit or as part of profit-making enterprises.
- (4) Each CTV licence is subject to the condition that the licensee must not sell access to more than 8 hours of air-time in any day to a particular person.

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- (5) For the purposes of the conditions imposed by subsections (2), (3) and (4), the sale of access to air-time to any of the following is taken to be the sale of access to air-time to a company:
- (a) the sale of access to air-time to any person in a position to exercise control of the company;
 - (b) the sale of access to air-time to any related body corporate (within the meaning of the *Corporations Act 2001*) of the company.
- (6) The ACMA may, by written determination, impose other conditions on all CTV licences relating to sale of access to air-time.

Conditions relating to other matters

- (7) The ACMA may, by written determination, impose other conditions on all CTV licences, including, but not limited to, conditions relating to:
- (a) community access to air-time; or
 - (b) the governance of CTV licensees (including conditions relating to provisions that the constitution of the licensee must at all times contain); or
 - (c) the provision of annual reports to the ACMA and the form in which they are to be provided.

Changes to conditions

- (8) The ACMA may, by written determination, vary or revoke any condition imposed by or under this section.
- (9) The ACMA must, before imposing, varying or revoking a condition under this section, seek public comment on the proposed condition or the proposed variation or revocation.
- (10) Action taken under this section must not be inconsistent with:
- (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 of Schedule 2.

Determinations are disallowable instruments

- (11) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definitions

(12) In this section:

access, in relation to air-time, means the right to select or provide programs to be broadcast during the air-time.

air-time means time available for broadcasting programs on a community broadcasting service.

sell, in relation to access to air-time, means enter into any arrangement under which a person receives any consideration in cash or in kind in relation to provision of the access to air-time.

87B Special licence condition relating to digital community radio broadcasting services

- (1) This section applies to a designated community radio broadcasting licence if the licence authorises the licensee to provide one or more digital community radio broadcasting services.
- (2) The licence is subject to the condition that the licensee must not provide a digital community radio broadcasting service under the licence unless:
 - (a) the service is transmitted using a multiplex transmitter; and
 - (b) the operation of the multiplex transmitter is authorised by a digital radio multiplex transmitter licence.

88 Matters to which conditions may relate

- (1) Conditions of community broadcasting licences must be relevant to community broadcasting services.
- (2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a community broadcasting licensee:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.

89 Duration of community broadcasting licences

Subject to subsection 90(1E) and Part 10, community broadcasting licences remain in force for 5 years.

90 Applications for renewal of community broadcasting licences

- (1) The ACMA may renew a community broadcasting licence if the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ACMA.
- (1A) Subject to subsection (1C), an application for renewal must be made no earlier than one year before the licence is due to expire, but no later than the earlier of the following times:
 - (a) 26 weeks before the licence is due to expire;
 - (b) a time that is notified in writing to the licensee by the ACMA.
- (1B) A time that is notified under paragraph (1A)(b) must be at least 4 weeks after the day on which it is notified to the licensee.

Late applications

- (1C) The ACMA may consider a late application for the renewal of a community broadcasting licence if:
 - (a) the licensee makes the application before the time when the licence is due to expire; and
 - (b) the application is accompanied by a written statement setting out the licensee's reasons for the lateness of the application; and
 - (c) the ACMA considers that there are exceptional circumstances that warrant the consideration of the application.
- (1D) In deciding whether there are exceptional circumstances that warrant the consideration of the application, the ACMA must have regard to:
 - (a) how late the application is; and
 - (b) the reasons given by the licensee for the lateness of the application; and
 - (c) the number of paid staff (if any) employed by the licensee; and

(d) such other matters (if any) as the ACMA considers relevant.

(1E) If:

- (a) the ACMA decides, under subsection (1C), to consider a late application for the renewal of a community broadcasting licence; and
- (b) the ACMA does not make a decision on the application before the time when the licence is due to expire;

the licence remains in force until the ACMA makes a decision on the application.

(1F) If:

- (a) the ACMA decides, under subsection (1C), to consider a late application for the renewal of a community broadcasting licence; and
- (b) the ACMA does not make a decision on the application within 26 weeks after receiving the application;

the ACMA is taken to have made, at the end of that 26-week period, a decision under section 91 to refuse to renew the licence.

Notification

- (2) If the ACMA receives an application for renewal, the ACMA must notify in the *Gazette* the fact that the application has been made.

91 ACMA may renew community broadcasting licences

- (1) Subject to subsection (2), if the ACMA receives an application under section 90, the ACMA may, by notice in writing given to the licensee, renew the licence for:
 - (a) if:
 - (i) the ACMA renews the licence after the time when the licence was due to expire; and
 - (ii) under subsection 90(1E), the licence remained in force until the ACMA made a decision on the application;

the period:

 - (iii) beginning immediately after the time when the ACMA made a decision on the application; and
 - (iv) ending at the end of the period of 5 years that began immediately after the time when the licence was due to expire; or

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- (b) otherwise—the period of 5 years beginning immediately after the time when the licence is due to expire.
- (2) The ACMA must refuse to renew a community broadcasting licence if the ACMA decides that subsection 83(2) applies to the licensee.
- (2A) The ACMA may refuse to renew a community broadcasting licence that is a broadcasting services bands licence if, having regard to the matters in paragraphs 84(2)(a) to (f), it considers that it would not allocate such a licence if it were deciding whether to allocate the licence to the licensee.
- (3) The ACMA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

91A Transfer of community broadcasting licences

Application for approval of transfer

- (1) A community broadcasting licensee may apply to the ACMA for approval of the transfer of the community broadcasting licence to another person.
- (2) Applications must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined in writing by the ACMA.

Decision about approval of transfer

- (3) After considering an application for approval of the transfer of a community broadcasting licence, the ACMA must, by written notice given to the applicant:
 - (a) approve the transfer; or
 - (b) refuse to approve the transfer.

Criteria

- (4) The ACMA must not approve the transfer of a community broadcasting licence that is a broadcasting services bands licence if:

- (a) the proposed transferee is not a company that:
 - (i) was formed in Australia or in an external Territory; and
 - (ii) represents a community interest; or
 - (b) in the case of a transfer of a CTV licence—the proposed transferee is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or
 - (c) the ACMA decides that subsection 83(2) applies to the proposed transferee.
- (5) Paragraph (4)(c) does not require the ACMA to consider the application of subsection 83(2) in relation to a proposed transferee before approving the transfer of a licence to the proposed transferee.
- (6) The ACMA must not approve the transfer of a community broadcasting licence unless the ACMA is satisfied that:
- (a) if the licence has not been renewed—the proposed transferee represents the same community interest as the original licensee represented when the licence was allocated; or
 - (b) if the licence has been renewed on one or more occasions—the proposed transferee represents the same community interest as the applicant for renewal represented when the licence was last renewed.
- (7) In deciding whether to approve the transfer of a community broadcasting licence, the ACMA must have regard to:
- (a) the principle that, except in special circumstances, the transfer should not be approved if consideration has been, or is to be, provided to the applicant in relation to the proposed transfer; and
 - (b) such other matters (if any) as the ACMA considers relevant.

Transfer

- (8) If the ACMA has approved the transfer of a community broadcasting licence to a particular person, the community broadcasting licensee may, within 90 days after the approval was given, transfer the community broadcasting licence to the person.

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92 Surrender of community broadcasting licences

A community broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

Part 6A—Temporary community broadcasting licences

92A Interpretation

In this Part:

company includes an incorporated association.

licence period means the period of a temporary community broadcasting licence determined by the ACMA under paragraph 92G(1)(c) or varied by the ACMA under section 92J.

timing conditions means the conditions of a temporary community broadcasting licence that:

- (a) are about the times in which the licence allows community broadcasting services to be provided; and
- (b) are determined by the ACMA under paragraph 92G(1)(b) or varied by the ACMA under section 92J.

92B Temporary community broadcasting licences

- (1) The ACMA may allocate to a person, on application in writing by the person, a temporary community broadcasting licence.
- (2) Applications must be in accordance with a form approved in writing by the ACMA.

92C Applicants for temporary community broadcasting licences

- (1) The ACMA is not to allocate a temporary community broadcasting licence to an applicant unless the applicant:
 - (a) is a company that is formed in Australia or in an external Territory; and
 - (b) represents a community interest.

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- (2) The ACMA is not to allocate a licence to an applicant if the ACMA decides that subsection 92D(2) applies to the applicant in relation to the licence. However, the ACMA is not required to consider the application of subsection 92D(2) to the applicant before allocating the licence.
- (3) The ACMA may refuse to allocate a licence to an applicant if the applicant was a temporary community broadcasting licensee for a period but did not provide community broadcasting services in that period. This subsection does not limit the ACMA's discretion to refuse to allocate a licence.

92D When applicants and licensees are regarded as suitable

- (1) A company is a *suitable applicant* or *suitable licensee* in relation to a temporary community broadcasting licence if the ACMA has not decided that subsection (2) applies to the company in relation to the licence.

Note: It is a condition of a temporary community broadcasting licence that the licensee remain a suitable licensee: see paragraph 9(2)(a) of Schedule 2.

- (2) The ACMA may, if it is satisfied that allowing a company to provide or continue to provide broadcasting services under a temporary community broadcasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;decide that this subsection applies to the company in relation to the licence.
- (3) In deciding whether such a risk exists, the ACMA is to take into account only:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of the chief executive and each director and secretary of the applicant; and
 - (d) the record in situations requiring trust and candour of each such person; and

- (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

92E Criteria for deciding whether to allocate a licence

- (1) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA may have regard to:
 - (a) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that is a broadcasting services bands licence in the same licence area; and
 - (b) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a temporary community broadcasting licence.
- (2) In deciding whether to allocate a temporary community broadcasting licence to an applicant or to one of a group of applicants, the ACMA is not to have regard to:
 - (a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and
 - (b) the nature and diversity of the interests of that community; and
 - (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and
 - (d) the capacity of the applicant to provide the proposed service.

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92F Licences to accord with alternative planning procedures

The ACMA is not to allocate a temporary community broadcasting licence except in accordance with a determination of the ACMA under section 34.

92G Licence area, timing conditions and licence period

- (1) Before allocating a temporary community broadcasting licence, the ACMA is to:
 - (a) designate a particular area in Australia as the licence area of the licence; and
 - (b) determine the timing conditions of the licence; and
 - (c) determine a period of up to 12 months as the licence period.
- (2) In determining the timing conditions and licence period, the ACMA is to have regard to:
 - (a) any other applications for temporary community broadcasting licences in the licence area of the proposed licence; and
 - (b) any other temporary community broadcasting licences in the licence area of the proposed licence; and
 - (c) such other matters as the ACMA thinks fit.

92H Conditions of temporary community broadcasting licences

Each temporary community broadcasting licence is subject to:

- (a) the conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2; and
- (b) the timing conditions; and
- (c) such other conditions as are imposed under section 92J.

92J ACMA may vary conditions or periods, or impose new conditions

- (1) The ACMA may, by notice in writing given to a temporary community broadcasting licensee:
 - (a) vary or revoke a condition of the licence (including a timing condition); or
 - (b) impose an additional condition on the licence; or
 - (c) vary the licence period.
-

- (2) Without limiting subsection (1), the ACMA may impose an additional condition on a licence:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.
- (3) An additional condition of a licence must be relevant to community broadcasting services.
- (4) If the ACMA proposes to vary or revoke a condition, impose an additional condition or vary the licence period, the ACMA is to give to the licensee:
 - (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.
- (5) This section does not allow the ACMA:
 - (a) to vary or revoke a condition set out in Part 5 of Schedule 2; or
 - (b) to vary or revoke a timing condition so that there are no times in which the licence allows community broadcasting services to be provided; or
 - (c) to vary the licence period so that the period is longer than 12 months.
- (6) If the ACMA varies or revokes a condition (other than a timing condition), imposes an additional condition or varies the licence period, the ACMA is to publish the fact of the variation, revocation or additional condition in the *Gazette*.
- (7) Action taken under subsection (1) must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 (other than paragraph 9(1)(h)) of Schedule 2.

92K Duration of temporary community broadcasting licences

Subject to section 92L and Part 10, a temporary community broadcasting licence remains in force for the licence period.

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92L Surrender of temporary community broadcasting licences

A temporary community broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

Part 7—Subscription television broadcasting services

Division 1—Allocation of subscription television broadcasting licences

94 Transmission system standards

- (1) If, after licence A and licence B have been allocated, both licensee A and licensee B agree as to a standard for a full digital transmission system, the Minister must, subject to subsection (2), declare by notice in the *Gazette* that standard to be the standard that must be used by all satellite subscription television broadcasting licensees.
- (2) Before declaring a standard under subsection (1), the Minister must consult with the operator of the subscription television satellite in relation to the efficient use of the satellite.
- (3) If licensee A and licensee B do not agree by 1 March 1994, the Minister must declare, by notice in the *Gazette*, a standard chosen by the Minister for a full digital transmission system to be the standard that must be used by all satellite subscription television broadcasting licensees.
- (4) Before declaring a standard under subsection (3), the Minister must:
 - (a) consult with licensee A and licensee B; and
 - (b) consult with the operator of the subscription television satellite in relation to the efficient use of the satellite; and
 - (c) have regard to any relevant international standard.
- (5) The standard must employ reception equipment that is capable of being manufactured in Australia, whether under licence or otherwise.

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- (6) Each satellite subscription television broadcasting licence is subject to the condition that the licensee will provide services using a transmission system in accordance with the standard determined under this section.

95 When subscription television broadcasting licence must not be allocated

- (1) A subscription television broadcasting licence is not to be allocated to an applicant if:
 - (a) the applicant is not a company that is formed in Australia or in an external Territory and has a share capital; or
 - (b) the ACMA decides that subsection 98(2) applies to the applicant.
- (2) Paragraph (1)(b) does not require the ACMA to consider the application of subsection 98(2) in relation to an applicant before a subscription television broadcasting licence is allocated to the applicant.

96 Allocation of other subscription television broadcasting licences

- (1) The ACMA may allocate to a person, on application in writing by the person, a subscription television broadcasting licence.
- (2) Licences under subsection (1) are to be allocated on the basis of one licence per service.
- (4) Applications must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined by the ACMA.
- (5) The ACMA must not allocate a subscription television broadcasting licence under this section if the Australian Competition and Consumer Commission has reported, within 30 days after being requested for a report under section 97, that, in the opinion of the Australian Competition and Consumer Commission, the allocation of the licence to the applicant:
 - (a) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the allocation of the licence were the

- acquisition by the applicant of an asset of a body corporate;
and
- (b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.
- (6) If a licence is allocated under this section, the ACMA must publish in the *Gazette* the name of the successful applicant.

97 Requests to Trade Practices Commission

- (1) Before a subscription television broadcasting licence is allocated to a person under section 96, the ACMA must request the Australian Competition and Consumer Commission to provide a report under this section.
- (2) The report is to advise whether, in the opinion of the Australian Competition and Consumer Commission, the allocation of the licence to the applicant:
- (a) would constitute a contravention of section 50 of the *Trade Practices Act 1974* if the allocation of the licence were the acquisition by the applicant of an asset of a body corporate; and
- (b) would not be authorised under section 88 of that Act if the applicant had applied for such an authorisation.
- (3) For the purposes of the consideration of a request by the Australian Competition and Consumer Commission, section 155 of the *Trade Practices Act 1974* applies as if the allocation of a licence under this Part were a matter referred to in subsection (1) of that section.

98 Suitability for allocation of licence

- (1) For the purposes of this Part, a company is a suitable subscription television broadcasting licensee or a suitable applicant for a subscription television broadcasting licence if the ACMA has not decided that subsection (2) applies to the person.
- (2) The ACMA may, if it is satisfied that allocating a subscription television broadcasting licence to a particular company or allowing a particular company to continue to hold a subscription television broadcasting licence would lead to a significant risk of:
- (a) an offence against this Act or the regulations being committed; or

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- (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;
- decide that this subsection applies to the company.
- (3) In deciding whether such a risk exists, the ACMA is to take into account:
 - (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of each person who is, or would be, if a subscription television broadcasting licence were allocated to the applicant, in a position to exercise control of the licence; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
 - (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).
 - (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

98D Compensation

- (1) In this section:
 - acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
 - just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- (2) If the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.

- (3) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court of Australia for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

Division 2—Conditions of subscription television broadcasting licence

99 Conditions applicable to subscription television broadcasting licence

- (1) The conditions set out in Part 6 of Schedule 2 apply to the provision by a subscription television broadcasting licensee of a subscription television broadcasting service.
- (2) The ACMA may, by notice in writing given to a subscription television broadcasting licensee, specify additional conditions to which the licence is subject or vary or revoke a condition imposed under this subsection.
- (4) If the ACMA proposes to impose a new condition or to vary or revoke a condition, the ACMA must:
 - (a) give to the licensee written notice of its intention; and
 - (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
 - (c) publish the proposed changes in the *Gazette*.
- (5) This section does not allow the ACMA to vary or revoke a condition set out in Part 6 of Schedule 2.
- (6) If the ACMA varies or revokes a condition or imposes a new condition, the ACMA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.
- (7) Action taken under this section must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 6 of Schedule 2.

100 Matters to which conditions may relate

- (1) Conditions of a subscription television broadcasting licence must be relevant to subscription television broadcasting services.

- (2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition:
- (a) requiring a licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by a subscription television broadcasting licensee does not recur; or
 - (c) designed to ensure compliance with the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*.
- (3) The ACMA must impose conditions on satellite subscription television broadcasting licences:
- (a) designed to ensure that the domestic reception equipment used by each satellite subscription television broadcasting licensee is accessible by other satellite broadcasting services; and
 - (b) designed to ensure that each satellite subscription television broadcasting licensee that has a subscriber management system provides access to that system to other satellite subscription television broadcasting licensees at a fair price.
- (4) The Minister may direct the ACMA to impose a condition under this section designed to ensure that subscription television broadcasting licensees adequately involve Australian industry in the provision of services under those licences.
- (4A) Conditions under subsection (4) may be different for different classes of licensees.
- (5) The ACMA must impose a condition on all subscription television broadcasting licences requiring each licensee to make available, as an option, domestic reception equipment on a rental basis.
- (6) The ACMA must impose a condition on all non-satellite subscription television broadcasting licences requiring that, if a licensee rents domestic reception equipment to a consumer, the rental agreement must allow the consumer to terminate the agreement on giving one month's written notice to the licensee.

Division 2A—Eligible drama expenditure

Subdivision A—Introduction

103A Simplified outline

The following is a simplified outline of this Division:

- This Division requires subscription television broadcasting licensees to ensure the maintenance of minimum levels of expenditure on new *eligible drama programs*.
- An *eligible drama program* is a drama program that is an Australian program, an Australian/New Zealand program, a New Zealand program or an Australian official co-production.
- If a licensee provides a subscription TV drama service, expenditure on new eligible drama programs for each financial year must be at least 10% of total program expenditure.
- If a *channel provider* supplies a channel that is televised on a subscription TV drama service, the 10% expenditure requirement is calculated by reference to the expenditure incurred by the channel provider.
- If a channel provider supplies a channel that is televised on a subscription TV drama service and the 10% expenditure requirement is not met for a particular financial year, the shortfall will have to be made up in the next financial year.
- If expenditure on new eligible drama programs for a financial year exceeds the 10% expenditure requirement, the excess expenditure may be carried forward to the next financial year.
- Licensees and channel providers are required to lodge annual returns about their program expenditure.

103B Definitions

In this Division:

acquiring, in relation to a drama program, includes acquiring rights in relation to the program.

Australian Content Standard means:

- (a) the *Broadcasting Services (Australian Content) Standard 2005* as in force from time to time; or
- (b) if the standard mentioned in paragraph (a) is not in force, but there is in force another standard that is a successor (whether immediate or not) to the standard mentioned in paragraph (a)—that other standard as in force from time to time.

carry-forward eligible drama expenditure provision means:

- (a) subsection 103NA(2); or
- (b) subsection 103RA(2); or
- (c) subsection 103TA(2); or
- (d) subsection 103UA(2); or
- (e) subsection 103XA(2); or
- (f) subsection 103ZAA(2).

channel means a continuous stream of programs.

channel provider has the meaning given by section 103C.

compliance certificate means a certificate under section 103ZE.

designated script development expenditure, in relation to a program, means expenditure incurred in developing the screenplay or a script outline for the program, where:

- (a) the program is a drama program; and
- (b) the expenditure is incurred by a person (the **first person**) under a contract with another person who is not a director, officer or employee of the first person; and
- (c) the writer, or each of the writers, involved in developing the screenplay or script outline is:
 - (i) a citizen or permanent resident of Australia; or
 - (ii) a citizen or permanent resident of New Zealand; and
- (d) the producer of the program is:

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- (i) a citizen or permanent resident of Australia; or
- (ii) a citizen or permanent resident of New Zealand; and
- (e) the expenditure is paid before the commencement of principal photography for the program; and
- (f) the expenditure is paid on or after 1 January 2006.

For the purposes of paragraph (d), *producer* has the same meaning as in the Australian Content Standard.

drama program means:

- (a) a program that has a fully scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; or
- (b) a program that has:
 - (i) a partially scripted screenplay in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure; and
 - (ii) actors delivering improvised dialogue that is based on a script outline or outlines developed by a writer or writers; or
- (c) a program that has actors delivering improvised dialogue that is based on a script outline or outlines:
 - (i) developed by a writer or writers; and
 - (ii) in which the dramatic elements of character, theme and plot are introduced and developed to form a narrative structure;

and includes:

- (d) a fully scripted sketch comedy program; and
- (e) an animated drama; and
- (f) a dramatised documentary;

but does not include:

- (g) a program that involves the incidental use of actors; or
- (h) advertising or sponsorship matter (whether or not of a commercial kind).

eligible drama program means:

- (a) a drama program that is an Australian program (within the meaning of the Australian Content Standard); or
- (b) a drama program that is an Australian/New Zealand program (within the meaning of the Australian Content Standard); or

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- (c) a drama program that is a New Zealand program (within the meaning of the Australian Content Standard); or
- (d) a drama program that is an Australian official co-production (within the meaning of the Australian Content Standard).

expenditure, in relation to a program or program material, means:

- (a) expenditure incurred in acquiring the program or program material; or
- (b) expenditure incurred in producing the program or program material; or
- (c) pre-production expenditure incurred in relation to the program or program material; or
- (d) expenditure incurred by way of the making of an investment in the program or program material;

and includes nil expenditure.

Note: Section 103H sets out a special rule for non-designated pre-production expenditure.

financial year means:

- (a) the financial year beginning on 1 July 1999; or
- (b) a later financial year.

incidental matter means:

- (a) advertising or sponsorship matter (whether or not of a commercial kind); or
- (b) a program promotion; or
- (c) an announcement; or
- (d) a hosting; or
- (e) any other interstitial program.

licensee means a subscription television broadcasting licensee.

new, in relation to an eligible drama program, has the meaning given by section 103K.

non-designated pre-production expenditure means pre-production expenditure other than designated script development expenditure.

part-channel provider has the meaning given by section 103D.

part-pass-through provider has the meaning given by section 103F.

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pass-through provider has the meaning given by section 103E.

pre-production expenditure, in relation to a program or program material, means:

- (a) expenditure incurred in developing the screenplay or a script outline for the program or program material; or
- (b) any other expenditure incurred by way of pre-production costs for the program or program material.

program material does not include advertising or sponsorship matter (whether or not of a commercial kind).

registered auditor means a person registered as an auditor, or taken to be registered as an auditor, under Part 9.2 of the *Corporations Act 2001*.

subscription TV drama service means a subscription television broadcasting service devoted predominantly to drama programs.

103C Channel providers

For the purposes of this Division, a *channel provider*, in relation to a subscription TV drama service provided by a licensee, is a person who:

- (a) packages a channel (which may include programs produced by the person); and
- (b) supplies the licensee with the channel; and
- (c) carries on a business in Australia, by means of a principal office or of a branch, that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on the subscription TV drama service.

103D Part-channel providers

For the purposes of this Division, a *part-channel provider*, in relation to a subscription TV drama service provided by a licensee, is a person who:

- (a) assembles a package of programs (which may include programs produced by the person); and
- (b) supplies the licensee with the package; and

- (c) carries on a business in Australia, by means of a principal office or of a branch, that involves the supply of the package; where:
 - (d) the package consists predominantly of drama programs; and
 - (e) the package constitutes a significant proportion of the program material that is televised by the licensee on the subscription TV drama service; and
 - (f) there is neither:
 - (i) a channel provider; nor
 - (ii) a pass-through provider;in relation to the subscription TV drama service.

103E Pass-through providers

For the purposes of this Division, a *pass-through provider*, in relation to a subscription TV drama service provided by a licensee, is a person who:

- (a) packages a channel (which may include programs produced by the person); and
- (b) supplies the licensee with the channel; and
- (c) does not carry on a business in Australia, by means of a principal office or of a branch, that involves the supply of the channel;

where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on the subscription TV drama service.

103F Part-pass-through providers

For the purposes of this Division, a *part-pass-through provider*, in relation to a subscription TV drama service provided by a licensee, is a person who:

- (a) assembles a package of programs (which may include programs produced by the person); and
- (b) supplies the licensee with the package; and
- (c) does not carry on a business in Australia, by means of a principal office or of a branch, that involves the supply of the package;

where:

- (d) the package consists predominantly of drama programs; and

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- (e) the package constitutes a significant proportion of the program material that is televised by the licensee on the subscription TV drama service; and
- (f) there is neither:
 - (i) a channel provider; nor
 - (ii) a pass-through provider;in relation to the subscription TV drama service.

103G Supply of channel or package

For the purposes of this Division, a person is taken to have supplied a channel, or a package of programs, to a licensee if the channel or package, as the case may be, is supplied to the licensee by the person:

- (a) directly; or
- (b) indirectly through one or more interposed persons.

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

For the purposes of this Division, non-designated pre-production expenditure is not to be counted unless principal photography has commenced for the program or program material concerned.

103J Cash-based accounting—when expenditure is incurred

- (1) For the purposes of this Division:
 - (a) if the whole of an item of expenditure (other than non-designated pre-production expenditure) is paid at a particular time—the expenditure is incurred when the expenditure is paid; and
 - (b) if different parts of an item of expenditure (other than non-designated pre-production expenditure) are paid at different times—each part is incurred when the part is paid.
- (2) For the purposes of this Division:
 - (a) if the whole of an item of non-designated pre-production expenditure is paid at a particular time—the expenditure is incurred at whichever is the later of the following times:
 - (i) the time when the expenditure is paid;

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- (ii) the commencement of principal photography for the program or program material concerned; and
- (b) if different parts of an item of non-designated pre-production expenditure are paid at different times—each part is incurred at whichever is the later of the following times:
 - (i) the time when the part is paid;
 - (ii) the commencement of principal photography for the program or program material concerned.

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

- (1) If:
- (a) during a financial year, a person incurs designated script development expenditure in relation to a drama program; and
 - (b) principal photography did not commence for the program before the end of the financial year;

this Division has effect, in relation to that expenditure, as if the drama program were an eligible drama program.

Recoupment of expenditure incurred by a person—program is not produced as an eligible drama program

- (2) If:
- (a) during a financial year (the **first financial year**), a person incurred designated script development expenditure in relation to a drama program; and
 - (b) principal photography did not commence for the program before the end of the first financial year; and
 - (c) principal photography commences for the program during a later financial year; and
 - (d) when principal photography commences for the program, the drama program is not an eligible drama program; and
 - (e) the person nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to a subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the person during the later financial year on new eligible drama

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programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (e).

Recoupment of expenditure incurred by a pass-through provider—program is not produced as an eligible drama program

- (3) If:
- (a) during a financial year (the ***first financial year***), a person incurred designated script development expenditure in relation to a drama program; and
 - (b) the person is a pass-through provider in relation to a subscription TV drama service because the person supplies a channel; and
 - (c) principal photography did not commence for the program before the end of the first financial year; and
 - (d) principal photography commences for the program during a later financial year; and
 - (e) when principal photography commences for the program, the drama program is not an eligible drama program; and
 - (f) the licensee who provided the subscription TV drama service nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the pass-through provider during the later financial year on new eligible drama programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (f).

Recoupment of expenditure incurred by a part-pass-through provider—program is not produced as an eligible drama program

- (4) If:
- (a) during a financial year (the ***first financial year***), a person incurred designated script development expenditure in relation to a drama program; and

- (b) the person is a part-pass-through provider in relation to a subscription TV drama service because the person supplies a package of programs; and
- (c) principal photography did not commence for the program before the end of the first financial year; and
- (d) principal photography commences for the program during a later financial year; and
- (e) when principal photography commences for the program, the drama program is not an eligible drama program; and
- (f) the licensee who provided the subscription TV drama service nominated the whole or a part of the designated script development expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;

then, for the purposes of the application of this Division to the subscription TV drama service, the total expenditure incurred by the part-pass-through provider during the later financial year on new eligible drama programs is taken to be reduced (but not below zero) by the amount of the whole or the part, as the case may be, of the expenditure referred to in paragraph (f).

103K When expenditure incurred on a new eligible drama program

- (1) For the purposes of this Division, if a person incurs expenditure on an eligible drama program, the eligible drama program is *new* if, and only if, the whole or a substantial part of the program has not been televised in Australia or New Zealand on a broadcasting service at any time before the expenditure is incurred.
- (2) For the purposes of subsection (1), it is to be assumed that the definition of *broadcasting service* in subsection 6(1) extended to matters and things in New Zealand.

103L ACMA may make determinations about what constitutes program expenditure

Program material

- (1) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be expenditure incurred on program material (other than eligible drama programs).

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- (2) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be expenditure incurred on program material (other than eligible drama programs).

Eligible drama programs

- (3) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be expenditure incurred on an eligible drama program.
- (4) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be expenditure incurred on an eligible drama program.

Designated script development expenditure

- (4A) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken to be designated script development expenditure.
- (4B) The ACMA may make a written determination providing that, for the purposes of this Division, specified expenditure is taken not to be designated script development expenditure.

Determination has effect

- (5) A determination under this section has effect accordingly.

Determination to be of a legislative character

- (6) A determination under this section is to be an instrument of a legislative character.

Legislative instrument

- (7) A determination under this section is a legislative instrument for the purpose of the *Legislative Instruments Act 2003*.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

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

Channel provider and part-channel provider

- (1) If:
- (a) either:
 - (i) a person is a channel provider in relation to a subscription TV drama service provided by a licensee because the person supplies a channel; or
 - (ii) a person is a part-channel provider in relation to a subscription TV drama service provided by a licensee because the person supplies a package of programs; and
 - (b) the person nominates the whole or a part of particular expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;
the whole or part, as the case may be, of the expenditure must not be nominated by the person for the purposes of:
 - (c) the application of any other provision of this Division (other than a carry-forward eligible drama expenditure provision) in relation to that service; or
 - (d) the application of any provision of this Division in relation to another subscription TV drama service provided by the licensee; or
 - (e) the application of any provision of this Division in relation to another subscription TV drama service provided by another licensee.
- (2) However, the rule in paragraph (1)(e):
- (a) does not apply in relation to a person who is a channel provider if:
 - (i) the person supplies the same or a substantially similar channel to the other licensee; and
 - (ii) apart from any breaks for the purposes of the transmission of incidental matter, the same or a substantially similar channel supplied by the person is televised by the other licensee on the other subscription TV drama service; and

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- (b) does not apply in relation to a person who is a part-channel provider if:
 - (i) the person supplies the same or a substantially similar package of programs to the other licensee; and
 - (ii) apart from any breaks for the purposes of the transmission of incidental matter, the same or a substantially similar package of programs supplied by the person is televised by the other licensee on the other subscription TV drama service.

Licensee

- (3) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) the licensee nominates the whole or a part of particular expenditure for the purposes of the application of a particular provision of this Division in relation to the subscription TV drama service;the whole or part, as the case may be, of the expenditure must not be nominated by the licensee for the purposes of:
 - (c) the application of any other provision of this Division (other than a carry-forward eligible drama expenditure provision) in relation to that service; or
 - (d) the application of any provision of this Division in relation to another subscription TV drama service provided by the licensee.

Subdivision B—Channel provider supplies channel

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

- (1) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel;it is a condition of the licence that, for each financial year of operation, the sum of:
 - (c) the channel provider's new eligible drama expenditure in relation to the subscription TV drama service; and

(d) the channel provider's carry-forward eligible drama expenditure in relation to the subscription TV drama service; equals or exceeds 10% of the channel provider's total program expenditure in relation to the channel.

(2) In this section:

channel provider's carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the channel provider's carry-forward eligible drama expenditure (within the meaning of subsection 103NA(2)) for the financial year.

channel provider's new eligible drama expenditure, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the channel provider during the financial year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

channel provider's total program expenditure, in relation to the channel, means the total expenditure incurred by the channel provider during the financial year on the program material that is included, or available to be included, in the channel.

(2A) The channel provider is not entitled to nominate, under the definition of *channel provider's new eligible drama expenditure* in subsection (2), so much of the designated script development expenditure incurred by the channel provider during the financial year as exceeds 10% of the channel provider's new eligible drama expenditure in relation to the subscription TV drama service.

(3) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the channel provider's new eligible drama expenditure and the channel provider's carry-forward eligible drama expenditure is less than 10% of the channel provider's total program expenditure, the shortfall will have to be made up in the next financial year—see sections 103P and 103Q.

103NA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

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- (b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel; and
 - (c) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service for a financial year exceeds 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the channel for the financial year.
- (2) For the purposes of section 103N, the *channel provider's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the channel provider nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.
- (3) Paragraph (1)(c) does not apply to so much of the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service as was incurred before 1 January 2006.

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

- (1) This section applies if:
- (a) a licensee (the *first licensee*) provides a subscription TV drama service (the *first subscription TV drama service*); and
 - (b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel (the *first channel*); and
 - (c) it is not the case that the channel provider supplies the same or a substantially similar channel to another licensee in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar channel supplied by the channel provider is televised by the other licensee on another subscription TV drama service; and
 - (d) the sum of:
 - (i) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for a particular financial year (the *shortfall year*); and

- (ii) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;
is less than 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):
 - (a) the channel provider's make-up expenditure is equal to the shortfall amount; or
 - (b) the first licensee's make-up expenditure is equal to the shortfall amount; or
 - (c) the sum of:
 - (i) the channel provider's make-up expenditure; and
 - (ii) the first licensee's make-up expenditure;is equal to the shortfall amount.

Definitions

- (3) In this section:

channel provider's make-up expenditure means so much of the total expenditure incurred by the channel provider during the make-up year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

first licensee's make-up expenditure means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first channel as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

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shortfall amount means the amount by which the sum of:

- (a) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year; and
- (b) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

fell short of 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

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

- (1) This section applies if:
 - (a) a licensee (the **first licensee**) provides a subscription TV drama service (the **first subscription TV drama service**); and
 - (b) a person is a channel provider in relation to the first subscription TV drama service because the person supplies a channel (the **first channel**); and
 - (c) the channel provider supplies the same or a substantially similar channel to one or more other licensees (the **additional licensees**) in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar channel supplied by the channel provider is televised by the additional licensees on subscription TV drama services (the **additional subscription TV drama services**); and
 - (d) the sum of:
 - (i) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for a particular financial year (the **shortfall year**); and
 - (ii) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the first licensee's licence that, for the next financial year (the *make-up year*):
- (a) the channel provider's make-up expenditure is equal to the shortfall amount; or
 - (b) the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the shortfall amount; or
 - (c) if the channel provider's make-up expenditure is less than the shortfall amount—the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the difference between the shortfall amount and the channel provider's make-up expenditure.

Definitions

- (3) In this section:

channel provider's make-up expenditure means so much of the total expenditure incurred by the channel provider during the make-up year on new eligible drama programs as the channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

first licensee's make-up expenditure means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first channel as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

first licensee's subscriber percentage means the percentage worked out using the following formula:

$$\frac{\text{Subscribers of first licensee}}{\text{Subscribers of first licensee} + \text{Subscribers of additional licensees}} \times 100$$

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monthly subscriber number, for a subscription TV drama service for a particular month, means the number worked out using the following formula:

$$\frac{\text{Number of subscribers to the subscription TV drama service on the first day of the month} + \text{Number of subscribers to the subscription TV drama service on the last day of the month}}{2}$$

shortfall amount means the amount by which the sum of:

- (a) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year; and
- (b) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the first subscription TV drama service for the shortfall year;

fell short of 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the first channel for the shortfall year.

subscribers of additional licensees means the sum of the monthly subscriber numbers for the additional subscription TV drama services for each month of operation during the shortfall year.

subscribers of first licensee means the sum of the monthly subscriber numbers for the first subscription TV drama service for each month of operation during the shortfall year.

Subdivision C—Pass-through provider supplies channel

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

- (1) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel;

it is a condition of the licence that, for each financial year of operation, the sum of:

- (c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and
 - (d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;
- equals or exceeds 10% of the licensee's total program expenditure in relation to the channel.

(2) In this section:

licensee's carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103RA(2)) for the financial year.

licensee's new eligible drama expenditure, in relation to the subscription TV drama service, means the sum of:

- (a) so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service; and
- (b) so much of the total expenditure incurred by the pass-through provider during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

licensee's total program expenditure, in relation to the channel, means the total expenditure incurred by the licensee during the financial year in respect of the supply by the pass-through provider of the channel.

(2A) The licensee is not entitled to nominate, under the definition of *licensee's new eligible drama expenditure* in subsection (2), so much of the designated script development expenditure incurred by the licensee and/or the pass-through provider during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

(3) If:

- (a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of

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licensee's new eligible drama expenditure in subsection (2);
and

- (b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the pass-through provider; that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.
- (4) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the licensee's new eligible drama expenditure and the licensee's carry-forward eligible drama expenditure is less than 10% of the licensee's total program expenditure, the shortfall will have to be made up in the next financial year—see section 103S.

103RA Carry-forward eligible drama expenditure

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel; and
 - (c) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the financial year.
- (2) For the purposes of section 103R, the *licensee's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.
- (3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service as was incurred before 1 January 2006.

103S Shortfall of eligible drama expenditure—pass-through provider supplies channel

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel; and
 - (c) the sum of:
 - (i) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for a particular financial year (the *shortfall year*); and
 - (ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year;is less than 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the licensee's licence that, for the next financial year (the *make-up year*), the licensee's make-up expenditure is equal to the shortfall amount.

Definitions

- (3) In this section:

licensee's make-up expenditure, in relation to the subscription TV drama service, means the sum of:

- (a) so much of the total expenditure incurred by the licensee during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service; and
- (b) so much of the total expenditure incurred by the pass-through provider during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service.

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shortfall amount means the amount by which the sum of:

- (a) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year; and
- (b) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the shortfall year;

fell short of 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the shortfall year.

Double counting

(4) If:

- (a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of *licensee's make-up expenditure* in subsection (3); and
- (b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the pass-through provider;

that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

Subdivision D—Licensee supplies all program material

103T 10% minimum eligible drama expenditure—licensee supplies all program material

(1) If:

- (a) a licensee provides a subscription TV drama service; and
- (b) there is none of the following:
 - (i) a channel provider;
 - (ii) a pass-through provider;
 - (iii) a part-channel provider;
 - (iv) a part-pass-through provider;

in relation to the subscription TV drama service;

it is a condition of the licence that, for each financial year of operation, the sum of:

- (c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and
 - (d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;
- equals or exceeds 10% of the licensee's total program expenditure in relation to the subscription TV drama service.
- (2) In this section:
- licensee's carry-forward eligible drama expenditure*, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103TA(2)) for the financial year.
- licensee's new eligible drama expenditure*, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.
- licensee's total program expenditure*, in relation to the subscription TV drama service, means the total expenditure incurred by the licensee during the financial year on program material that is for televising, or available for televising, by the licensee on the subscription TV drama service.
- (3) The licensee is not entitled to nominate, under the definition of *licensee's new eligible drama expenditure* in subsection (2), so much of the designated script development expenditure incurred by the licensee during the financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

103TA Carry-forward eligible drama expenditure

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) there is none of the following:
 - (i) a channel provider;
 - (ii) a pass-through provider;
 - (iii) a part-channel provider;

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- (iv) a part-pass-through provider;
in relation to the subscription TV drama service; and
 - (c) the licensee's new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for the financial year.
- (2) For the purposes of section 103T, the *licensee's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.
- (3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service as was incurred before 1 January 2006.

Subdivision E—Part-channel provider supplies package of programs

103U 10% minimum eligible drama expenditure—part-channel provider supplies package of programs

- (1) If:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs;
- it is a condition of the licence that, for each financial year of operation, the sum of:
- (c) the part-channel provider's new eligible drama expenditure in relation to the subscription TV drama service; and
 - (d) the part-channel provider's carry-forward eligible drama expenditure in relation to the subscription TV drama service;
- equals or exceeds 10% of the part-channel provider's total program expenditure in relation to the package of programs.

- (2) In this section:

part-channel provider's carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the part-channel provider's carry-forward eligible drama expenditure (within the meaning of subsection 103UA(2)) for the financial year.

part-channel provider's new eligible drama expenditure, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the part-channel provider during the financial year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

part-channel provider's total program expenditure, in relation to the package of programs, means the total expenditure incurred by the part-channel provider during the financial year on the program material that is included, or available to be included, in the package of programs.

- (2A) The part-channel provider is not entitled to nominate, under the definition of ***part-channel provider's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the part-channel provider during the financial year as exceeds 10% of the part-channel provider's new eligible drama expenditure in relation to the subscription TV drama service.

- (3) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the part-channel provider's new eligible drama expenditure and the part-channel provider's carry-forward eligible drama expenditure is less than 10% of the part-channel provider's total program expenditure, the shortfall will have to be made up in the next financial year—see sections 103V and 103W.

103UA Carry-forward eligible drama expenditure

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs; and

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- (c) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service for a financial year exceeds 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the package of programs for the financial year.
- (2) For the purposes of section 103U, the *part-channel provider's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the part-channel provider nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.
- (3) Paragraph (1)(c) does not apply to so much of the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service as was incurred before 1 January 2006.

103V Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs exclusively to licensee

- (1) This section applies if:
 - (a) a licensee (the *first licensee*) provides a subscription TV drama service (the *first subscription TV drama service*); and
 - (b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs (the *first package of programs*); and
 - (c) it is not the case that the part-channel provider supplies the same or a substantially similar package of programs to another licensee in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar package of programs supplied by the part-channel provider is televised by the other licensee on another subscription TV drama service; and
 - (d) the sum of:
 - (i) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for a particular financial year (the *shortfall year*); and

- (ii) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):
 - (a) the part-channel provider's make-up expenditure is equal to the shortfall amount; or
 - (b) the first licensee's make-up expenditure is equal to the shortfall amount; or
 - (c) the sum of:
 - (i) the part-channel provider's make-up expenditure; and
 - (ii) the first licensee's make-up expenditure;is equal to the shortfall amount.

Definitions

- (3) In this section:

first licensee's make-up expenditure means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first package of programs as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

part-channel provider's make-up expenditure means so much of the total expenditure incurred by the part-channel provider during the make-up year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

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shortfall amount means the amount by which the sum of:

- (a) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year; and
- (b) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first TV drama service for the shortfall year;

fell short of 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

103W Shortfall of eligible drama expenditure—part-channel provider supplies a package of programs to multiple licensees

(1) This section applies if:

- (a) a licensee (the *first licensee*) provides a subscription TV drama service (the *first subscription TV drama service*); and
- (b) a person is a part-channel provider in relation to the first subscription TV drama service because the person supplies a package of programs (the *first package of programs*); and
- (c) the part-channel provider supplies the same or a substantially similar package of programs to one or more other licensees (the *additional licensees*) in circumstances where, apart from any breaks for the purposes of the transmission of incidental matter, the same or substantially similar package of programs supplied by the part-channel provider is televised by the additional licensees on subscription TV drama services (the *additional subscription TV drama services*); and
- (d) the sum of:
 - (i) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for a particular financial year (the *shortfall year*); and
 - (ii) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year;

is less than 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the first licensee's licence that, for the next financial year (the ***make-up year***):
- (a) the part-channel provider's make-up expenditure is equal to the shortfall amount; or
 - (b) the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the shortfall amount; or
 - (c) if the part-channel provider's make-up expenditure is less than the shortfall amount—the first licensee's make-up expenditure is equal to the first licensee's subscriber percentage of the difference between the shortfall amount and the part-channel provider's make-up expenditure.

Definitions

- (3) In this section:

first licensee's make-up expenditure means so much of the total expenditure incurred by the first licensee during the make-up year on new eligible drama programs not included, or available to be included, in the first package of programs as the first licensee nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

first licensee's subscriber percentage means the percentage worked out using the following formula:

$$\frac{\text{Subscribers of first licensee}}{\text{Subscribers of first licensee} + \text{Subscribers of additional licensees}} \times 100$$

monthly subscriber number, for a subscription TV drama service for a particular month, means the number worked out using the following formula:

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$$\frac{\text{Number of subscribers to the subscription TV drama service on the first day of the month} + \text{Number of subscribers to the subscription TV drama service on the last day of the month}}{2}$$

part-channel provider's make-up expenditure means so much of the total expenditure incurred by the part-channel provider during the make-up year on new eligible drama programs as the part-channel provider nominates for the purposes of the application of subsection (2) in relation to the first subscription TV drama service.

shortfall amount means the amount by which the sum of:

- (a) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the first subscription TV drama service for the shortfall year; and
- (b) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the first TV drama service for the shortfall year;

fell short of 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the first package of programs for the shortfall year.

subscribers of additional licensees means the sum of the monthly subscriber numbers for the additional subscription TV drama services for each month of operation during the shortfall year.

subscribers of first licensee means the sum of the monthly subscriber numbers for the first subscription TV drama service for each month of operation during the shortfall year.

Subdivision F—Part-pass-through provider supplies package of programs

**103X 10% minimum eligible drama expenditure—
part-pass-through provider supplies package of programs**

- (1) If:
 - (a) a licensee provides a subscription TV drama service; and

- (b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs;

it is a condition of the licence that, for each financial year of operation, the sum of:

- (c) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and
(d) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;

equals or exceeds 10% of the licensee's total program expenditure in relation to the package of programs.

- (2) In this section:

licensee's carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103XA(2)) for the financial year.

licensee's new eligible drama expenditure, in relation to the subscription TV drama service, means the sum of:

- (a) so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service; and
(b) so much of the total expenditure incurred by the part-pass-through provider during the financial year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

licensee's total program expenditure, in relation to the package of programs, means the total expenditure incurred by the licensee during the financial year in respect of the supply by the part-pass-through provider of the package of programs.

- (2A) The licensee is not entitled to nominate, under the definition of *licensee's new eligible drama expenditure* in subsection (2), so much of the designated script development expenditure incurred by the licensee and/or the part-pass-through provider during the

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financial year as exceeds 10% of the licensee's new eligible drama expenditure in relation to the subscription TV drama service.

- (3) If:
- (a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of *licensee's new eligible drama expenditure* in subsection (2); and
 - (b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the part-pass-through provider; that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.
- (4) Division 3 of Part 10 (which deals with breaches of conditions) does not apply to the condition set out in subsection (1).

Note: If the sum of the licensee's new eligible drama expenditure and the licensee's carry-forward eligible drama expenditure is less than 10% of the licensee's total program expenditure, the shortfall will have to be made up in the next financial year—see section 103Y.

103XA Carry-forward eligible drama expenditure

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs; and
 - (c) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the financial year.
- (2) For the purposes of section 103X, the *licensee's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

- (3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service as was incurred before 1 January 2006.

103Y Shortfall of eligible drama expenditure—part-pass-through provider supplies package of programs

- (1) This section applies if:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs; and
 - (c) the sum of
 - (i) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for a particular financial year (the *shortfall year*); and
 - (ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year;is less than 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the shortfall year.

Shortfall amount to be made up next financial year

- (2) It is a condition of the licensee's licence that, for the next financial year (the *make-up year*), the licensee's make-up expenditure is equal to the shortfall amount.

Definitions

- (3) In this section:

licensee's make-up expenditure, in relation to the subscription TV drama service, means the sum of:

- (a) so much of the total expenditure incurred by the licensee during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service; and

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- (b) so much of the total expenditure incurred by the part-pass-through provider during the make-up year on new eligible drama programs as the licensee nominates for the purposes of the application of subsection (2) in relation to the subscription TV drama service.

shortfall amount means the amount by which the sum of:

- (a) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year; and
- (b) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the shortfall year;

fell short of 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the shortfall year.

Double counting

- (4) If:
 - (a) the licensee nominates the whole or a part of particular expenditure under paragraph (a) of the definition of *licensee's make-up expenditure* in subsection (3); and
 - (b) the whole or part, as the case may be, of the expenditure is attributable to a new eligible drama program on which expenditure was incurred by the part-pass-through provider;that new eligible drama program is to be disregarded in determining the expenditure that may be nominated by the licensee under paragraph (b) of that definition.

Subdivision G—Licensee supplies part of program material

103Z 10% minimum eligible drama expenditure—licensee supplies part of program material

- (1) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) some, but not all, of the program material that is televised by the licensee on the subscription TV drama service consists of program material included in a package of programs supplied to the licensee by:

- (i) a part-channel provider; or
 - (ii) a part-pass-through provider;
- in relation to the subscription TV drama service; and
- (c) the remainder of the program material that is televised by the licensee on the subscription TV drama service consists predominantly of drama programs;
- it is a condition of the licence that, for each financial year of operation, the sum of:

- (d) the licensee's new eligible drama expenditure in relation to the subscription TV drama service; and
 - (e) the licensee's carry-forward eligible drama expenditure in relation to the subscription TV drama service;
- equals or exceeds 10% of the licensee's total program expenditure in relation to the subscription TV drama service.

- (2) In this section:

licensee's carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the licensee's carry-forward eligible drama expenditure (within the meaning of subsection 103ZAA(2)) for the financial year.

licensee's new eligible drama expenditure, in relation to the subscription TV drama service, means so much of the total expenditure incurred by the licensee during the financial year on new eligible drama programs not included in that package as the licensee nominates for the purposes of the application of subsection (1) in relation to the subscription TV drama service.

licensee's total program expenditure, in relation to the subscription TV drama service, means the total expenditure incurred by the licensee during the financial year on program material that is:

- (a) not included in that package; and
 - (b) for televising, or available for televising, by the licensee on the subscription TV drama service.
- (3) The licensee is not entitled to nominate, under the definition of ***licensee's new eligible drama expenditure*** in subsection (2), so much of the designated script development expenditure incurred by the licensee during the financial year as exceeds 10% of the

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licensee's new eligible drama expenditure in relation to the subscription TV drama service.

103ZAA Carry-forward eligible drama expenditure

- (1) This section applies if:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) some, but not all, of the program material that is televised by the licensee on the subscription TV drama service consists of program material included in a package of programs supplied to the licensee by:
 - (i) a part-channel provider; or
 - (ii) a part-pass-through provider;in relation to the subscription TV drama service; and
 - (c) the remainder of the program material that is televised by the licensee on the subscription TV drama service consists predominantly of drama programs; and
 - (d) the licensee's new eligible drama expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee's total program expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service for the financial year.
- (2) For the purposes of section 103Z, the *licensee's carry-forward eligible drama expenditure* in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.
- (3) Paragraph (1)(c) does not apply to so much of the licensee's new eligible drama expenditure (within the meaning of section 103Z) in relation to the subscription TV drama service as was incurred before 1 January 2006.

Subdivision H—Annual returns

103ZA Licensee to lodge annual return

- (1) A licensee who provides one or more subscription TV drama services must, within 60 days after the end of each financial year of operation, give to the ACMA:
 - (a) a return, in the approved form, containing such information as is required by that form in relation to the application of this Division in connection with those services; and
 - (b) a certificate by a registered auditor, in the approved form, stating that, in the opinion of the auditor, the return, in so far as it relates to expenditure incurred by the licensee, is correct.
- (2) A person is guilty of an offence if:
 - (a) the person is subject to a requirement under subsection (1); and
 - (b) the person intentionally contravenes that requirement.

Penalty: 1,000 penalty units.
- (3) A reference in this section to an *approved form* is a reference to a form approved, in writing, by the ACMA for the purposes of the provision in which the expression appears.

103ZB Channel provider and part-channel provider to lodge annual return

- (1) If a person is a channel provider or a part-channel provider in relation to one or more subscription TV drama services provided by a licensee during a financial year, the person must, within 60 days after the end of that financial year, give to the ACMA:
 - (a) a return, in the approved form, containing such information as is required by that form in relation to the application of this Division in connection with those services; and
 - (b) a certificate by a registered auditor, in the approved form, stating that, in the opinion of the auditor, the return is correct.
- (2) A person is guilty of an offence if:
 - (a) the person is subject to a requirement under subsection (1); and

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(b) the person intentionally contravenes that requirement.

Penalty: 1,000 penalty units.

(3) If:

(a) a person is a channel provider or a part-channel provider in relation to one or more subscription TV drama services provided by a licensee during a financial year; and

(b) the person contravenes subsection (1) in relation to the financial year;

the ACMA must inform the licensee, in writing, of that contravention as soon as practicable after the ACMA becomes aware of that contravention.

(4) A reference in this section to an *approved form* is a reference to a form approved, in writing, by the ACMA for the purposes of the provision in which the expression appears.

103ZC ACMA may inquire into the correctness of an annual return

The ACMA may make whatever inquiries it thinks necessary or desirable in order to determine whether a return given to it under this Subdivision contains correct information.

103ZD Nominations to be attached to annual returns

Licensee

(1) A nomination that:

(a) is made by a licensee; and

(b) relates to the application of a provision of this Division in respect of a financial year;

must:

(c) be in writing; and

(d) accompany the return given by the licensee under section 103ZA for that financial year.

Channel provider and part-channel provider

(2) A nomination that:

(a) is made by a person who is a channel provider or a part-channel provider in relation to one or more subscription

TV drama services provided by a licensee during a financial year; and

- (b) relates to the application of a provision of this Division in respect of that financial year;

must:

- (c) be in writing; and
- (d) accompany the relevant return given by the channel provider or the part-channel provider, as the case may be, under section 103ZB for that financial year.

Subdivision I—Compliance certificates

103ZE ACMA to issue compliance certificate

Channel provider

(1) If:

- (a) a licensee provides a subscription TV drama service; and
- (b) a person is a channel provider in relation to the subscription TV drama service because the person supplies a channel; and
- (c) 60 days pass after the end of a particular financial year of operation;

then, as soon as practicable, the ACMA must:

- (d) give the licensee a written certificate stating:
 - (i) whether the amount worked out under subsection (1A) fell short of 10% of the channel provider's total program expenditure (within the meaning of section 103N) in relation to the channel for the financial year; and
 - (ii) if so, that an amount specified in the certificate is the amount of the shortfall; and
- (e) give the channel provider a copy of that certificate.

(1A) For the purposes of subparagraph (1)(d)(i), the amount is the sum of:

- (a) the channel provider's new eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service for the financial year; and

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- (b) the channel provider's carry-forward eligible drama expenditure (within the meaning of section 103N) in relation to the subscription TV drama service for the financial year.

Pass-through provider

- (2) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a pass-through provider in relation to the subscription TV drama service because the person supplies a channel; and
 - (c) 60 days pass after the end of a particular financial year of operation;

then, as soon as practicable, the ACMA must give the licensee a written certificate stating:

- (d) whether the sum of:
 - (i) the licensee's new eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the financial year; and
 - (ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103R) in relation to the subscription TV drama service for the financial year; fell short of 10% of the licensee's total program expenditure (within the meaning of section 103R) in relation to the channel for the financial year; and
- (e) if so, that an amount specified in the certificate is the amount of the shortfall.

Part-channel provider

- (3) If:
 - (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs; and
 - (c) 60 days pass after the end of a particular financial year of operation;

then, as soon as practicable, the ACMA must:

- (d) give the licensee a written certificate stating:

- (i) whether the amount worked out under subsection (3A) fell short of 10% of the part-channel provider's total program expenditure (within the meaning of section 103U) in relation to the package of programs for the financial year; and
 - (ii) if so, that an amount specified in the certificate is the amount of the shortfall; and
 - (e) give the part-channel provider a copy of that certificate.
- (3A) For the purposes of subparagraph (3)(d)(i), the amount is the sum of:
- (a) the part-channel provider's new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service for the financial year; and
 - (b) the part-channel provider's carry-forward eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service for the financial year.

Part-pass-through provider

- (4) If:
- (a) a licensee provides a subscription TV drama service; and
 - (b) a person is a part-pass-through provider in relation to the subscription TV drama service because the person supplies a package of programs; and
 - (c) 60 days pass after the end of a particular financial year of operation;
- then, as soon as practicable, the ACMA must give the licensee a written certificate stating:
- (d) whether the sum of:
 - (i) the licensee's new eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the financial year; and
 - (ii) the licensee's carry-forward eligible drama expenditure (within the meaning of section 103X) in relation to the subscription TV drama service for the financial year;fell short of 10% of the licensee's total program expenditure (within the meaning of section 103X) in relation to the package of programs for the financial year; and

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- (e) if so, that an amount specified in the certificate is the amount of the shortfall.

Note: For the evidentiary effect of a compliance certificate, see section 103ZF.

103ZF Compliance certificate to be prima facie evidence

- (1) A compliance certificate is, in proceedings arising under this Act, prima facie evidence of the matters in the certificate.
- (2) The ACMA may certify that a document is a copy of a compliance certificate.
- (3) This section applies to the certified copy as if it were the original.

Subdivision J—Miscellaneous

103ZG Anti-avoidance—transactions between persons not at arm's length

- (1) If:
 - (a) a person has incurred expenditure in connection with a transaction where the parties to the transaction are not dealing with each other at arm's length in relation to the transaction; and
 - (b) apart from this section, the expenditure is counted for the purposes of the application of this Division; and
 - (c) the amount of the expenditure is greater or less than is reasonable;the ACMA may, by writing, determine that the amount of the expenditure is taken, for the purposes of the application of this Division in relation to the parties to the transaction, to be the amount that would have been reasonable if the parties were dealing with each other at arm's length.
- (2) A determination under subsection (1) has effect accordingly.

103ZH Expenditure to be expressed in Australian currency

- (1) For the purposes of this Division, expenditure is to be expressed in Australian currency.

- (2) For the purposes of this Division, if expenditure is incurred otherwise than in Australian currency, the expenditure is to be expressed in Australian currency at a rate equal to whichever of the following is applicable:
- (a) if the expenditure is incurred in connection with a transaction and the parties to the transaction have agreed on the exchange rate that is applicable to the expenditure—that exchange rate; or
 - (b) in any other case—the exchange rate applicable at the time when the expenditure is incurred.

103ZJ Review before 31 March 2003

- (1) Before 31 March 2003, the Minister must cause to be conducted a review relating to Australian and New Zealand content on subscription television broadcasting services.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report under this section to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Division 6—Miscellaneous

113 Transfer of subscription television broadcasting licence

- (1) Subject to subsection (2), a subscription television broadcasting licensee may transfer the subscription television broadcasting licence to another person.
- (2) Licensee C must not transfer licence C without the written approval of the Minister.

114 Surrender of subscription television broadcasting licence

A subscription television broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

115 Minister may protect the free availability of certain types of programs

- (1) The Minister may, by notice published in the *Gazette*, specify an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.
- (1A) The Minister may, by notice published in the *Gazette*, amend a notice under subsection (1) to specify an additional event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the public.
- (1AA) Subject to subsection (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 2,016 hours before the start of the event, unless the Minister publishes in the *Gazette* before that time a declaration that the event continues to be specified in the notice after that time.
- (1AB) The Minister may publish a declaration under subsection (1AA) only if the Minister is satisfied that at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the right to televise the event concerned.
- (1B) Subject to subsections (1AA) and (2), an event specified in a notice under subsection (1) is taken to be removed from the notice 168

hours after the end of the event, unless the Minister publishes in the *Gazette* before that time a declaration that the event continues to be specified in the notice after that time.

- (2) The Minister may, by notice published in the *Gazette*, amend a notice under subsection (1) to remove an event from the notice.

Note: The following are examples of situations in which the Minister might exercise the power to remove an event from a notice:

Example 1

The national broadcasters and commercial television broadcasting licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. The Minister is of the opinion that removing the event from the notice is likely to have the effect that the event will be televised to a greater extent than if it remained on the notice.

Example 2

A commercial television broadcasting licensee has acquired the right to televise an event, but has failed to televise the event or has televised only an unreasonably small proportion of the event. The Minister is of the opinion that removing that event, or another event, from the notice is likely to have the effect that the removed event will be televised to a greater extent than it would be if it remained on the notice.

- (3) Notices and declarations under this section are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

115A Review of anti-siphoning provisions

- (1) Before 31 December 2009, the Minister must cause to be conducted a review of the following matters:
- (a) the operation of section 115;
 - (b) the operation of paragraph 7(1)(ob) of Schedule 2;
 - (c) the operation of paragraph 10(1)(e) and subclauses 10(1A) and (1B) of Schedule 2;
 - (d) the operation of Part 4A of Schedule 4;
 - (e) whether section 115 should be amended or repealed;
 - (f) whether paragraph 7(1)(ob) of Schedule 2 should be amended or repealed;
 - (g) whether paragraph 10(1)(e) and subclauses 10(1A) and (1B) of Schedule 2 should be amended or repealed;

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- (h) whether Part 4A of Schedule 4 should be amended or repealed.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

116 Certain arrangements not to result in control or in persons being associates

- (1) A person who is in a position to exercise control of a satellite subscription television broadcasting licence is not taken to be in a position to exercise control of another satellite subscription television broadcasting licence only because of a provision of a contract, arrangement or understanding under which all or any of the following things are done:
 - (a) a subscriber management system is provided for subscribing to either or both of the subscription television broadcasting services being provided under those licences;
 - (b) the subscription television broadcasting services being provided under those licences are marketed on a joint basis;
 - (c) joint use is made of facilities for:
 - (i) transmitting programs; or
 - (ii) the operation of disabling devices for restricting access to certain programs;
 - (d) such other things as are prescribed.
- (2) Subsection (1) does not apply to a contract, arrangement or understanding under which, or as a result of which, a person who is in a position to exercise control of a satellite subscription television broadcasting service comes to be in a position to exercise control (whether directly or indirectly) of the selection or provision of a significant proportion of the programs broadcast by another satellite subscription television broadcasting licensee.
- (3) For the purposes of Part 5, a person who is in a position to exercise control of a commercial television broadcasting licence is not an associate of another person who is in a position to exercise control of another commercial television broadcasting licence only

because of an association between them in relation to their participation in a venture that operates licence B.

116A Use of additional capacity

Services under a satellite subscription television broadcasting licence may use capacity other than high performance beams on a subscription television satellite for the purpose of ensuring that as much of Australia as possible is covered by those services.

116B Application of section 51 of the Trade Practices Act

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

116C Interpretation

(1) In this Part:

licensee A means the holder of licence A.

licensee B means the holder of licence B.

Part 8—Subscription broadcasting and narrowcasting class licences

117 Determination of class licences

The ACMA may, by notice published in the *Gazette*, determine a class licence for the provision of:

- (a) subscription radio broadcasting services; or
- (b) subscription radio narrowcasting services; or
- (c) subscription television narrowcasting services; or
- (d) open narrowcasting radio services; or
- (e) open narrowcasting television services.

118 Conditions of class licences

- (1) The ACMA may include in a class licence conditions that, having regard to:
 - (a) the objects of this Act and the regulatory policy set out in section 4; and
 - (b) the matters referred to in section 22;it considers should be imposed on the provision of services under that licence.
- (2) Different conditions may be specified for:
 - (a) different categories of broadcasting services; and
 - (b) services providing radio programs and services providing television programs.
- (3) Each class licence is subject to the conditions set out in Part 7 of Schedule 2.

119 Matters to which conditions may relate

- (1) Conditions of class licences must be relevant to the broadcasting services to which those licences relate.

- (2) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a class licence:
- (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur; or
 - (c) designed to ensure compliance with the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*.

120 Variation of class licences

- (1) The ACMA may, by notice published in the *Gazette*:
- (a) vary or revoke conditions specified in a class licence; or
 - (b) specify additional conditions of the licence.
- (2) Action taken under subsection (1) must not be inconsistent with:
- (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 7 of Schedule 2.
- (3) Before publishing a notice under subsection (1), the ACMA must:
- (a) publicise its intention to vary the licence, stating:
 - (i) the subject matter of the proposed variation; and
 - (ii) a place at which copies of the licence and of the proposed variation may be bought; and
 - (iii) an address to which representations concerning the proposed variation can be sent; and
 - (iv) the last date for making those representations; and
 - (b) give due consideration to any representations so made.

121 Class licences and variations to be disallowable by the Parliament

Class licences, and instruments varying class licences, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Section 121A

Part 8A—Restrictions on subscription television broadcasting services in regional areas etc.

121A Simplified outline

The following is a simplified outline of this Part:

- Unless the ACMA gives permission, a subscription television broadcasting licensee, or a related body corporate, must not provide a television service in a regional area if 3 or more consecutive program items transmitted on that service are identical to any 3 or more consecutive program items transmitted by a metropolitan commercial television broadcasting licensee during prime viewing hours.

121B Definitions

In this Part:

licence area means a licence area of a commercial television broadcasting licence.

metropolitan commercial television broadcasting licensee means a commercial television broadcasting licensee whose licence area is a metropolitan licence area.

metropolitan licence area means a licence area in which is situated the General Post Office of the capital city of:

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia.

prime viewing hours means the hours:

- (a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and

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- (b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

program item means a television program, but does not include:

- (a) advertising or sponsorship matter (whether or not of a commercial kind); or
- (b) a news program that:
 - (i) is not a regularly scheduled news program; and
 - (ii) is solely or principally about a matter of national significance; or
- (c) a program that covers an Olympic Games that is being held at the time the program is transmitted; or
- (d) a program that covers a Paralympic Games that is being held at the time the program is transmitted; or
- (e) a program that covers a Commonwealth Games that is being held at the time the program is transmitted.

regional area means an area that is not part of a metropolitan licence area.

related body corporate has the same meaning as in the *Corporations Act 2001*.

121C Identical program items

For the purposes of this Part, in determining whether a program item is identical to another program item, disregard any differences between the techniques used to transmit the program items.

121D Continuity of program items

- (1) For the purposes of this Part, any break during the transmission of a program item for the purposes of the transmission of other matter:
 - (a) is taken not to affect the continuity of the program item; and
 - (b) is to be counted in working out the length of the program item; and
 - (c) despite paragraph (b), is to be ignored in working out whether the program item is identical to another program item.

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- (2) For the purposes of this Part, any break between program items for the purposes of the transmission of other matter:
- (a) is taken not to affect the consecutiveness of the program items; and
 - (b) is to be counted in working out the total length of the program items.

121E ACMA permission is required to provide certain television services in regional areas

- (1) A subscription television broadcasting licensee, or a related body corporate of a subscription television broadcasting licensee, ***engages in conduct to which this subsection applies*** if, without the written permission of the ACMA, the subscription television broadcasting licensee or the related body corporate, as the case may be, provides:
- (a) a subscription television broadcasting service; or
 - (b) a subscription television narrowcasting service; or
 - (c) an open narrowcasting television service;
- in a regional area, where, to the knowledge of the subscription television broadcasting licensee or the related body corporate, as the case may be, 3 or more consecutive program items transmitted on that service during a particular period:
- (d) the total length of which is the same as, or shorter than, the length of prime viewing hours; and
 - (e) that occurs within the 24 hour period beginning at the start of prime viewing hours;
- are identical to any 3 or more consecutive program items transmitted by a metropolitan commercial television broadcasting licensee during those prime viewing hours.
- (2) A subscription television broadcasting licensee, or a related body corporate of a subscription television broadcasting licensee, must take all reasonable steps to ensure that the subscription television broadcasting licensee or the related body corporate, as the case may be, does not engage in conduct to which subsection (1) applies.

Part 8B—International broadcasting licences

Division 1—Introduction

121F Simplified outline

The following is a simplified outline of this Part:

- Applications may be made to the ACMA for the allocation of international broadcasting licences.
- The ACMA may only reject an application for the allocation of an international broadcasting licence to a person if:
 - (a) the ACMA is not satisfied that the person is an Australian company; or
 - (b) the ACMA is not satisfied that the person is a suitable applicant; or
 - (c) the Minister for Foreign Affairs is of the opinion that the international broadcasting service is likely to be contrary to Australia's national interest.
- A licensee must keep records of broadcasts for 90 days.
- An international broadcasting licence may only be cancelled if:
 - (a) the licensee does not commence to provide an international broadcasting service within 2 years; or
 - (b) the Minister for Foreign Affairs is of the opinion that the international broadcasting service is likely to be contrary to Australia's national interest.

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- The ACMA may make declarations (*nominated broadcaster declarations*) that allow international broadcasting licences and related transmitter licences to be held by different persons, so long as the transmitter licence is held by an Australian company.
- If a nominated broadcaster declaration is in force:
 - (a) the international broadcasting licence may be issued to a company that is not an Australian company; and
 - (b) the holder of the transmitter licence must keep records of broadcasts for 90 days; and
 - (c) the holder of the transmitter licence may receive notices on behalf of the holder of the international broadcasting licence.

121FAA Definitions

In this Part:

company means a body corporate.

holder, in relation to a nominated broadcaster declaration, means the person who applied for the declaration.

nominated broadcaster declaration means a declaration under section 121FLC.

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

Division 2—Allocation of international broadcasting licences

121FA Application for international broadcasting licence

- (1) A person may apply to the ACMA for a licence to provide an international broadcasting service if no nominated broadcaster declaration is in force in relation to that service.
- (1A) If a person is the holder of a nominated broadcaster declaration in relation to an international broadcasting service proposed to be provided by another person (the *content provider*):
 - (a) the holder of the declaration may, on behalf of the content provider, apply to the ACMA for a licence authorising the content provider to provide the international broadcasting service; and
 - (b) if an application is made under paragraph (a)—the content provider is taken to be the applicant for the licence.
- (1B) An application under this section may only be made on the basis of one licence per service.
- (2) An application under this section must:
 - (a) be in accordance with a form approved in writing by the ACMA; and
 - (b) be accompanied by the application fee determined in writing by the ACMA.

121FB Corporate status and suitability

- (1) If the ACMA:
 - (a) is satisfied that an applicant under subsection 121FA(1) for an international broadcasting licence is a company that is formed in Australia or in an external Territory; and
 - (b) does not decide that subsection 121FC(1) applies to the applicant;

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the ACMA must:

- (c) refer the application to the Minister for Foreign Affairs; and
- (d) give the Minister for Foreign Affairs a report about whether the proposed international broadcasting service concerned complies with the international broadcasting guidelines.

(2) If the ACMA:

- (a) is not satisfied that an applicant under subsection 121FA(1) for an international broadcasting licence is a company that is formed in Australia or in an external Territory; or
- (b) decides that subsection 121FC(1) applies to an applicant under subsection 121FA(1) for an international broadcasting licence;

the ACMA must refuse to allocate an international broadcasting licence to the applicant.

(3) If, under subsection (2), the ACMA refuses to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the refusal to the applicant.

(4) If an application for an international broadcasting licence is made under subsection 121FA(1), the ACMA must make reasonable efforts to either:

- (a) take action under subsection (1) of this section; or
- (b) refuse to allocate the licence;

within 30 days after the application was made.

(5) If the ACMA:

- (a) is satisfied that an applicant under subsection 121FA(1A) for an international broadcasting licence is a company; and
- (b) does not decide that subsection 121FC(1) applies to the applicant;

the ACMA must:

- (c) refer the application to the Minister for Foreign Affairs; and
- (d) give the Minister for Foreign Affairs a report about whether the proposed international broadcasting service concerned complies with the international broadcasting guidelines.

(6) If the ACMA:

- (a) is not satisfied that an applicant under subsection 121FA(1A) for an international broadcasting licence is a company; or

- (b) decides that subsection 121FC(1) applies to an applicant under subsection 121FA(1A) for an international broadcasting licence;
the ACMA must refuse to allocate an international broadcasting licence to the applicant.
- (7) If, under subsection (6), the ACMA refuses to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the refusal to:
- (a) the applicant; and
 - (b) the holder of the nominated broadcaster declaration concerned.
- (8) If an application for an international broadcasting licence is made under subsection 121FA(1A), the ACMA must make reasonable efforts to either:
- (a) take action under subsection (5) of this section; or
 - (b) refuse to allocate the licence;
- within 30 days after the application was made.

121FC Unsuitable applicant

- (1) The ACMA may, if it is satisfied that allowing a particular company to provide an international broadcasting service under an international broadcasting licence would lead to a significant risk of:
- (a) an offence against this Act or the regulations being committed; or
 - (aa) a breach of a civil penalty provision occurring; or
 - (b) a breach of the conditions of the licence occurring;
- decide that this subsection applies to the company.
- (2) In deciding whether such a risk exists, the ACMA is to take into account:
- (a) the business record of the company; and
 - (b) the company's record in situations requiring trust and candour; and
 - (c) the business record of each person who is, or would be, if an international broadcasting licence were allocated to the company, in a position to control the licence; and

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- (d) the record in situations requiring trust and candour of each such person; and
- (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
- (f) whether a civil penalty order has been made against:
 - (i) the company; or
 - (ii) a person referred to in paragraph (c) or (d).

121FD Australia's national interest

Direction not to allocate licence

- (1) If:
 - (a) an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5); and
 - (b) the Minister for Foreign Affairs is of the opinion that the proposed international broadcasting service concerned is likely to be contrary to Australia's national interest;the Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA not to allocate an international broadcasting licence to the applicant.

No objection to allocation of licence

- (2) If:
 - (a) an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5); and
 - (b) the Minister for Foreign Affairs is not of the opinion that the proposed international broadcasting service concerned is likely to be contrary to Australia's national interest;the Minister for Foreign Affairs must, by written notice given to the ACMA, inform the ACMA that he or she has no objection to the allocation of an international broadcasting licence to the applicant.

Australia's national interest

- (3) For the purposes of this section, in determining whether a proposed international broadcasting service is likely to be contrary to Australia's national interest, the Minister for Foreign Affairs must have regard to the likely effect of the proposed service on Australia's international relations.
- (4) For the purposes of this section, in determining whether a proposed international broadcasting service is likely to be contrary to Australia's national interest, the Minister for Foreign Affairs may have regard to a report given by the ACMA under subsection 121FB(1) or (5). This subsection does not limit the material to which the Minister for Foreign Affairs may have regard.

Decision to be made within 60 days

- (5) If an application for an international broadcasting licence is referred to the Minister for Foreign Affairs under subsection 121FB(1) or (5), the Minister for Foreign Affairs must make reasonable efforts to either:
 - (a) direct the ACMA under subsection (1) of this section; or
 - (b) inform the ACMA under subsection (2) of this section; within 60 days after the referral.

Notification

- (6) If the Minister for Foreign Affairs directs the ACMA not to allocate an international broadcasting licence to an applicant, the ACMA must give written notice of the direction to:
 - (a) in all cases—the applicant; and
 - (b) in the case of an application under subsection 121FA(1A)—the holder of the nominated broadcaster declaration concerned.

121FE Allocation of licence

If the Minister for Foreign Affairs informs the ACMA under subsection 121FD(2) that he or she has no objection to the allocation of an international broadcasting licence to an applicant, the ACMA must allocate the licence to the applicant.

Division 3—Obligations of international broadcasting licensees

121FF Conditions of international broadcasting licences

- (1) Each international broadcasting licence is subject to the following conditions:
 - (a) the licensee must cause a record of programs broadcast on the international broadcasting service concerned to be made in a form approved in writing by the ACMA;
 - (b) the licensee must retain in its custody a record so made for a period of 90 days after the broadcast;
 - (c) the licensee must, without charge, make available to the ACMA, on request, any specified record made by the licensee under paragraph (a) that has been retained by the licensee (whether or not the licensee is, at the time of the request, under an obligation to retain the record).
- (2) This section does not apply to an international broadcasting licence if a nominated broadcaster declaration is in force in relation to the international broadcasting service concerned.

Note: Corresponding conditions apply to nominated broadcaster declarations—see section 121FLE.

Division 4—Remedies

121FG Prohibition on providing an international broadcasting service without a licence

- (1) A person is guilty of an offence if the person:
 - (a) intentionally provides an international broadcasting service; and
 - (b) does not have an international broadcasting licence to provide the service, and is reckless as to that fact.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.
- (3) A person must not provide an international broadcasting service if the person does not have a licence to provide that service.
- (4) Subsection (3) is a civil penalty provision.
- (5) A person who contravenes subsection (3) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

121FH Remedial directions—unlicensed international broadcasting services

If the ACMA is satisfied that a person has breached, or is breaching, subsection 121FG(3), the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that section, or is unlikely to breach that section, in the future.

121FHA Breach of remedial direction—offence

- (1) A person commits an offence if:
 - (a) the person has been given a notice under section 121FH; and

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- (b) the person engages in conduct; and
- (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

- (3) In this section:

engage in conduct means:

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

121FHB Breach of remedial direction—civil penalty provision

- (1) A person must comply with a notice under section 121FH.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

121FJ Offence for breach of conditions of international broadcasting licence

- (1) A person is guilty of an offence if:
 - (a) the person is an international broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of the licence.

Penalty: 2,000 penalty units.

- (2) In this section:

engage in conduct means:

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

121FJA Civil penalty provision relating to breach of conditions of international broadcasting licences

- (1) An international broadcasting licensee must not breach a condition of the licence.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

121FJB Remedial directions—licence conditions

- (1) If the ACMA is satisfied that an international broadcasting licensee has breached, or is breaching, a condition of the licence, the ACMA may, by written notice given to the licensee, direct the licensee to take action directed towards ensuring that the licensee does not breach that condition, or is unlikely to breach that condition, in the future.
- (2) The following are examples of the kinds of direction that may be given to a licensee under subsection (1):
 - (a) a direction that the licensee implement effective administrative systems for monitoring compliance with a condition of the licence;
 - (b) a direction that the licensee implement a system designed to give the licensee's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

121FJC Breach of remedial direction—offence

- (1) A person commits an offence if:
 - (a) the person has been given a notice under section 121FJB; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

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- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.
- (3) In this section:
engage in conduct means:
 - (a) do an act; or
 - (b) omit to perform an act.

121FJD Breach of remedial direction—civil penalty provision

- (1) A person must comply with a notice under section 121FJB.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

121FK Cancellation of licence if service does not commence within 2 years

- (1) If:
 - (a) a person has been allocated an international broadcasting licence; and
 - (b) the person has not commenced to provide the international broadcasting service concerned within 2 years after the allocation of the licence;the ACMA may cancel the licence.

Notice of intention to cancel

- (2) If the ACMA proposes to cancel a licence under subsection (1), the ACMA must give to the licensee:
 - (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed cancellation.

**121FL Formal warning, or cancellation or suspension of licence,
where service is contrary to Australia's national interest**

Formal warning

- (1) If:
- (a) an international broadcasting service is provided under an international broadcasting licence; and
 - (b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and
 - (c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to issue a formal warning to the licensee;
- the ACMA must issue a formal warning to the licensee.

Suspension of licence

- (3) If:
- (a) an international broadcasting service is provided under an international broadcasting licence; and
 - (b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and
 - (c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to suspend the licence for the period specified in the direction;
- the ACMA must suspend the licence for the period specified in the direction.

Cancellation of licence

- (5) If:
- (a) an international broadcasting service is provided under an international broadcasting licence; and
 - (b) the Minister for Foreign Affairs is of the opinion that the service is contrary to Australia's national interest; and
 - (c) the Minister for Foreign Affairs, by written notice given to the ACMA, directs the ACMA to cancel the licence;
- the ACMA must cancel the licence.

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- (6) If the Minister for Foreign Affairs proposes to direct the ACMA to cancel an international broadcasting licence, he or she must direct the ACMA to:
- (a) give the licensee written notice of his or her intention; and
 - (b) give the licensee a reasonable opportunity to send a submission to the ACMA in relation to the proposed direction; and
 - (c) forward any such submission to the Minister for Foreign Affairs.

Australia's national interest

- (8) For the purposes of this section, in determining whether an international broadcasting service is contrary to Australia's national interest, the Minister for Foreign Affairs must have regard to the effect of the service on Australia's international relations.
- (9) For the purposes of this section, in determining whether an international broadcasting service is contrary to Australia's national interest, the Minister for Foreign Affairs may have regard to a report given by the ACMA under section 121FM. This subsection does not limit the material to which the Minister for Foreign Affairs may have regard.

Division 4A—Nominated broadcaster declarations

121FLA Object of this Division

The main object of this Division is to provide for the making of declarations (*nominated broadcaster declarations*) that allow the following licences to be held by different persons:

- (a) an international broadcasting licence that authorises the provision of an international broadcasting service;
- (b) a transmitter licence for a radiocommunications transmitter that is for use for transmitting the international broadcasting service.

121FLB Applications for nominated broadcaster declarations

If a person (the *transmission provider*):

- (a) is the licensee of a transmitter licence for a transmitter that is used, or intended for use, for transmitting an international broadcasting service; or
- (b) proposes to apply for a transmitter licence for a transmitter that is intended for use for transmitting an international broadcasting service;

the transmission provider may apply to the ACMA for a nominated broadcaster declaration in relation to the provision of the international broadcasting service by a particular person (the *content provider*).

121FLC Making a nominated broadcaster declaration

- (1) After considering the application, the ACMA must declare in writing that the provision of the international broadcasting service by the content provider is nominated in relation to the transmitter licence or proposed transmitter licence, if the ACMA is satisfied that:
 - (a) either:
 - (i) the content provider holds an international broadcasting licence that authorises the provision of the international broadcasting service; or

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- (ii) the content provider does not hold such a licence but, if the declaration were made, the transmission provider or another person will, within 60 days after the making of the declaration, apply under subsection 121FA(1A), on behalf of the content provider, for an international broadcasting licence that authorises the provision of the international broadcasting service by the content provider; and
 - (b) the transmission provider intends to transmit the international broadcasting service on behalf of the content provider; and
 - (c) the transmission provider is a company that is formed in Australia or in an external Territory; and
 - (d) if the declaration were made, the transmission provider would be in a position to comply with all of the obligations imposed on the transmission provider under section 121FLE.
- (2) The ACMA must give a copy of the declaration to:
 - (a) the transmission provider; and
 - (b) the content provider.
- (3) If the ACMA refuses to make a nominated broadcaster declaration, the ACMA must give written notice of the refusal to:
 - (a) the transmission provider; and
 - (b) the content provider.
- (4) If an application is made for a nominated broadcaster declaration, the ACMA must make reasonable efforts to:
 - (a) make the declaration under subsection (1); or
 - (b) refuse to make the declaration;within 30 days after the application is made.
- (5) This Part does not prevent the ACMA from making more than one nominated broadcaster declaration in relation to a particular international broadcasting service, so long as each declaration relates to a different transmitter licence or proposed transmitter licence.

121FLD Effect of nominated broadcaster declaration

If:

- (a) a nominated broadcaster declaration is in force in relation to an international broadcasting service; and
- (b) the provision of the international broadcasting service is authorised by an international broadcasting licence; and
- (c) the holder of the declaration is the licensee of a transmitter licence that authorises the operation of a transmitter for transmitting the international broadcasting service; and
- (d) the licensee of the transmitter licence transmits the international broadcasting service on behalf of the licensee of the international broadcasting licence;

then:

- (e) for the purposes of the *Radiocommunications Act 1992*, the licensee of the international broadcasting licence is taken not to operate the radiocommunications transmitter for any purpose in connection with that transmission; and
- (f) for the purposes of this Act:
 - (i) the licensee of the international broadcasting licence is taken to provide the international broadcasting service; and
 - (ii) the licensee of the transmitter licence is taken not to provide the international broadcasting service; and
- (g) for the purposes of this Act, any programs that are transmitted by the licensee of the transmitter licence on behalf of the licensee of the international broadcasting licence:
 - (i) are taken to be programs transmitted by the licensee of the international broadcasting licence; and
 - (ii) are not taken to be programs transmitted by the licensee of the transmitter licence; and
- (h) for the purposes of this Part (other than section 121FLG), the ACMA is taken to have given a written notice to the licensee of the international broadcasting licence if the ACMA gives the notice to the licensee of the transmitter licence.

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121FLE Conditions of nominated broadcaster declarations

- (1) Each nominated broadcaster declaration is subject to the following conditions:
 - (a) the holder of the declaration must cause a record of programs broadcast on the international broadcasting service concerned to be made in a form approved in writing by the ACMA;
 - (b) the holder of the declaration must retain in the holder's custody a record so made for a period of 90 days after the broadcast;
 - (c) the holder of the declaration must, without charge, make available to the ACMA, on request, any specified record made by the holder under paragraph (a) that has been retained by the holder (whether or not the holder is, at the time of the request, under an obligation to retain the record).
- (2) Subsection (1) does not apply to a nominated broadcaster declaration unless the holder of the declaration is the licensee of a transmitter licence that authorises the operation of a transmitter for transmitting the international broadcasting service concerned.

121FLF Offence for breach of conditions of nominated broadcaster declaration

- (1) A person is guilty of an offence if:
 - (a) the person is the holder of a nominated broadcaster declaration; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of the declaration.

Penalty: 2,000 penalty units.

- (2) In this section:

engage in conduct means:

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

121FLG Revocation of nominated broadcaster declaration

- (1) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international

broadcasting service by a person (the *content provider*) if the ACMA is satisfied that:

- (a) the holder of the declaration is neither transmitting, nor proposing to transmit, the international broadcasting service on behalf of the content provider; or
 - (b) the holder of the declaration is involved, or proposes to become involved, in the selection or provision of programs to be transmitted on the international broadcasting service; or
 - (c) the holder of the declaration is not a company that is formed in Australia or in an external Territory.
- (2) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international broadcasting service by a person (the *content provider*) if the ACMA is satisfied that:
- (a) at the time the declaration was made, there was no international broadcasting licence that authorised the provision of the international broadcasting service by the content provider; and
 - (b) either:
 - (i) no application was made under subsection 121FA(1A) for such a licence within 60 days after the making of the declaration; or
 - (ii) an application for such a licence was made under subsection 121FA(1A) within 60 days after the making of the declaration, but the application was refused.
- (3) The ACMA must, by writing, revoke a nominated broadcaster declaration relating to the provision of an international broadcasting service by a person (the *content provider*) if:
- (a) the holder of the declaration; or
 - (b) the content provider;
- gives the ACMA a written notice stating that the holder of the declaration, or the content provider, does not consent to the continued operation of the declaration.
- (4) The ACMA must give a copy of the revocation to:
- (a) the person who held the declaration; and
 - (b) the content provider.

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- (5) A revocation under subsection (1), (2) or (3) takes effect on the date specified in the revocation.
- (6) The ACMA must not revoke a nominated broadcaster declaration under subsection (1) or (2) unless the ACMA has first:
 - (a) given the holder of the declaration a written notice:
 - (i) setting out a proposal to revoke the declaration; and
 - (ii) inviting the holder of the declaration to make a submission to the ACMA on the proposal; and
 - (b) given the content provider a written notice:
 - (i) setting out a proposal to revoke the declaration; and
 - (ii) inviting the content provider to make a submission to the ACMA on the proposal; and
 - (c) considered any submission that was received under paragraph (a) or (b) within the time limit specified in the notice concerned.
- (7) A time limit specified in a notice under subsection (6) must run for at least 7 days.
- (8) A person must not enter into a contract or arrangement under which the person or another person is:
 - (a) prevented from giving a notice under subsection (3); or
 - (b) subject to any restriction in relation to the giving of a notice under subsection (3).
- (9) A contract or arrangement entered into in contravention of subsection (8) is void.

121FLH Cancellation of licence if declaration ceases to be in force and licensee is not an Australian company

- (1) If:
 - (a) a nominated broadcaster declaration ceases to be in force; and
 - (b) the provision of the international broadcasting service concerned is authorised by an international broadcasting licence; and
 - (c) 30 days pass, and the ACMA is satisfied that:

- (i) the international broadcasting licensee is not a company that is formed in Australia or in an external Territory; and
 - (ii) the international broadcasting licensee has not taken reasonable steps to arrange for the international broadcasting service to be provided by a company that is formed in Australia or in an external Territory;
- the ACMA must cancel the licence.
- (2) If:
- (a) a nominated broadcaster declaration ceases to be in force; and
 - (b) the provision of the international broadcasting service concerned is authorised by an international broadcasting licence; and
 - (c) 90 days pass, and the ACMA is satisfied that the international broadcasting licensee is not a company that is formed in Australia or in an external Territory;
- the ACMA must cancel the licence.
- (3) The ACMA may, by written notice given to the licensee, determine that paragraph (2)(c) has effect, in relation to the licensee, as if a reference in that paragraph to 90 days were a reference to such greater number of days as is specified in the notice.
- (4) The ACMA must not notify a greater number of days under subsection (3) unless it is satisfied that there are exceptional circumstances that warrant the greater number of days.

Notice of intention to cancel

- (5) If the ACMA proposes to cancel a licence under subsection (1) or (2), the ACMA must give to the licensee:
- (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed cancellation.

121FLJ Register of nominated broadcaster declarations

- (1) The ACMA is to maintain a register in which the ACMA includes particulars of all nominated broadcaster declarations currently in force.

Part 8B International broadcasting licences

Division 4A Nominated broadcaster declarations

Section 121FLJ

- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

Division 5—ACMA to assist the Minister for Foreign Affairs

121FM Report about compliance with international broadcasting guidelines

The Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA to:

- (a) prepare a report about whether a specified international broadcasting service complies with the international broadcasting guidelines; and
- (b) give the report to the Minister for Foreign Affairs.

121FN Records of broadcasts

The Minister for Foreign Affairs may, by written notice given to the ACMA, direct the ACMA to:

- (a) obtain specified records from an international broadcasting licensee under section 121FF; and
- (b) give the records to the Minister for Foreign Affairs.

Division 6—Miscellaneous

121FP International broadcasting guidelines

- (1) The ACMA must formulate written guidelines relating to international broadcasting services.
- (2) To avoid doubt, international broadcasting guidelines may deal with matters other than Australia's national interest.
- (3) International broadcasting guidelines are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

121FQ Surrender of international broadcasting licences

- (1) An international broadcasting licensee may, by notice in writing given to the ACMA, surrender the licence.

121FR Complaints about international broadcasting services

- (1) It is not a function of the ACMA to monitor and investigate complaints concerning international broadcasting services.
- (2) However, if an international broadcasting service also falls into another category of broadcasting services, this section does not prevent the ACMA from performing its function of monitoring and investigating complaints about the service in the service's capacity as a service that falls into that other category.

121FS Statements about decisions of the Minister for Foreign Affairs

- (1) If:
 - (a) the Minister for Foreign Affairs makes a decision under subsection 121FD(1) or 121FL(3) or (5); and
 - (b) a person is entitled to make an application to the Federal Court or the Federal Magistrates Court under section 5 of the *Administrative Decisions (Judicial Review) Act 1977* in relation to the decision;

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the person may, by written notice given to the Minister for Foreign Affairs, request the Minister for Foreign Affairs to give the person a written statement setting out the reasons for the decision.

- (2) If a person makes a request under subsection (1) in relation to a decision, the Minister for Foreign Affairs must either:
- (a) as soon as practicable, and in any event within 28 days, after receiving the request:
 - (i) prepare a written statement setting out the reasons for the decision; and
 - (ii) give the statement to the person; or
 - (b) both:
 - (i) as soon as practicable, and in any event within 28 days, after receiving the request, prepare a statement about the decision; and
 - (ii) cause a copy of the statement to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the statement.

Part 9—Program standards

122 Program standards for children’s programs and Australian content

- (1) The ACMA must, by notice in writing, determine standards that are to be observed by commercial television broadcasting licensees.
- (2) Standards under subsection (1) for commercial television broadcasting licensees are to relate to:
 - (a) programs for children; and
 - (b) the Australian content of programs.
- (4) Standards must not be inconsistent with this Act or the regulations.
- (5) The ACMA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 9 of the *Broadcasting Services (Australian Content) Standard 1999* as in force on 4 August 2004.

Note: Section 9 of the *Broadcasting Services (Australian Content) Standard 1999* deals with quotas for Australian television programs.

- (6) The ACMA must ensure that, at all times after the commencement of this subsection, there is in force under subsection (1) a standard that is, or has the same effect as, the standard in section 5 of *Television Program Standard 23—Australian Content in Advertising* as in force on 4 August 2004.

Note: Section 5 of *Television Program Standard 23—Australian Content in Advertising* deals with quotas for Australian television advertisements.

- (7) If:
 - (a) there is a simulcast period, or a simulcast-equivalent period, for the licence area of a commercial television broadcasting licence; and
 - (b) during that period, the licensee provides a core commercial television broadcasting service in the licence area;then, during that period, standards under subsection (1), in so far as they relate to programs for children, do not apply to a commercial

television broadcasting service provided by the licensee unless that service is the core commercial television broadcasting service.

- (8) If:
- (a) there is a simulcast period, or a simulcast-equivalent period, for the licence area of a commercial television broadcasting licence; and
 - (b) during that period, the licensee provides a core commercial television broadcasting service in the licence area;
- then, during that period, standards under subsection (1), in so far as they relate to Australian content of programs, do not apply to a commercial television broadcasting service provided by the licensee unless that service is the core commercial television broadcasting service.
- (9) If a commercial television broadcasting licence is allocated under section 36 or subsection 40(1) on or after 1 January 2007, standards under subsection (1) do not apply to the licensee during the first 5 years of operation.
- (10) In this section:
- simulcast period* has the same meaning as in Schedule 4.

123 Development of codes of practice

- (1) It is the intention of the Parliament that radio and television industry groups representing:
- (a) commercial broadcasting licensees; and
 - (b) community broadcasting licensees other than providers of services targeted, to a significant extent, to one or more remote Indigenous communities; and
 - (ba) community broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities; and
 - (c) providers of subscription broadcasting services; and
 - (d) providers of subscription narrowcasting services; and
 - (e) providers of open narrowcasting services;
- develop, in consultation with the ACMA and taking account of any relevant research conducted by the ACMA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the industry.

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- (2) Codes of practice developed for a section of the broadcasting industry may relate to:
- (a) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry; and
 - (b) methods of ensuring that the protection of children from exposure to program material which may be harmful to them is a high priority; and
 - (c) methods of classifying programs that reflect community standards; and
 - (d) promoting accuracy and fairness in news and current affairs programs; and
 - (e) preventing the broadcasting of programs that:
 - (i) simulate news or events in a way that misleads or alarms the audience; or
 - (ii) depict the actual process of putting a person into a hypnotic state; or
 - (iii) are designed to induce a hypnotic state in the audience; or
 - (iv) use or involve the process known as *subliminal perception* or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness; and
 - (f) in the case of codes of practice developed by commercial broadcasting licensees—broadcasting time devoted to advertising; and
 - (g) in the case of codes of practice developed by commercial radio broadcasting licensees—the broadcasting of Australian music; and
 - (h) methods of:
 - (i) handling complaints from the public about program content or compliance with codes of practice; and
 - (ii) reporting to the ACMA on complaints so made; and
 - (i) captioning of programs for the hearing impaired; and
 - (j) in the case of codes of practice developed by community broadcasting licensees:
 - (i) the kinds of sponsorship announcements that may be broadcast by those licensees; or

- (ii) the kinds of sponsorship announcements that particular kinds of program may carry; and
 - (k) in the case of codes of practice developed by subscription broadcasting licensees—dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management;
 - (l) such other matters relating to program content as are of concern to the community.
- (3) In developing codes of practice relating to matters referred to in paragraphs (2)(a) and (c), community attitudes to the following matters are to be taken into account:
 - (a) the portrayal in programs of physical and psychological violence;
 - (b) the portrayal in programs of sexual conduct and nudity;
 - (c) the use in programs of offensive language;
 - (d) the portrayal in programs of the use of drugs, including alcohol and tobacco;
 - (e) the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
 - (f) such other matters relating to program content as are of concern to the community.
- (3A) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that:
 - (a) for the purpose of classifying films—those codes apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (b) those codes provide for methods of modifying films having particular classifications under that system so that:
 - (i) the films are suitable to be broadcast; or
 - (ii) the films are suitable to be broadcast at particular times; and
 - (c) those codes require that films classified as “M” may be broadcast only:

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- (i) between the hours of 8:30 pm on a day and 5 am on the following day; or
 - (ii) between the hours of noon and 3 pm on any day that is a school day; and
 - (d) films classified as “MA 15+” may be broadcast only between the hours of 9 pm on a day and 5 am on the following day; and
 - (e) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification.
- (3B) In developing codes of practice referred to in paragraph (2)(a), (b), or (c), industry groups representing commercial television broadcasting licensees and community television broadcasting licensees must ensure that films classified as “M” or “MA 15+” do not portray material that goes beyond the previous “AO” classification criteria.
- (3C) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing providers of open narrowcasting television services must ensure that:
- (a) for the purpose of classifying films—those codes apply the film classification system provided for by the *Classification (Publications, Films and Computer Games) Act 1995*; and
 - (b) those codes provide for methods of modifying films having particular classifications under that system so that:
 - (i) the films are suitable to be broadcast; or
 - (ii) the films are suitable to be broadcast at particular times; and
 - (c) those codes require that films classified as “M” may be broadcast only:
 - (i) between the hours of 8.30 pm on a day and 5 am on the following day; or
 - (ii) between the hours of noon and 3 pm on any day that is a school day; and
 - (d) films classified as “MA 15+” may be broadcast only between the hours of 9 pm on a day and 5 am on the following day; and
 - (e) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification.

- (3D) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), industry groups representing providers of open narrowcasting television services must ensure that films classified as “M” or “MA 15+” do not portray material that goes beyond the previous “AO” classification criteria.
- (4) If:
- (a) a group representing a particular section of the broadcasting industry develops a code of practice to be observed in the conduct of the broadcasting operations of that section of the industry; and
 - (b) the ACMA is satisfied that:
 - (i) the code of practice provides appropriate community safeguards for the matters covered by the code; and
 - (ii) the code is endorsed by a majority of the providers of broadcasting services in that section of the industry; and
 - (iii) members of the public have been given an adequate opportunity to comment on the code;the ACMA must include that code in the Register of codes of practice.
- (5) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each commercial television broadcasting service provided by a commercial television broadcasting licensee.
- (6) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each commercial radio broadcasting service provided by a commercial radio broadcasting licensee.
- (7) To avoid doubt, a reference in this section to ***broadcasting operations*** includes a reference to each community radio broadcasting service provided by a designated community radio broadcasting licensee.

123A Review by the ACMA

- (1) The ACMA must periodically conduct a review of the operation of subsections 123(3A) and (3C) to see whether those subsections are in accordance with prevailing community standards.

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- (2) If, after conducting such a review, the ACMA concludes that subsection 123(3A) or (3C) is not in accordance with prevailing community standards, the ACMA must recommend to the Minister appropriate amendments to this Act that would ensure that subsection 123(3A) or (3C), as the case requires, is in accordance with prevailing community standards.
- (3) If the Minister receives a recommendation under subsection (2), the Minister must cause a copy of the recommendation to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the recommendation.

124 ACMA to maintain Register of codes of practice

- (1) The ACMA is to maintain a Register in which it includes all codes of practice registered under section 123.
- (2) The Register is to be open for public inspection.
- (3) The Register may be maintained by electronic means.

125 ACMA may determine program standards where codes of practice fail or where no code of practice developed

- (1) If:
 - (a) the ACMA is satisfied that there is convincing evidence that a code of practice registered under section 123 is not operating to provide appropriate community safeguards for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and
 - (b) the ACMA is satisfied that it should determine a standard in relation to that matter;the ACMA must, in writing, determine a standard in relation to that matter.
- (2) If:
 - (a) no code of practice has been registered under section 123 for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and
 - (b) the ACMA is satisfied that it should determine a standard in relation to that matter;

the ACMA must, by notice in writing, determine a standard in relation to that matter.

126 Consultation on standards

The ACMA must, before determining, varying or revoking a standard, seek public comment on the proposed standard or the variation or revocation.

127 Notification of determination or variation or revocation of standards

If the ACMA determines or varies or revokes a standard, the ACMA must publish in the *Gazette* a notice stating:

- (a) that the standard has been determined, varied or revoked; and
- (b) the places where copies of the standard or of the variation or revocation can be purchased.

128 Standards and codes to be amendable by the Parliament

- (1) If:
 - (a) either House of the Parliament agrees to an amendment of a standard or code of practice which has been determined or registered in accordance with this Part; and
 - (b) otherwise than as mentioned in subsection (2), the other House agrees to that amendment of the standard or code of practice;the standard or code of practice has effect as amended by that amendment from the 28th day after the day on which that other House agrees to the amendment.
- (2) If notice of a motion for an amendment to a standard or code of practice is given in a House, and within 15 sitting days of that House after the notice has been given:
 - (a) the notice has not been withdrawn and the motion has not been called on; or
 - (b) the motion has been called on and moved and has not been withdrawn or otherwise disposed of;the amendment specified in the motion shall then be taken to have been agreed to by that House.

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129 Limitation of ACMA's power in relation to standards

- (1) Subject to subsection (2), the ACMA must not determine a standard that requires that, before programs are broadcast, the programs, or a sample of the programs, be approved by the ACMA or by a person or body appointed by the ACMA.
- (2) The ACMA may determine such a standard in relation to programs for children.

130 Application of the Trade Practices Act

Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

Part 9A—Technical standards

130A Technical standards for digital transmission—television etc.

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of any or all of the following services delivered using the broadcasting services bands:
 - (a) commercial television broadcasting services;
 - (b) national television broadcasting services;
 - (c) community television broadcasting services;
 - (d) subscription television broadcasting services;
 - (e) subscription television narrowcasting services provided under a class licence;
 - (ea) open narrowcasting television services provided under a class licence;
 - (f) datacasting services (other than restricted datacasting services) provided under datacasting licences.

Conditional access systems

- (2) Standards under subsection (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.

Application program interfaces

- (3) Standards under subsection (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.

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Conversion schemes

- (4) The commercial television conversion scheme under clause 6 of Schedule 4 must be consistent with any standards determined under subsection (1).
- (5) The national television conversion scheme under clause 19 of Schedule 4 must be consistent with any standards determined under subsection (1).

Instruments

- (6) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

Compliance

- (7) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.

Note 2: For compliance by holders of community television broadcasting licences, see clause 9 of Schedule 2.

Note 3: For compliance by holders of subscription television broadcasting licences, see clause 10 of Schedule 2.

Note 4: For compliance by providers of television broadcasting services provided under a class licence, see clause 11 of Schedule 2.

Note 5: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.

Note 6: For compliance by holders of datacasting transmitter licences, see section 109A of the *Radiocommunications Act 1992*.

Definitions

- (8) In this section:

application program interface has the meaning generally accepted within the broadcasting industry.

conditional access system means a conditional access system that:

- (a) relates to the provision of one or more eligible datacasting services; and

- (b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

digital mode has the same meaning as in Schedule 4.

eligible datacasting service means:

- (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
- (b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

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

130AA Technical standards for digital transmission—radio etc.

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission of any or all of the following services using a digital modulation technique:
 - (a) commercial radio broadcasting services;
 - (b) national radio broadcasting services;
 - (c) community radio broadcasting services;
 - (d) subscription radio broadcasting services provided under a class licence;
 - (e) subscription radio narrowcasting services provided under a class licence;
 - (f) open narrowcasting radio services provided under a class licence;
 - (g) restricted datacasting services provided under restricted datacasting licences.

Instruments

- (2) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

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Compliance

- (3) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial radio broadcasting licences, see clause 8 of Schedule 2.

Note 2: For compliance by holders of community radio broadcasting licences, see clause 9 of Schedule 2.

Note 3: For compliance by providers of radio broadcasting services provided under a class licence, see clause 11 of Schedule 2.

Note 4: For compliance by holders of restricted datacasting licences, see clause 24A of Schedule 6.

130AB Technical standards relating to the operation of multiplex transmitters

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to the operation of multiplex transmitters under digital radio multiplex transmitter licences.

Note: For compliance, see paragraph 109B(1)(o) of the *Radiocommunications Act 1992*.

Instruments

- (2) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

130B Technical standards for domestic digital reception equipment—television etc.

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
- (a) commercial television broadcasting services;
 - (b) national television broadcasting services;
 - (c) community television broadcasting services;
 - (d) subscription television broadcasting services;
 - (e) television broadcasting services provided under a class licence;

- (f) datacasting services provided under datacasting licences.

Offence

- (2) A person commits an offence if:
 - (a) the person supplies equipment; and
 - (b) the equipment is domestic reception equipment; and
 - (c) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
 - (i) commercial television broadcasting services;
 - (ii) national television broadcasting services;
 - (iii) community television broadcasting services;
 - (iv) subscription television broadcasting services;
 - (v) television broadcasting services provided under a class licence;
 - (vi) datacasting services provided under datacasting licences; and
 - (d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

Civil penalty

- (3) A person must not supply domestic reception equipment if:
 - (a) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
 - (i) commercial television broadcasting services;
 - (ii) national television broadcasting services;
 - (iii) community television broadcasting services;
 - (iv) subscription television broadcasting services;
 - (v) television broadcasting services provided under a class licence;
 - (vi) datacasting services provided under datacasting licences; and
 - (b) the equipment does not comply with a standard determined under subsection (1).

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- (4) Subsection (3) is a civil penalty provision.

Instruments

- (5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

Reception of subscription television broadcasting services

- (6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:
- (a) in isolation; or
 - (b) in conjunction with any other equipment.

Exemptions

- (7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Definitions

- (8) In this section:

digital mode has the same meaning as in Schedule 4.

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

supply has the same meaning as in the *Trade Practices Act 1974*.

130BA Technical standards for domestic digital reception equipment—radio etc.

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted using a digital modulation technique:
- (a) commercial radio broadcasting services;

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- (b) national radio broadcasting services;
- (c) community radio broadcasting services;
- (d) subscription radio broadcasting services provided under a class licence;
- (e) subscription radio narrowcasting services provided under a class licence;
- (f) open narrowcasting radio services provided under a class licence;
- (g) restricted datacasting services provided under restricted datacasting licences.

Offence

- (2) A person commits an offence if:
- (a) the person supplies equipment; and
 - (b) the equipment is domestic reception equipment; and
 - (c) the equipment is capable of receiving any or all of the following services transmitted using a digital modulation technique:
 - (i) commercial radio broadcasting services;
 - (ii) national radio broadcasting services;
 - (iii) community radio broadcasting services;
 - (iv) subscription radio broadcasting services provided under a class licence;
 - (v) subscription radio narrowcasting services provided under a class licence;
 - (vi) open narrowcasting radio services provided under a class licence;
 - (vii) restricted datacasting services provided under restricted datacasting licences; and
 - (d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

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Civil penalty

- (3) A person must not supply domestic reception equipment if:
- (a) the equipment is capable of receiving any or all of the following services transmitted using a digital modulation technique:
 - (i) commercial radio broadcasting services;
 - (ii) national radio broadcasting services;
 - (iii) community radio broadcasting services;
 - (iv) subscription radio broadcasting services provided under a class licence;
 - (v) subscription radio narrowcasting services provided under a class licence;
 - (vi) open narrowcasting radio services provided under a class licence;
 - (vii) restricted datacasting services provided under restricted datacasting licences; and
 - (b) the equipment does not comply with a standard determined under subsection (1).
- (4) Subsection (3) is a civil penalty provision.

Instruments

- (5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

Reception of subscription radio broadcasting services

- (6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription radio broadcasting services when used:
- (a) in isolation; or
 - (b) in conjunction with any other equipment.

Exemptions

- (7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

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Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Definition

(8) In this section:

supply has the same meaning as in the *Trade Practices Act 1974*.

Part 9B Industry codes and industry standards

Division 1 Simplified outline

Section 130C

Part 9B—Industry codes and industry standards

Division 1—Simplified outline

130C Simplified outline

The following is a simplified outline of this Part:

- Industry codes may be registered by the ACMA.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

Division 2—Interpretation

130D Industry codes

For the purposes of this Part, an *industry code* is a code developed under this Part (whether or not in response to a request under this Part).

130E Industry standards

For the purposes of this Part, an *industry standard* is a standard determined under this Part.

130F Industry activities

- (1) For the purposes of this Part, each of the following is an *industry activity*:
- (a) providing a commercial television broadcasting service;
 - (b) providing a national television broadcasting service (within the meaning of Schedule 4);
 - (c) providing a community television broadcasting service;
 - (d) providing a subscription television broadcasting service;
 - (e) providing a television broadcasting service under a class licence;
 - (ea) providing a commercial radio broadcasting service;
 - (eb) providing a national radio broadcasting service;
 - (ec) providing a community radio broadcasting service;
 - (ed) subscription radio broadcasting services provided under a class licence;
 - (ee) subscription radio narrowcasting services provided under a class licence;
 - (ef) open narrowcasting radio services provided under a class licence;
 - (f) providing a datacasting service under a datacasting licence (other than a restricted datacasting licence);
 - (fa) providing a restricted datacasting service under a restricted datacasting licence;

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- (g) importing, manufacturing or supplying domestic reception equipment that is capable of receiving any or all of the following:
 - (i) commercial television broadcasting services;
 - (ii) national television broadcasting services;
 - (iii) community television broadcasting services;
 - (iv) subscription television broadcasting services;
 - (v) television broadcasting services provided under a class licence;
 - (va) commercial radio broadcasting services;
 - (vb) national radio broadcasting services;
 - (vc) community radio broadcasting services;
 - (vd) subscription radio broadcasting services provided under a class licence;
 - (ve) subscription radio narrowcasting services provided under a class licence;
 - (vf) open narrowcasting radio services provided under a class licence;
 - (vi) datacasting services provided under datacasting licences;
- (h) operating a transmitter under a datacasting transmitter licence;
- (i) operating a multiplex transmitter under a digital radio multiplex transmitter licence.

Reception of subscription television broadcasting services

- (2) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services, or subscription radio broadcasting services, when used:
 - (a) in isolation; or
 - (b) in conjunction with any other equipment.

Definitions

- (3) In this section:

import means import into Australia.

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

supply has the same meaning as in the *Trade Practices Act 1974*.

130G Sections of the industry

- (1) For the purposes of this Part, *sections of the industry* are to be ascertained in accordance with this section.
- (2) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of industry activity constitute a section of the industry for the purposes of this Part.
- (3) The section must be identified in the determination by a unique name and/or number.
- (4) A determination under subsection (2) has effect accordingly.
- (5) Sections of the industry determined under subsection (2):
 - (a) need not be mutually exclusive; and
 - (b) may consist of the aggregate of any 2 or more sections of the industry determined under subsection (2); and
 - (c) may be subsets of a section of the industry determined under subsection (2).
- (6) Subsection (5) does not, by implication, limit subsection (2).

130H Participants in a section of the industry

For the purposes of this Part, if a person is a member of a group that constitutes a section of the industry, the person is a *participant* in that section of the industry.

Division 3—General principles relating to industry codes and industry standards

130J Statement of regulatory policy

The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the industry should develop codes (*industry codes*) that are to apply to participants in that section of the industry in relation to the industry activities of the participants.

130K Examples of matters that may be dealt with by industry codes and industry standards

- (1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the industry is involved.
- (3) The examples are as follows:
 - (a) the labelling of domestic reception equipment;
 - (b) electronic program guides, including the provision of information for the purpose of compiling electronic program guides;
 - (c) the numbering of digital services, including the use of logical channel numbers;
 - (d) application program interfaces (within the meaning of section 130A);
 - (e) conditional access systems (within the meaning of section 130A);
 - (f) the updating of software used in domestic reception equipment.

130L Industry codes and industry standards not to deal with certain matters

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

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- (a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or
- (b) a code registered, or a standard determined, under Part 9 of this Act; or
- (c) a standard determined under Part 9A of this Act; or
- (d) a standard determined under Part 4 of Schedule 4 to this Act; or
- (e) a code registered, or a standard determined, under Part 5 of Schedule 5 to this Act; or
- (f) a code registered, or a standard determined, under Part 4 of Schedule 6 to this Act; or
- (fa) a code registered, or a standard determined, under Part 4 of Schedule 7 to this Act; or
- (g) a code of practice notified to the ACMA under subsection 8(1) of the *Australian Broadcasting Corporation Act 1983*; or
- (h) a code of practice notified to the ACMA under subsection 10(1) of the *Special Broadcasting Service Act 1991*.

Division 4—Industry codes

130M Registration of industry codes

- (1) This section applies if:
 - (a) the ACMA is satisfied that a body or association represents a particular section of the industry; and
 - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the industry activities of those participants; and
 - (c) the body or association gives a copy of the code to the ACMA; and
 - (d) the ACMA is satisfied that:
 - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
 - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
 - (e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
 - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
 - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
 - (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
 - (i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and

- (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period.
- (2) The ACMA must register the code by including it in the Register of industry codes kept under section 130ZA.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
 - (a) an industry code (the *new code*) is registered under this Part; and
 - (b) the new code is expressed to replace another industry code; the other code ceases to be registered under this Part when the new code is registered.

130N ACMA may request codes

- (1) If the ACMA is satisfied that a body or association represents a particular section of the industry, the ACMA may, by written notice given to the body or association, request the body or association to:
 - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the industry activities of those participants; and
 - (b) give the ACMA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The ACMA must not make a request under subsection (1) in relation to a particular section of the industry unless the ACMA is satisfied that:
 - (a) the development of the code is necessary or convenient in order to:
 - (i) provide appropriate community safeguards; or
 - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and

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- (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The ACMA may vary a notice under subsection (1) by extending the period specified in the notice.
- (5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

130P Publication of notice where no body or association represents a section of the industry

- (1) If the ACMA is satisfied that a particular section of the industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:
 - (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and
 - (b) setting out the matter or matters relating to the industry activities that would be likely to be specified in the subsection 130N(1) notice.
- (2) The period specified in a notice under subsection (1) must run for at least 60 days.

130Q Replacement of industry codes

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, section 130M has effect, in relation to the registration of the code, as if paragraphs 130M(1)(e) and (f) had not been enacted.

Note: Paragraphs 130M(1)(e) and (f) deal with submissions about draft codes.

Division 5—Industry standards

130R ACMA may determine an industry standard if a request for an industry code is not complied with

- (1) This section applies if:
 - (a) the ACMA has made a request under subsection 130N(1) in relation to the development of a code that is to:
 - (i) apply to participants in a particular section of the industry; and
 - (ii) deal with one or more matters relating to the industry activities of those participants; and
 - (b) any of the following conditions is satisfied:
 - (i) the request is not complied with;
 - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
 - (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and
 - (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or
 - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (3) Before determining an industry standard under this section, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
- (4) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

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130S ACMA may determine industry standard where no industry body or association formed

- (1) This section applies if:
 - (a) the ACMA is satisfied that a particular section of the industry is not represented by a body or association; and
 - (b) the ACMA has published a notice under subsection 130P(1) relating to that section of the industry; and
 - (c) that notice:
 - (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and
 - (ii) sets out one or more matters relating to the industry activities of the participants in that section of the industry; and
 - (d) no such body or association comes into existence within that period; and
 - (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
 - (i) provide appropriate community safeguards in relation to that matter or those matters; or
 - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (3) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130T ACMA may determine industry standards—total failure of industry codes

- (1) This section applies if:
 - (a) an industry code that:
 - (i) applies to participants in a particular section of the industry; and
-

- (ii) deals with one or more matters relating to the industry activities of those participants;
has been registered under this Part for at least 180 days; and
 - (b) the ACMA is satisfied that the code is totally deficient (as defined by subsection (6)); and
 - (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).
- (5) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with one or more matters relating to the industry activities of those participants is *totally deficient* if, and only if:
 - (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

Section 130U

130U ACMA may determine industry standards—partial failure of industry codes

- (1) This section applies if:
 - (a) an industry code that:
 - (i) applies to participants in a particular section of the industry; and
 - (ii) deals with 2 or more matters relating to the industry activities of those participants;
 - has been registered under this Part for at least 180 days; and
 - (b) section 130T does not apply to the code; and
 - (c) the ACMA is satisfied that the code is deficient (as defined by subsection (6)) to the extent to which the code deals with one or more of those matters (the *deficient matter* or *deficient matters*); and
 - (d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
 - (e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.
- (2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subsection is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).
- (5) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subsection does not affect:

- (a) the continuing registration of the remainder of the industry code; or
 - (b) any investigation, proceeding or remedy in respect of a contravention of the industry code that occurred before that day.
- (6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with 2 or more matters relating to the industry activities of those participants is *deficient* to the extent to which it deals with a particular one of those matters if, and only if:
- (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
 - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.
- (7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

130V Compliance with industry standards

- (1) If:
- (a) an industry standard that applies to participants in a particular section of the industry is registered under this Part; and
 - (b) a person is a participant in that section of the industry;
- the person must comply with the industry standard.

Offence

- (2) A person commits an offence if:
- (a) the person is subject to a requirement under subsection (1); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct contravenes the requirement.

Penalty: 1,500 penalty units.

Civil penalty

- (3) Subsection (1) is a civil penalty provision.

Section 130W

130W Formal warnings—breach of industry standards

- (1) This section applies to a person who is a participant in a particular section of the industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

130X Variation of industry standards

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the industry if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the industry activities of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the industry activities of those participants.

130Y Revocation of industry standards

- (1) The ACMA may, by legislative instrument, revoke an industry standard.
- (2) If:
 - (a) an industry code is registered under this Part; and
 - (b) the code is expressed to replace an industry standard;the industry standard is revoked when the code is registered.

130Z Public consultation on industry standards

- (1) Before determining or varying an industry standard, the ACMA must:
 - (a) cause to be published in a newspaper circulating in each State a notice:
 - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
 - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and

- (iii) specifying the place or places where the copies will be available; and
 - (iv) inviting interested persons to give written comments about the draft to the ACMA within the period specified under subparagraph (ii); and
 - (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
 - (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
 - (4) If interested persons have given comments in accordance with a notice under subsection (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.
 - (5) In this section:
State includes the Australian Capital Territory and the Northern Territory.

Division 6—Register of industry codes and industry standards

130ZA ACMA to maintain Register of industry codes and industry standards

- (1) The ACMA is to maintain a Register in which the ACMA includes:
 - (a) all industry codes required to be registered under this Part;
and
 - (b) all industry standards; and
 - (c) all requests made under section 130N; and
 - (d) all notices under section 130P.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

Part 10—Remedies for breaches of licensing provisions

Division 1—Offences for providing unlicensed services

131 Prohibition on providing a commercial television broadcasting service without a licence

A person must not provide a commercial television broadcasting service unless the person has a licence to provide that service.

Penalty: 20,000 penalty units.

132 Prohibition on providing a subscription television broadcasting service without a licence

A person must not provide a subscription television broadcasting service unless the person has a licence to provide that service.

Penalty: 2,000 penalty units.

133 Prohibition on providing a commercial radio broadcasting service without a licence

A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.

Penalty: 2,000 penalty units.

134 Prohibition on providing a community television broadcasting service without a licence

A person must not provide a community television broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

Penalty: 500 penalty units.

Section 135

135 Prohibition on providing a community radio broadcasting service without a licence

A person must not provide a community radio broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

Penalty: 50 penalty units.

136 Continuing offences

A person who breaches a provision of this Division is guilty of a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.

Division 1A—Civil penalty provisions relating to unlicensed services

136A Prohibition on providing a commercial television broadcasting service without a licence

- (1) A person must not provide a commercial television broadcasting service if the person does not have a licence to provide that service.
- (2) Subsection (1) is a civil penalty provision.

136B Prohibition on providing a subscription television broadcasting service without a licence

- (1) A person must not provide a subscription television broadcasting service if the person does not have a licence to provide that service.
- (2) Subsection (1) is a civil penalty provision.

136C Prohibition on providing a commercial radio broadcasting service without a licence

- (1) A person must not provide a commercial radio broadcasting service if the person does not have a licence to provide that service.
- (2) Subsection (1) is a civil penalty provision.

136D Prohibition on providing a community television broadcasting service without a licence

- (1) A person must not provide a community television broadcasting service with the use of the broadcasting services bands if the person does not have a licence to provide that service.
- (2) Subsection (1) is a civil penalty provision.

Section 136E

136E Prohibition on providing a community radio broadcasting service without a licence

- (1) A person must not provide a community radio broadcasting service with the use of the broadcasting services bands if the person does not have a licence to provide that service.
- (2) Subsection (1) is a civil penalty provision.

136F Continuing breaches

A person who contravenes a provision of this Division commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Division 2—Action by ACMA where a person provides a service without a licence

137 Remedial directions—unlicensed services

If the ACMA is satisfied that a person has breached, or is breaching, section 136A, 136B, 136C, 136D or 136E, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that section, or is unlikely to breach that section, in the future.

138 Breach of remedial direction—offences

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 137; and
 - (b) the notice relates to a breach of section 136A; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person commits an offence if:
- (a) the person has been given a notice under section 137; and
 - (b) the notice relates to a breach of section 136B or 136C; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

- (3) A person commits an offence if:
- (a) the person has been given a notice under section 137; and
 - (b) the notice relates to a breach of section 136D or 136E; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 50 penalty units.

- (4) A person who contravenes subsection (1), (2) or (3) commits a separate offence in respect of each day (including a day of a

Part 10 Remedies for breaches of licensing provisions

Division 2 Action by ACMA where a person provides a service without a licence

Section 138A

conviction for the offence or any later day) during which the contravention continues.

(5) In this section:

engage in conduct means:

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

138A Breach of remedial direction—civil penalty provision

- (1) A person must comply with a notice under section 137.
- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Division 3—Action in relation to breaches by licensees

139 Offence for breach of conditions of licences and class licences

- (1) A person is guilty of an offence if:
- (a) the person is a commercial television broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of the licence set out in subclause 7(1) (other than paragraph 7(1)(ia)) of Schedule 2.

Penalty: 2,000 penalty units.

- (1A) A person commits an offence if:
- (a) the person is a commercial television broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition of the licence set out in paragraph 7(1)(ia) of Schedule 2.

Penalty: 60 penalty units.

- (1B) An offence against subsection (1A) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (1C) Subsection (1A) is a designated infringement notice provision.

- (2) A person is guilty of an offence if:
- (a) the person is a subscription television broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of a subscription television broadcasting licence set out in section 103P, 103Q, 103S, 103T, 103V, 103W, 103Y or 103Z, or in subclause 10(1) of Schedule 2.

Penalty: 1,000 penalty units.

- (3) A person is guilty of an offence if:
- (a) the person is a commercial radio broadcasting licensee; and

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- (b) the person engages in conduct; and
- (c) the person's conduct breaches a condition of the licence set out in subclause 8(1) (other than paragraph 8(1)(ha)) of Schedule 2.

Penalty: 500 penalty units.

- (3A) A person commits an offence if:
- (a) the person is a commercial radio broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches the condition of the licence set out in paragraph 8(1)(ha) of Schedule 2.

Penalty: 60 penalty units.

- (3B) An offence against subsection (3A) is an offence of strict liability.

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (3C) Subsection (3A) is a designated infringement notice provision.

- (4) A person is guilty of an offence if:
- (a) the person is a community broadcasting licensee (other than a temporary community broadcasting licensee); and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of the licence set out in subclause 9(1) of Schedule 2.

Penalty: 50 penalty units.

- (5) A person is guilty of an offence if:
- (a) the person is a temporary community broadcasting licensee; and
 - (b) the person engages in conduct; and
 - (c) the person's conduct breaches a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2.

Penalty: 50 penalty units.

- (6) A person is guilty of an offence if:
- (a) the person provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting service; and

- (b) the person engages in conduct; and
- (c) the person's conduct breaches a condition set out in subclause 11(1) of Schedule 2.

Penalty: 50 penalty units.

- (7) In this section:

engage in conduct means:

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

140 Continuing offences

A person who breaches section 139 is guilty of a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.

140A Civil penalty provisions relating to breach of conditions of licences and class licences

- (1) A commercial television broadcasting licensee must not breach a condition of the licence set out in subclause 7(1) of Schedule 2.
- (2) A subscription television broadcasting licensee must not breach a condition of a subscription television broadcasting licence set out in:
 - (a) section 103P, 103Q, 103S, 103T, 103V, 103W, 103Y or 103Z; or
 - (b) subclause 10(1) of Schedule 2.
- (3) A commercial radio broadcasting licensee must not breach a condition of the licence set out in subclause 8(1) of Schedule 2.
- (4) A community broadcasting licensee (other than a temporary community broadcasting licensee) must not breach a condition of the licence set out in subclause 9(1) of Schedule 2.
- (5) A temporary community broadcasting licensee must not breach a condition of the licence set out in subclause 9(1) (other than paragraph 9(1)(h)) of Schedule 2.
- (6) A person who provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting

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service must not breach a condition set out in subclause 11(1) of Schedule 2.

Civil penalty

- (7) Subsections (1), (2), (3), (4), (5) and (6) are civil penalty provisions.

Continuing breaches

- (8) A person who contravenes a provision of this section commits a separate contravention of that provision in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

141 Remedial directions—licence conditions, class licences and codes of practice

Licence conditions relating to commercial, community or subscription services

- (1) If the ACMA is satisfied that a person who is:
- (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee;
- has breached, or is breaching, a condition of the licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that condition, or is unlikely to breach that condition, in the future.
- (2) The following are examples of the kinds of direction that may be given to a person under subsection (1):
- (a) a direction that the person implement effective administrative systems for monitoring compliance with a condition of the licence;
 - (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

- (3) If the ACMA is satisfied that a person who is in a position to exercise control of:
- (a) a commercial television broadcasting licence; or
 - (b) a commercial radio broadcasting licence;
- has caused, or is causing, the licensee to breach a condition of the licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not cause the licensee to breach that condition, or is unlikely to cause the licensee to breach that condition, in the future.

Class licences

- (4) If the ACMA is satisfied that a person who provides:
- (a) a subscription radio broadcasting service; or
 - (b) a subscription narrowcasting service; or
 - (c) an open narrowcasting service;
- has breached, or is breaching, a condition of the relevant class licence, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that condition, or is unlikely to breach that condition, in the future.
- (5) The following are examples of the kinds of direction that may be given to a person under subsection (4):
- (a) a direction that the person implement effective administrative systems for monitoring compliance with a condition of the relevant class licence;
 - (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the relevant class licence, in so far as those requirements affect the employees, agents or contractors concerned.

Codes of practice

- (6) If the ACMA is satisfied that a person who provides:
- (a) a subscription radio broadcasting service; or
 - (b) a subscription narrowcasting service; or
 - (c) an open narrowcasting service;

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has breached, or is breaching, a registered code of practice that applies to the service, the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that code of practice, or is unlikely to breach that code of practice, in the future.

- (7) The following are examples of the kinds of direction that may be given to a person under subsection (6):
- (a) a direction that the person implement effective administrative systems for monitoring compliance with a registered code of practice that applies to the service concerned;
 - (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a registered code of practice that applies to the service concerned, in so far as those requirements affect the employees, agents or contractors concerned.

142 Breach of remedial direction—offences

- (1) A person commits an offence if:
- (a) the person has been given a notice under section 141; and
 - (b) the person is:
 - (i) a commercial television broadcasting licensee; or
 - (ii) in a position to exercise control of a commercial television broadcasting licence; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person commits an offence if:
- (a) a person has been given a notice under section 141; and
 - (b) the person is a subscription television broadcasting licensee; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 2,000 penalty units.

- (3) A person commits an offence if:
- (a) the person has been given a notice under section 141; and
 - (b) the person is:
 - (i) a commercial radio broadcasting licensee; or
 - (ii) in a position to exercise control of a commercial radio broadcasting licence; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 500 penalty units.

- (4) A person commits an offence if:
- (a) the person has been given a notice under section 141; and
 - (b) the person is not:
 - (i) a commercial television broadcasting licensee; or
 - (ii) in a position to exercise control of a commercial television broadcasting licence; or
 - (iii) a subscription television broadcasting licensee; or
 - (iv) a commercial radio broadcasting licensee; or
 - (v) in a position to exercise control of a commercial radio broadcasting licence; and
 - (c) the person engages in conduct; and
 - (d) the person's conduct contravenes a requirement in the notice.

Penalty: 50 penalty units.

- (5) A person who contravenes subsection (1), (2), (3) or (4) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

- (6) In this section:

engage in conduct means:

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

142A Breach of remedial direction—civil penalty provision

- (1) A person must comply with a notice under section 141.

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- (2) Subsection (1) is a civil penalty provision.
- (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

143 Suspension and cancellation

- (1) If a commercial television broadcasting licensee, a commercial radio broadcasting licensee, a subscription television broadcasting licensee or a community broadcasting licensee:
 - (a) fails to comply with a notice under section 141; or
 - (b) breaches a condition of the licence;the ACMA may, by notice in writing given to the person:
 - (c) suspend the licence for such period, not exceeding 3 months, as is specified in the notice; or
 - (d) cancel the licence.

(1A) If:

- (a) a subscription television broadcasting licensee provides a subscription TV drama service (within the meaning of Division 2A of Part 7); and
- (b) the licence is suspended because of a breach of a condition set out in that Division;

the ACMA may take such action, by way of suspending one or more subscription television broadcasting licences held by:

- (c) the licensee; or
- (d) a related body corporate of the licensee;

as the ACMA considers necessary to ensure that the same, or a substantially similar, service is not transmitted by the licensee or the related body corporate, as the case may be, during the period of suspension.

(1B) If:

- (a) a subscription television broadcasting licensee provides a subscription TV drama service (within the meaning of Division 2A of Part 7); and
- (b) the licence is cancelled because of a breach of a condition set out in that Division;

the ACMA may take such action, by way of cancelling one or more subscription television broadcasting licences held by:

- (c) the licensee; or
- (d) a related body corporate of the licensee;

as the ACMA considers necessary to ensure that the same, or a substantially similar, service is not transmitted by the licensee or the related body corporate, as the case may be, at a time after the cancellation.

- (2) If the ACMA proposes to take action under subsection (1), (1A) or (1B) the ACMA must give to the person:
 - (a) written notice of its intention; and
 - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.
- (3) In this section:

related body corporate has the same meaning as in the *Corporations Act 2001*.

Division 4—Action in relation to class licences

144 Application to Federal Court

- (1) If the ACMA is satisfied that a person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the ACMA may apply to the Federal Court for an order that the person cease providing those services.
- (2) If the Federal Court is satisfied, on such an application, that the person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the Federal Court may order the person to cease providing those services.

Part 10A—Anti-hoarding rules

Division 1—Introduction

146A Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a regime to discourage commercial television broadcasting licensees, program suppliers, the ABC and the SBS from hoarding rights to provide live television coverage of certain events or series of events.
- The Minister may make a disallowable instrument designating the events or series that are covered by this Part. The instrument must also specify an *offer time* for the event or series. The offer time must occur 30 days or more before the start of the event or series unless the Minister is satisfied that the offer time should occur closer to the start of the event or series.
- If a commercial television broadcasting licensee acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the licensee must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC and the SBS. The offer must remain open for acceptance for a minimum period of 7 days.
- If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to provide live television coverage of a designated event or series, but does not confer the right to televise the whole or a part of the event or series, the program supplier must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC and the SBS. The offer must remain open for acceptance for a minimum period of 7 days.

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- If the ABC acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the ABC must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the SBS. The offer must remain open for acceptance for a minimum period of 7 days.
- If the SBS acquires a right to provide live television coverage of a designated event or series, but does not intend to televise the whole or a part of the event or series, the SBS must, before the offer time, offer to transfer the right to televise the whole or the part of the event or series, for a nominal charge, to the ABC. The offer must remain open for acceptance for a minimum period of 7 days.

146B Definitions

In this Part:

Central-Western time zone means:

- (a) the area consisting of:
 - (i) South Australia; and
 - (ii) Broken Hill (within the meaning of the *Standard Time Act 1987* of New South Wales); or
- (b) Western Australia; or
- (c) the Northern Territory; or
- (d) the Territory of Christmas Island; or
- (e) the Territory of Cocos (Keeling) Islands.

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

coverage area means an area that corresponds to a licence area.

designated event has the meaning given by section 146C.

designated series of events has the meaning given by section 146C.

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

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live, in relation to the televising of an event, or series of events, has the meaning generally accepted within the television industry.

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

offer time has the meaning given by section 146C.

program supplier has the meaning given by section 146D.

related body corporate has the same meaning as in the *Corporations Act 2001*.

supply, in relation to programs, includes confer rights to televise the programs.

televise means:

- (a) in relation to a commercial television broadcasting licensee—televise on a commercial television broadcasting service provided by the licensee; or
- (b) in relation to a national broadcaster—televise on a national television broadcasting service provided by the broadcaster.

146C Designated events and designated series of events

- (1) The Minister may, by writing, declare that a specified event is a *designated event* for the purposes of this Part.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) The Minister may, by writing, declare that a specified series of events is a *designated series of events* for the purposes of this Part.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) To avoid doubt, the Minister may declare an event to be a designated event under subsection (1) even if the event is part of a series of events.
- (4) A declaration under subsection (1) or (2) must also provide that a time that:
 - (a) is ascertained in accordance with the declaration; and
 - (b) occurs before the start of the event, or the series of events, as the case may be;

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is the *offer time* in relation to the event or the series of events, as the case requires, for the purposes of this Part.

- (5) The offer time in relation to an event or series of events must occur 30 days or more before the start of the event or the series of events, as the case may be, unless the Minister is satisfied that the offer time should occur closer to the start of the event or series of events, as the case requires.
- (6) A declaration under this section has effect accordingly.
- (7) A declaration under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

146CA When event or series is eligible for delayed televising in the Central-Western time zones

- (1) The Minister may, by writing, determine that a specified designated event is eligible for delayed televising in the Central-Western time zones.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) The Minister may, by writing, determine that a specified designated series of events is eligible for delayed televising in the Central-Western time zones.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (3) To avoid doubt, the Minister may make a determination under subsection (1) even if the event concerned is part of a series of events.
- (4) A determination under this section has effect only for the purposes of paragraphs 146KA(1)(b) and (2)(d) and 146R(1)(b) and (2)(d).
- (5) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) A copy of a determination under this section is to be published in the *Gazette*.

Note: The following is an example of a situation in which the Minister might make a determination under this section: in a case where a day-night cricket match begins at 2 pm in Sydney, delayed televising of the

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match in Perth would allow Perth viewers the same evening viewing time as viewers in Sydney.

146D Program suppliers

- (1) This section sets out the 3 situations in which a person is a **program supplier** of a commercial television broadcasting licensee for the purposes of this Part.

Agreements

- (2) A person is a **program supplier** of a commercial television broadcasting licensee for the purposes of this Part if:
- (a) the person has an agreement to supply the licensee with programs that can be televised by the licensee; and
 - (b) the person supplies, or may reasonably be expected to supply, the licensee with at least two-thirds of:
 - (i) all the sporting programs that are, or are to be, televised by the licensee during the period when the agreement is in force; or
 - (ii) all the prescribed programs that are, or are to be, televised by the licensee during the period when the agreement is in force;whether or not the programs are, or are to be, supplied under the agreement.

Related body corporate

- (3) A person is a **program supplier** of a commercial television broadcasting licensee for the purposes of this Part if the person:
- (a) is a related body corporate of the licensee; and
 - (b) supplies, or proposes to supply, the licensee with any of:
 - (i) the sporting programs that are, or are to be, televised by the licensee; or
 - (ii) the prescribed programs that are, or are to be, televised by the licensee.

ACMA declaration

- (4) If:
- (a) apart from this subsection, a person is not a program supplier of a commercial television broadcasting licensee; and

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- (b) the person supplies, or proposes to supply, the licensee with any of:
 - (i) the sporting programs that are, or are to be, televised by the licensee; or
 - (ii) the prescribed programs that are, or are to be, televised by the licensee; and
 - (c) having regard to the following matters, the ACMA is satisfied that the person should be treated as a program supplier of the licensee:
 - (i) the purpose underlying this Part;
 - (ii) whether the relationship between the person and the licensee was entered into or maintained for the sole or dominant purpose of avoiding the application of any provision of this Part;
 - (iii) any other relevant matters;
- the ACMA may, by writing, declare that the person is a ***program supplier*** of the licensee for the purposes of this Part.
- (5) A declaration under subsection (4) has effect accordingly.
 - (6) The ACMA must arrange for a copy of a declaration under subsection (4) to be:
 - (a) given to the person and licensee concerned; and
 - (b) published in the *Gazette*.

Division 2—Commercial television broadcasting licensees

146E Anti-hoarding rule—licensees

- (1) A commercial television broadcasting licensee *contravenes the anti-hoarding rule* if:
- (a) the licensee has a right to televise live, in the licence area for the licence, the whole of a designated event or the whole of a designated series of events; and
 - (b) the licensee acquired the right when the event was a designated event, or the series was a designated series of events, as the case may be; and
 - (c) either:
 - (i) the licensee did not televise live in that area any part of the event or series; or
 - (ii) the licensee televised live in that area some, but not all, of the event or series; and
 - (d) neither the licensee nor the licensee's program supplier, before the offer time for the event or series, offered to transfer to each national broadcaster, in accordance with sections 146G and 146H, the right to televise live in the corresponding coverage area:
 - (i) if subparagraph (c)(i) applies—the whole of the event or series; or
 - (ii) if subparagraph (c)(ii) applies—the remainder of the event or series.

Note 1: For compliance by licensees, see clause 7 of Schedule 2.

Note 2: For delayed televising in the Central-Western time zones, see section 146KA.

- (2) For the purposes of subsection (1), a licensee is taken to have televised live the whole of an event, or the whole of a series of events, if the licensee televises live all but an insubstantial proportion of the event or series, as the case may be.

Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

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- (3) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the licensee, as if that proportion were a designated event in its own right.
- (4) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.

146F Anti-hoarding rule—program suppliers

- (1) A commercial television broadcasting licensee's program supplier must not intentionally or recklessly contravene the anti-hoarding rule.

Penalty: 2,000 penalty units.

- (2) A commercial television broadcasting licensee's program supplier *contravenes the anti-hoarding rule* if:
 - (a) the program supplier is entitled to confer on the licensee (the *first licensee*) a right to televise live, in the licence area for the licence, the whole of a designated event or the whole of a designated series of events; and
 - (b) the program supplier acquired the entitlement when the event was a designated event, or the series was a designated series of events, as the case may be; and
 - (c) either:
 - (i) the program supplier did not confer on the first licensee, or on another commercial television broadcasting licensee whose licence area is the same as that of the first licensee, the right to televise live in that area any part of the event or series; or
 - (ii) the program supplier conferred on the first licensee, or on another commercial television broadcasting licensee whose licence area is the same as that of the first licensee, the right to televise live in that area some, but not all, of the event or series; and

- (d) the program supplier did not, before the offer time for the event or series, offer to transfer to each national broadcaster, in accordance with sections 146G and 146H, the right to televise live in the corresponding coverage area:
 - (i) if subparagraph (c)(i) applies—the whole of the event or series; or
 - (ii) if subparagraph (c)(ii) applies—the remainder of the event or series.
- (3) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the program supplier, as if that proportion were a designated event in its own right.
- (4) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the program supplier, as if that proportion were a designated series of events in its own right.
- (5) This section has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
 - (a) is otherwise than on just terms; and
 - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.
- (6) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

146G What constitutes an offer to transfer rights to televise live events

- (1) For the purposes of this Division, a commercial television broadcasting licensee, or a program supplier, is taken to offer to transfer to a national broadcaster the right to televise live:
 - (a) the whole or a part of a particular designated event; or

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- (b) the whole or a part of a particular designated series of events; if, and only if, the licensee or supplier, as the case may be, offers to make an arrangement (whatever its terms or form) which in substance gives the national broadcaster the right to televise live the whole or the part of the event or series, as the case may be.
- (2) In determining whether an arrangement is covered by subsection (1), regard must be had to the practical effect of the arrangement.

146H Offers to transfer rights to televise live events

- (1) This section applies to an offer by a commercial television broadcasting licensee, or a program supplier, to transfer to a particular national broadcaster (the *first national broadcaster*) the right to televise live:
 - (a) the whole or a part of a particular designated event; or
 - (b) the whole or a part of a particular designated series of events.
- (2) The offer must be in writing.
- (3) The offer must be given to the Managing Director of the first national broadcaster.
- (4) The offer must be given to the Managing Director of the first national broadcaster at or about the same time as a corresponding offer is made to the Managing Director of the other national broadcaster.
- (5) The offer must be open for acceptance by the first national broadcaster throughout the period:
 - (a) beginning when the offer is given to the Managing Director of the first national broadcaster; and
 - (b) ending immediately before the start of the event or series.
- (6) The period referred to in subsection (5) must not be shorter than 7 days.
- (7) The offer must require that the consideration to be given by the first national broadcaster is to consist of a promise to pay \$1, if and when demanded by the licensee or the program supplier, as the case requires.

- (8) The first national broadcaster is not entitled to accept the offer if a corresponding offer has already been accepted by the other national broadcaster, unless the other national broadcaster consents in writing.
- (9) If:
- (a) the offer is accepted by the first national broadcaster; and
 - (b) a corresponding offer is simultaneously accepted by the other national broadcaster;
- then:
- (c) the licensee or program supplier, as the case may be, may elect to treat one of those acceptances as having preceded the other of those acceptances; and
 - (d) if such an election is made—the other of those acceptances has no effect unless the national broadcaster who gave the preceding acceptance consents in writing.

146J Contracts to acquire rights to televise live events must authorise the transfer of the rights

- (1) Neither a commercial television broadcasting licensee, nor the licensee's program supplier, must enter into a contract under which the licensee or the program supplier, as the case may be:
- (a) acquires; or
 - (b) will be entitled to acquire (whether on the fulfilment of a condition or otherwise);
- rights to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the licensee or program supplier, as the case may be, to make an offer of the kind referred to in section 146E.
- (2) A commercial television broadcasting licensee's program supplier must not enter into a contract under which the program supplier:
- (a) is entitled; or
 - (b) will be entitled (whether on the fulfilment of a condition or otherwise);
- to confer on the licensee the right to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the program supplier to make an offer of the kind referred to in section 146F.

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- (3) A contract entered into in contravention of subsection (1) or (2) is void.

146K Simultaneous events in a series

Licensees

- (1) For the purposes of this Division, if:
- (a) a commercial television broadcasting licensee has the right to televise live, in the licence area for the licence, a particular designated series of events; and
 - (b) during a particular period, 2 or more events in that series (the *simultaneous events*) wholly or partly overlap; and
 - (c) during that period, the licensee televises live in that area one of those simultaneous events;

the licensee is taken, during that period, to have televised live in that area the remainder of those simultaneous events.

Note: For delayed televising in the Central-Western time zones, see section 146KA.

- (2) For the purposes of paragraph (1)(c), a licensee is taken to have televised live the whole of an event if the licensee televises live all but an insubstantial proportion of the event.

Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

- (3) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, subsection (1) has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.

Program suppliers

- (4) For the purposes of this Division, if:
- (a) a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live, in the licence area for the licence, a particular designated series of events; and
 - (b) during a particular period, 2 or more events in that series (the *simultaneous events*) wholly or partly overlap; and

- (c) the program supplier conferred on the licensee the right to televise live during that period in that area one of those simultaneous events;
the program supplier is taken to have conferred on the licensee the right to televise live during that period in that area the remainder of those simultaneous events.
- (5) If a commercial television broadcasting licensee's program supplier is entitled to confer on the licensee a right to televise live a substantial proportion of a designated series of events, subsection (4) has effect, in relation to the program supplier, as if that proportion were a designated series of events in its own right.

146KA Delayed televising in the Central-Western time zones

- (1) For the purposes of paragraph 146E(1)(c), if:
- (a) a commercial television broadcasting licensee televises, in the licence area for the licence:
 - (i) a designated event or a designated series of events; or
 - (ii) a part of a designated event or a part of a designated series of events; and
 - (b) the event or series is eligible for delayed televising in the Central-Western time zones; and
 - (c) apart from this subsection, the televising mentioned in paragraph (a) is not live; and
 - (d) the licence area is wholly or substantially within a particular Central-Western time zone; and
 - (e) assuming the event or series, or the part of the event or series, as the case may be, had been televised live in Sydney—the event or series, or the part of the event or series, as the case may be, is televised, as mentioned in paragraph (a), not later than the local time in that zone that is equivalent to the time at which the event or series, or the part of the event or series, as the case may be, was televised live in Sydney;
- the event or series, or the part of the event or series, as the case may be, is taken to be televised live by the licensee in the licence area.

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- (2) For the purposes of paragraph 146K(1)(c), if:
- (a) a commercial television broadcasting licensee has the right to televise live, in the licence area for the licence, a particular designated series of events; and
 - (b) during a particular period, 2 or more events in that series wholly or partly overlap; and
 - (c) the licensee televises in the licence area one of those events; and
 - (d) the series is eligible for delayed televising in the Central-Western time zones; and
 - (e) apart from this subsection, the televising mentioned in paragraph (c) is not live; and
 - (f) the licence area is wholly or substantially within a particular Central-Western time zone; and
 - (g) assuming the event had been televised live in Sydney—the event is televised, as mentioned in paragraph (c), not later than the local time in that zone that is equivalent to the time at which the event was televised live in Sydney;
- the event is taken to be televised live by the licensee in the licence area during that period.
- (3) For the purposes of subsections (1) and (2), a licensee is taken to have televised live the whole of an event, or the whole of a series of events, if the licensee televises all but an insubstantial proportion of the event or series, as the case may be.
- Note: For example, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.
- (4) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the licensee, as if that proportion were a designated event in its own right.
- (5) If a commercial television broadcasting licensee has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the licensee, as if that proportion were a designated series of events in its own right.

Division 3—National broadcasters

146L Anti-hoarding rule

- (1) A national broadcaster must not contravene the anti-hoarding rule.
- (2) A national broadcaster *contravenes the anti-hoarding rule* if:
 - (a) the national broadcaster has a right to televise live, in a coverage area, the whole of a designated event, or the whole of a designated series of events; and
 - (b) the national broadcaster acquired the right when the event was a designated event, or the series was a designated series of events, as the case may be; and
 - (c) either:
 - (i) the national broadcaster did not televise live in that area any part of the event or series; or
 - (ii) the national broadcaster televised live in that area some, but not all, of the event or series; and
 - (d) the national broadcaster did not, before the offer time for the event or series of events, offer to transfer to the other national broadcaster, in accordance with sections 146M and 146N, the right to televise live in that area:
 - (i) if subparagraph (c)(i) applies—the whole of the event or series; or
 - (ii) if subparagraph (c)(ii) applies—the remainder of the event or series.

Note: For delayed televising in the Central-Western time zones, see section 146R.

- (3) For the purposes of subsection (2), a national broadcaster is taken to have televised live the whole of an event, or the whole of a series of events, if the national broadcaster televises live all but an insubstantial proportion of the event or series, as the case may be.

Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

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Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

- (4) If a national broadcaster has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the national broadcaster, as if that proportion were a designated event in its own right.
- (5) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the national broadcaster, as if that proportion were a designated series of events in its own right.
- (6) This section does not apply to a right acquired by a national broadcaster because of the operation of Division 2 or this Division.

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

- (1) For the purposes of this Division, a national broadcaster (the *first national broadcaster*) is taken to offer to transfer to the other national broadcaster the right to televise live:
 - (a) the whole or a part of a particular designated event; or
 - (b) the whole or a part of a particular designated series of events;if, and only if, the first national broadcaster offers to make an arrangement (whatever its terms or form) which in substance gives the other national broadcaster the right to televise live the whole or the part of the event or series, as the case may be.
- (2) In determining whether an arrangement is covered by subsection (1), regard must be had to the practical effect of the arrangement.

146N Offers to transfer rights to televise live events

- (1) This section applies to an offer by a national broadcaster to transfer to the other national broadcaster the right to televise live:
 - (a) the whole or a part of a particular designated event; or
 - (b) the whole or a part of a particular designated series of events.

- (2) The offer must be in writing.
- (3) The offer must be given to the Managing Director of the other national broadcaster.
- (4) The offer must be open for acceptance by the other national broadcaster throughout the period:
 - (a) beginning when the offer is given to the Managing Director of the other national broadcaster; and
 - (b) ending immediately before the start of the event or series.
- (5) The period referred to in subsection (4) must not be shorter than 7 days.
- (6) The offer must require that the consideration to be given by the other national broadcaster is to consist of a promise to pay \$1, if and when demanded by the national broadcaster who made the offer.

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

- (1) A national broadcaster must not enter into a contract under which the national broadcaster:
 - (a) acquires; or
 - (b) will be entitled to acquire (whether on the fulfilment of a condition or otherwise);rights to televise live the whole, or a substantial proportion, of a designated event, or of a designated series of events, unless the contract authorises the national broadcaster to make an offer of the kind referred to in section 146L.
- (2) A contract entered into in contravention of subsection (1) is void.

146Q Simultaneous events in a series

- (1) For the purposes of this Division, if:
 - (a) a national broadcaster has the right to televise live, in a coverage area, a particular designated series of events; and
 - (b) during a particular period, 2 or more events in that series (the *simultaneous events*) wholly or partly overlap; and

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(c) during that period, the national broadcaster televises live in that area one of those simultaneous events;

the national broadcaster is taken, during that period, to have televised live in that area the remainder of those simultaneous events.

Note: For delayed televising in the Central-Western time zones, see section 146R.

(2) For the purposes of paragraph (1)(c), a national broadcaster is taken to have televised live the whole of an event if the broadcaster televises live all but an insubstantial proportion of the event.

Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event being televised.

(3) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the national broadcaster, as if that proportion were a designated series of events in its own right.

146R Delayed televising in the Central-Western time zones

(1) For the purposes of paragraph 146L(2)(c), if:

(a) a national broadcaster televises, in a coverage area:

- (i) a designated event or a designated series of events; or
- (ii) a part of a designated event or a part of a designated series of events; and

(b) the event or series is eligible for delayed televising in the Central-Western time zones; and

(c) apart from this subsection, the televising mentioned in paragraph (a) is not live; and

(d) the coverage area is wholly or substantially within a particular Central-Western time zone; and

(e) assuming the event or series, or the part of the event or series, as the case may be, had been televised live in Sydney—the event or series, or the part of the event or series, as the case may be, is televised, as mentioned in paragraph (a), not later

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than the local time in that zone that is equivalent to the time at which the event or series, or the part of the event or series, as the case may be, was televised live in Sydney;
the event or series, or the part of the event or series, as the case may be, is taken to be televised live by the national broadcaster in the coverage area.

- (2) For the purposes of paragraph 146Q(1)(c), if:
- (a) a national broadcaster has the right to televise live, in a coverage area, a particular designated series of events; and
 - (b) during a particular period, 2 or more events in that series wholly or partly overlap; and
 - (c) the broadcaster televises in the coverage area one of those events; and
 - (d) the series is eligible for delayed televising in the Central-Western time zones; and
 - (e) apart from this subsection, the televising mentioned in paragraph (c) is not live; and
 - (f) the coverage area is wholly or substantially within a particular Central-Western time zone; and
 - (g) assuming the event had been televised live in Sydney—the event is televised, as mentioned in paragraph (c), not later than the local time in that zone that is equivalent to the time at which the event was televised live in Sydney;
- the event is taken to be televised live by the national broadcaster in the coverage area during that period.
- (3) For the purposes of subsections (1) and (2), a national broadcaster is taken to have televised live the whole of an event, or the whole of a series of events, if the broadcaster televises all but an insubstantial proportion of the event or series, as the case may be.
- Note 1: For example, in the case of the ABC, interruptions by way of news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.
- Note 2: For example, in the case of the SBS, interruptions by way of commercial breaks, news breaks, program promotions, announcements or brief crosses to other live events would amount to an insubstantial proportion of the event or series being televised.

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- (4) If a national broadcaster has a right to televise live a substantial proportion of a designated event, this section has effect, in relation to the broadcaster, as if that proportion were a designated event in its own right.
- (5) If a national broadcaster has a right to televise live a substantial proportion of a designated series of events, this section has effect, in relation to the broadcaster, as if that proportion were a designated series of events in its own right.

Division 4—Review of anti-hoarding provisions

146S Review of anti-hoarding provisions

- (1) Within 2 years after the commencement of this Part, the Minister must cause to be conducted a review of the effectiveness of the anti-hoarding provisions enacted by this Part.
- (2) The Minister must cause a report to be prepared of the review under subsection (1).
- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Part 11—Complaints to the ACMA

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

147 Complaints relating to offences or breach of licence conditions

If a person believes that another person who is providing a broadcasting service has:

- (a) committed an offence against this Act or the regulations; or
- (aa) breached a civil penalty provision; or
- (b) breached a condition of a licence or a class licence;

the person may make a complaint to the ACMA about the matter.

148 Complaints under codes of practice

If:

- (a) a person has made a complaint to a provider of broadcasting services on a matter relating to:
 - (i) program content; or
 - (ii) compliance with a code of practice that applies to those services and that is included in the Register of codes of practice; and
- (b) if there is a relevant code of practice relating to the handling of complaints of that kind—the complaint was made in accordance with that code of practice; and
- (c) either:
 - (i) the person has not received a response within 60 days after making the complaint; or
 - (ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.

149 Investigation of complaints by the ACMA

- (1) Subject to subsection (2), the ACMA must investigate the complaint.

- (2) The ACMA need not investigate the complaint if it is satisfied that:
 - (a) the complaint is frivolous or vexatious or was not made in good faith; or
 - (b) in the case of a complaint referred to in section 147—the complaint does not relate to:
 - (i) an offence against this Act or the regulations; or
 - (ia) a breach of a civil penalty provision; or
 - (ii) a breach of a condition of a licence.
- (3) The ACMA must notify the complainant of the results of such an investigation.

Part 11 Complaints to the ACMA

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

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

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

If:

- (a) a person has made a complaint to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation on the ground that the Corporation has, in providing a national broadcasting service or a datacasting service, acted contrary to a code of practice developed by the Corporation and notified to the ACMA; and
- (b) either:
 - (i) the person has not received a response within 60 days after making the complaint; or
 - (ii) the person has received a response within that period but considers that response to be inadequate;

the person may make a complaint to the ACMA about the matter.

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

- (1) Subject to subsection (2), the ACMA must investigate the complaint.
- (2) The ACMA need not investigate the complaint if it is satisfied that:
 - (a) the complaint is frivolous or vexatious or was not made in good faith; or
 - (b) the complaint is not relevant to a code of practice developed by the Corporation.

152 Action by ACMA where complaint justified

- (1) If, having investigated a complaint, the ACMA is satisfied that:
 - (a) the complaint was justified; and

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- (b) the ACMA should take action under this section to encourage the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation to comply with the relevant code of practice;
- the ACMA may, by notice in writing given to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice.
- (2) That other action may include broadcasting or otherwise publishing an apology or retraction.
- (3) The ACMA must notify the complainant of the results of such an investigation.

153 ACMA may report to Minister on results of recommendation

- (1) If:
- (a) the ACMA has made a recommendation to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation under section 152; and
- (b) the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, as the case may be, does not, within 30 days after the recommendation was given, take action that the ACMA considers to be appropriate;
- the ACMA may give the Minister a written report on the matter.
- (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which he or she received the report.

Part 13—Information gathering by the ACMA

Division 1—Introduction

168 Obtaining of information by the ACMA

- (1) In informing itself on any matter relevant to its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*), the ACMA:
 - (a) may consult with such persons, bodies and groups as it thinks fit, and may form consultative committees for that purpose; and
 - (b) may conduct investigations and hold hearings; and
 - (c) may otherwise inform itself in any manner it thinks fit.
- (2) Subject to any directions by the Minister under this Part, the procedure that the ACMA adopts in informing itself on any matter relevant to those functions is to be that which the ACMA considers:
 - (a) will be the quickest and most economical in the circumstances; and
 - (b) will also promote the due administration of this Act.

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

In making a decision on any matter relating to the functions referred to in subsection 168(1), the ACMA is not limited to a consideration of material made available through an investigation or hearing conducted in relation to the matter, but may take into account such other matters as it considers relevant, including the knowledge and experience of the members.

Division 2—Investigations

170 Investigations by the ACMA

The ACMA may conduct investigations for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related powers.

171 Minister may direct ACMA to conduct an investigation

- (1) The Minister may direct the ACMA in writing to investigate any matter with respect to which the Parliament is given power to make laws by paragraph 51(v) of the Constitution.
- (2) Without limiting subsection (1), the Minister may direct the ACMA to investigate:
 - (a) any matter that the Minister is satisfied should be investigated in the interests of the due administration of this Act; or
 - (b) any matter relating to the future regulation or operation of a carriage service or a content service.
- (3) In this section:

carriage service has the same meaning as in the *Telecommunications Act 1997*.

content service has the same meaning as in the *Telecommunications Act 1997*.

172 ACMA may call for written submissions from the public

The ACMA may, in conducting an investigation, call for written submissions from members of the public.

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173 Notice requiring appearance for examination

For the purposes of an investigation, the ACMA may give a notice in writing to a person summoning the person:

- (a) to attend before a delegate of the ACMA named in the notice to produce documents or to answer questions; or
- (b) to provide documents or other information to the ACMA; relevant to the subject matter of the investigation.

174 Examination on oath or affirmation

- (1) If a person is summoned to attend before a delegate of the ACMA, the delegate may examine that person on oath or affirmation and, for that purpose:
 - (a) may require the person to take an oath or make an affirmation; and
 - (b) may administer an oath or affirmation to the person.
- (2) The oath or affirmation is to be an oath or affirmation that the statements the person will make will be true to the best of the person's knowledge or belief.
- (3) The delegate may require the person to answer a question that is put to the person at an examination and that is relevant to a matter that the ACMA is investigating or is to investigate.

175 Examination to take place in private

The examination of a person for the purposes of an investigation must be conducted in private, but the person is entitled to have an adviser present at the examination.

176 Record to be made of examination

- (1) If a person is examined by a delegate of the ACMA, a record must be made of the examination and the person is entitled to be given a written copy of the record.
- (2) If the record of the examination of a person is made in electronic form, the person is, if the person so requests, to be given a copy of the record in that form.

177 Production of documents for inspection

The ACMA may, by notice in writing given to a person, require the person:

- (a) to make available for inspection by a member of the staff of the ACMA any documents in the possession of the person that may contain information relevant to the subject matter of an investigation; and
- (b) to permit that member to make copies of any such documents.

178 Report on investigation

- (1) The ACMA may prepare a report on an investigation, and must prepare a report on an investigation conducted at the direction of the Minister and give a copy of each report conducted at the direction of the Minister to the Minister.
- (2) If a report on an investigation relates to conduct that could constitute an offence under this Act or another law of the Commonwealth, the ACMA may give a copy of the report or of a part of the report to the Director of Public Prosecutions.

179 Publication of report

- (1) Except in the case of a report prepared as a result of an investigation directed by the Minister, the ACMA may cause a copy of a report on an investigation to be published.
- (2) The Minister may direct the ACMA to publish a report on an investigation directed by the Minister.
- (3) The ACMA is not required to publish, or to disclose to a person to whose affairs it relates, a report or part of a report if the publication or disclosure would:
 - (a) disclose matter of a confidential character; or
 - (b) be likely to prejudice the fair trial of a person.

180 Person adversely affected by report to be given opportunity to comment

If publication of matter in a report or part of a report would or would be likely to adversely affect the interests of a person, the

Part 13 Information gathering by the ACMA

Division 2 Investigations

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ACMA must not publish the report or the part of the report until it has given the person a reasonable period, not exceeding 30 days, to make representations, either orally or in writing, in relation to the matter.

Division 3—Hearings

182 Power to hold hearings

The ACMA may hold hearings for the purposes of the performance or exercise of any of its broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related powers.

183 Minister may direct ACMA to hold a hearing

If the Minister is satisfied that the ACMA should, in the interests of the due administration of this Act, hold a hearing in relation to any matter, the Minister may direct the ACMA in writing to hold a hearing in relation to the matter.

184 Procedure for conduct of hearings

- (1) Subject to this Division, the procedure for the conduct of a hearing is within the discretion of the ACMA.
- (2) The ACMA may give directions, either generally or in relation to a particular case, for the procedures to be followed in relation to the conduct of hearings.

185 ACMA may direct holding of conference

- (1) The ACMA may, at any stage of a hearing, direct persons participating or seeking to participate in the hearing to attend a conference before a member of the ACMA or a member of the staff of the ACMA for the purpose of:
 - (a) discussing matters relevant to the hearing; or
 - (b) clarifying any of the matters to be dealt with by the hearing;
or
 - (c) resolving any differences between the persons participating in the hearing.
- (2) If a person who is directed to participate in a conference in relation to a hearing fails, without reasonable excuse, to attend the conference, the person may be excluded from participation or further participation in the hearing.

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186 Hearings to be informal, quick and economical

- (1) A hearing is to be conducted:
 - (a) with as little technicality and formality; and
 - (b) as quickly and economically;as the requirements of this Act and a proper consideration of the matters before the ACMA permit.
- (2) In holding a hearing, the ACMA is not bound by the rules of evidence.

187 Hearings to be in public except in exceptional cases

- (1) Subject to subsection (2), a hearing conducted by the ACMA must take place in public.
- (2) A hearing or a part of a hearing may be conducted in private if:
 - (a) evidence that may be given, or a matter that may arise, during the hearing or the part of the hearing is of a confidential nature; or
 - (b) the ACMA is satisfied that hearing a matter or part of a matter in public would not be conducive to the due administration of this Act.

188 Public notice of hearings

If the ACMA is to conduct a hearing in public, the ACMA must give reasonable public notice of the conduct of the hearing.

189 Confidential material not to be published

If a hearing or part of a hearing takes place in public, the ACMA may order that evidence or other material presented to the hearing, or material in a submission lodged with the ACMA under section 196, that is, in the opinion of the ACMA, of a confidential nature not be published, or that its disclosure be restricted as directed by the ACMA.

190 Directions as to private hearings

If a hearing or part of a hearing takes place in private, the ACMA:

- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
- (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.

191 Constitution of ACMA for conduct of hearings

The ACMA is to be constituted for the purposes of a hearing by a panel consisting of such members as the Chair directs.

192 Presiding member

A panel conducting a hearing is to be presided over by the Chair or, if the Chair is not a member of the panel, by such member of the panel as the Chair directs.

193 Reconstitution of hearing panel

- (1) If, during the course of a hearing:
 - (a) it appears to the Chair that, because of the importance of the matters in issue the panel conducting a hearing should be reconstituted by the addition to that panel of one or more additional members; or
 - (b) a member of the panel conducting the hearing is unable to continue with the hearing;the Chair may direct that the panel be reconstituted.
- (2) All proceedings in the hearing that have taken place before the reconstitution of the panel are, unless the panel as reconstituted otherwise directs, to be taken to have taken place before the reconstituted panel.

194 Exercise of powers in relation to conduct of hearing

The powers of the ACMA in relation to the conduct of a particular hearing may be exercised:

- (a) by the panel conducting that hearing; or
- (b) by the Chair; or

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- (c) by a member of the ACMA authorised by the Chair to exercise those powers in relation to the hearing.

195 Summons to give evidence or produce documents

- (1) The member presiding at a hearing may:
 - (a) by notice in writing given to a person, summon that person to appear before the ACMA as constituted for the purposes of the hearing to give evidence in relation to the subject matter of the hearing or to produce to the ACMA such documents as are specified in the notice, or to do both; or
 - (b) require a person appearing to give evidence either to take an oath or to make an affirmation; or
 - (c) administer an oath or affirmation to a person so appearing.
- (2) The oath or affirmation to be taken or made by a person is an oath or affirmation that the evidence the person will give will be true.

196 Written submissions may be made to hearing

A person may lodge with the ACMA any submissions in writing that the person wishes the ACMA to take into account in relation to the subject matter of the hearing.

197 Evidence and submissions to be taken into account by ACMA

The ACMA must take into account:

- (a) evidence given, or a submission made, to it at a hearing; or
 - (b) a submission lodged with it in relation to the hearing;
- in making a decision on a matter to which the evidence or submission relates.

198 Representation at hearings

- (1) A person who wishes to participate in a hearing may be represented at the hearing by another person.
- (2) As far as practicable, the ACMA is to ensure that a person is not at a disadvantage at a hearing because that person is not represented by another person.

199 Reports on hearings

- (1) If the ACMA has completed a hearing, the ACMA must prepare and publish a report setting out its findings as a result of the hearing.
- (2) If the hearing was conducted at the direction of the Minister, the ACMA must give a copy of the report to the Minister.
- (3) The ACMA is not required to include in a report any material:
 - (a) that is of a confidential nature; or
 - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
 - (c) that is the subject of an order or direction under section 189 or 190.

Division 4—General

200 Protection of members and persons giving evidence

- (1) A person who is a member of the panel conducting a hearing has in the performance of his or her duties as a member of the panel the same protection and immunity as a Justice of the High Court.
- (2) A lawyer appearing before the ACMA at a hearing as the representative of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.
- (3) A person who is summoned to appear at a hearing, or a person who gives evidence or produces documents at an investigation or a hearing, has the same protection as a witness in a proceeding in the High Court.

201 Protection of panel conducting hearing

A person must not:

- (a) obstruct a member of a panel conducting a hearing; or
- (b) disrupt a hearing; or
- (c) do any other act or thing that would, if the hearing were a proceeding in the High Court, constitute a contempt in the face of that Court.

Penalty: Imprisonment for one year.

202 Non-compliance with requirement to give evidence

- (1) A person required to give evidence or to produce documents at a hearing must not:
 - (a) fail to attend as required by the notice; or
 - (b) fail to appear and report from day to day unless excused or released from further attendance.

Penalty: Imprisonment for one year.

(1A) A person required to give evidence or to produce documents at a hearing must not:

- (a) fail to attend as required by the notice; or
- (b) fail to appear and report from day to day unless excused or released from further attendance.

(1B) Subsection (1A) is a civil penalty provision.

(2) A person required to answer a question, to give evidence or to produce documents under this Part must not:

- (a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer; or
- (c) refuse or fail to produce a document that the person is required to produce.

Penalty: Imprisonment for one year.

(2AA) A person required to answer a question, to give evidence or to produce documents under this Part must not:

- (a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer; or
- (c) refuse or fail to produce a document that the person is required to produce.

(2AB) Subsection (2AA) is a civil penalty provision.

(2A) Subsections (1), (1A), (2) and (2AA) do not apply if the person has a reasonable excuse.

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

(2B) A person who wishes to rely on subsection (2A) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

(3) For the avoidance of doubt, it is declared that it is a reasonable excuse for a person to refuse to answer a question or to produce a

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document if the answer to the question or the production of the document would tend to incriminate the person.

- (4) It is a reasonable excuse for a person to refuse to answer a question or to produce a document if:
- (a) the person is a journalist; and
 - (b) the answer to the question or the production of the document would tend to disclose the identity of a person who supplied information in confidence to the journalist; and
 - (c) the information has been used for the purposes of:
 - (i) a television or radio program; or
 - (ii) datacasting content.
- (5) For the purposes of this section, *journalist* means a person engaged in the profession or practice of reporting for, photographing, editing, recording or making:
- (a) television or radio programs; or
 - (b) datacasting content;
- of a news, current affairs, information or documentary character.

203 Proceedings for defamation not to lie

No action or proceeding, whether civil or criminal, lies:

- (a) against the Commonwealth, the Minister, the ACMA, a member of the staff of the ACMA, a person who is a member of the panel constituting a hearing or a person acting with the authority of the ACMA in respect of the printing or publishing of a report of an investigation or a transcript of proceedings at a hearing; or
- (b) in respect of the publication, by any means, of a fair and accurate report of proceedings at a hearing.

Part 14—Appeals to the Administrative Appeals Tribunal

204 Appeals to the Administrative Appeals Tribunal

Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of a decision set out in column 1 of the table made under the provision of this Act set out in column 2, but such an application may only be made by the person described in column 3.

TABLE

Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
To make a determination under subsection 35D(2) in relation to a commercial radio broadcasting licence	Section 35D	The licensee
Refusal to allocate an additional licence	Section 38A	The licensee
Refusal to allocate an additional licence	Section 38B	The applicant
Refusal to allocate licence	Subsection 40(1)	The applicant
Direction that a licence not be allocated under subsection 40(1)	Subsection 40(7)	The applicant
That a person is not a suitable applicant or licensee (Commercial)	Subsection 41(2)	The person

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Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
Variation of licence conditions or imposition of new conditions (Commercial)	Subsection 43(1)	The licensee
To enter a newspaper in Register	Subsection 59(3)	The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area
Refusal to remove newspaper from Register	Subsection 59(4)	The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area
To enter a newspaper in Register	subsection 59(4A)	The publisher of a newspaper or a commercial radio broadcasting licensee in the relevant licence area
Refusal to remove newspaper from Register	subsection 59(4B)	The publisher of a newspaper or a commercial radio broadcasting licensee in the relevant licence area
Refusal to approve transaction or determination of period of approval	Section 61AJ or 61AMC	The applicant for approval
Refusal to extend time for compliance	Section 61AK or 61AMD	The applicant
Refusal to extend time for compliance	Section 61AP	The applicant

Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
To affirm or revoke a decision made under subsection 61AZE(1)	Section 61AZF	A person whose interests are affected by the decision made under subsection 61AZE(1)
Refusal to approve temporary breach or determination of period of approval	Subsection 67(4)	The applicant for approval
Refusal to extend time for compliance	Subsection 68(2)	The applicant
Refusal to extend time for compliance	Subsection 71(3)	The applicant
That a person is not a suitable applicant or licensee (Community)	Subsection 83(2)	The person
Variation of licence conditions or imposition of new conditions (Community)	Subsection 87(1)	The licensee
Refusal to approve the transfer of a community broadcasting licence	Section 91A	The applicant or the proposed transferee
That a person is not a suitable applicant or licensee (Temporary community)	Subsection 92D(2)	The person
Variation of licence conditions (other than timing conditions), imposition of new conditions or variation of licence period (Temporary community)	Section 92J	The licensee

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Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
Refusal to allocate licence	Subsection 96(1)	The applicant
That a person is not a suitable applicant or licensee	Subsection 98(2)	The person
Variation of conditions or imposition of new conditions	Subsection 99(2)	The licensee
Variation of class licence conditions or imposition of new conditions	Subsection 120(1)	A person operating under the class licence
Refusal of permission	Subsection 121E(1)	The subscription television broadcasting licensee or the related body corporate, as the case may be
Grant of permission	Subsection 121E(1)	A commercial television broadcasting licensee any part of whose licence area is included in the regional area
That subsection 121FC(1) applies to a company	Subsection 121FC(1)	The company
Cancellation of an international broadcasting licence	Subsection 121FK(1)	The licensee
Refusal to make a nominated broadcaster declaration	Section 121FLC	The transmission provider or the content provider

Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
Revocation of a nominated broadcaster declaration	Section 121FLG	The holder of the declaration, or the content provider
Cancellation of an international broadcasting licence	Section 121FLH	The licensee
Refusal to include a code of practice in the Register	Subsection 123(4)	The relevant industry group
Suspension or cancellation of licence	Section 143	The licensee
Declaration that a person is a program supplier of a commercial television broadcasting licensee	Subsection 146D(4)	The person
Refusal to permit an accounting period ending on a day other than 30 June	Subsection 205B(2)	The licensee
To issue a notice relating to the amount of licence fee paid	Subsection 205C(2)	The licensee
That no additional fee be remitted or that part only of the additional fee be remitted	Subsection 205D(4)	The licensee
Refusal of permission	Subclause 7(2A) of Schedule 2	The licensee seeking the permission

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Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
Grant of permission	Subclause 7(2A) of Schedule 2	A commercial television broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area
Refusal of permission	Subclause 8(3) of Schedule 2	The licensee seeking the permission
Grant of permission	Subclause 8(3) of Schedule 2	A commercial radio broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area
Refusal of permission	Subclause 9(2A) of Schedule 2	The licensee seeking the permission
Grant of permission	Subclause 9(2A) of Schedule 2	A community broadcasting licensee where the provision of the services would occur in any part of that licensee's licence area

205 Notification of decisions to include notification of reasons and appeal rights

If the ACMA makes a decision that is reviewable under section 204, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and
- (b) a statement to the effect that an application may be made to the Administrative Appeals Tribunal for a review of the decision.

Part 14A—Accounts and payment of licence fees

205A Definitions

In this Part:

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

gross earnings has the same meaning:

- (a) in relation to a commercial radio broadcasting licence—as in the *Radio Licence Fees Act 1964*; and
- (b) in relation to a commercial television broadcasting licence—as in the *Television Licence Fees Act 1964*; and
- (c) in relation to a channel A datacasting transmitter licence—as in the *Datacasting Transmitter Licence Fees Act 2006*.

licence fee means a fee imposed under:

- (a) section 5 of the *Radio Licence Fees Act 1964*; or
- (b) section 5 of the *Television Licence Fees Act 1964*; or
- (c) section 7 of the *Datacasting Transmitter Licence Fees Act 2006*.

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

205B Broadcasting licensees to keep accounts

- (1) A commercial television broadcasting licensee or a commercial radio broadcasting licensee must:
 - (a) keep and maintain, in a recognised business or commercial form, financial accounts in relation to the service or services provided under the licence; and
 - (b) make those accounts available for inspection by the ACMA or an authorised officer when requested to do so; and
 - (c) within 6 months after 30 June in each year, give the ACMA:
 - (i) an audited balance-sheet and an audited profit and loss account, in a form approved by the ACMA, in relation

Section 205B

- to the service or services provided under the licence for the year ending on that 30 June; and
- (ii) a statutory declaration stating the gross earnings in relation to the licence during that year; and
 - (d) keep such records in respect of the service or services provided under the licence as the ACMA directs and give copies of those records to the ACMA when requested to do so.
- (2) A licensee may, with the permission of the ACMA, adopt an accounting period which is a period of 12 months ending on a day other than 30 June.
- (3) If a licensee adopts such an accounting period, paragraph (1)(c) has effect as if:
- (a) the reference in that paragraph to 6 months after 30 June were a reference to:
 - (i) if 6 months after the end of the accounting period does not include 31 December—6 months after the end of the accounting period; or
 - (ii) if 6 months after the end of the accounting period includes 31 December—the period starting immediately after the end of the accounting period and ending on that 31 December; and
 - (b) a reference in that paragraph to the year ending on 30 June were a reference to the year ending on the last day of that accounting period.
- (4) The declaration referred to in subparagraph (1)(c)(ii) must be made by the chief executive officer or secretary of the licensee.
- (5) In this section:

authorised officer means a member, or a member of the staff of the ACMA, authorised by the ACMA in writing for the purposes of this section.

Note: For enforcement of this section, see Division 3 of Part 10 of this Act and paragraphs 7(1)(ia) and 8(1)(ha) of Schedule 2.

205BA Datacasting transmitter licensees to keep accounts

- (1) A channel A datacasting transmitter licensee must:
- (a) keep and maintain, in a recognised business or commercial form, financial accounts in relation to the transmission of matter by radiocommunications transmitters operating under the licence; and
 - (b) make those accounts available for inspection by the ACMA or an authorised officer when requested to do so; and
 - (c) within 6 months after the end of each financial year, give the ACMA:
 - (i) an audited balance-sheet and an audited profit and loss account, in a form approved by the ACMA, in relation to the transmission of matter by radiocommunications transmitters operating under the licence during the financial year; and
 - (ii) a statutory declaration stating the gross earnings in relation to the licence during the financial year; and
 - (d) keep such records in relation to the operation of radiocommunications transmitters under the licence as the ACMA directs, and give copies of those records to the ACMA when requested to do so.
- (2) The declaration referred to in subparagraph (1)(c)(ii) must be made by the chief executive officer or secretary of the licensee.

Nominated datacaster declarations

- (3) Clause 46 of Schedule 6 does not apply to this section.

Definition

- (4) In this section:

authorised officer means a member, or a member of the staff, of the ACMA, authorised by the ACMA in writing for the purposes of this section.

Note: For enforcement of this section, see paragraph 109A(1)(bb) of the *Radiocommunications Act 1992*.

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205C Payment of licence fees

- (1) If a commercial television broadcasting licensee, a commercial radio broadcasting licensee or a channel A datacasting transmitter licensee pays an amount that the licensee believes is the licence fee that is due and payable in relation to the licence, the licensee must, in a notice accompanying the payment, inform the ACMA, in a form approved by the ACMA, of the manner of working out the amount paid.
- (2) If:
 - (a) the ACMA, having regard to the documents given to it under paragraph 205B(1)(c) or 205BA(1)(c), works out the amount of the licence fee that is due and payable in relation to the licence; and
 - (b) the amount worked out is not the same as the amount paid; the ACMA must give the licensee, as soon as practicable, a notice in writing:
 - (c) specifying the amount worked out; and
 - (d) setting out details of how the amount was worked out; and
 - (e) if the amount paid is more than the amount worked out, specifying the amount overpaid; and
 - (f) if the amount paid is less than the amount worked out, specifying the amount unpaid; and
 - (g) if the ACMA is satisfied that the licensee deliberately miscalculated the amount of the licence fee—stating that it is so satisfied.
- (3) If the notice given to the licensee under subsection (2) specifies an amount overpaid, the ACMA must, within 21 days after the day the notice was issued, arrange for the amount to be refunded to the licensee.

205D Penalty for unpaid licence fees

- (1) If an amount of licence fee remains unpaid after the due date, the following additional fees are due and payable by the licensee as penalties:
 - (a) an additional fee at the rate of 20% per annum on the amount unpaid, worked out from the due date;
 - (b) an additional fee of \$1,500;

unless subsection (2) or (3) applies in relation to the amount unpaid.

(2) If:

- (a) an amount of licence fee is specified in a notice under paragraph 205C(2)(f) as an amount unpaid; and
- (b) the notice does not contain a statement that the ACMA is satisfied that the licensee deliberately miscalculated the amount of the licence fee; and
- (c) the amount unpaid is not paid within 21 days after the day the notice was issued;

then:

- (d) this subsection applies in relation to the amount unpaid; and
- (e) the following additional fees are due and payable by the licensee as penalties:
 - (i) an additional fee at the rate of 20% per annum on the amount unpaid, worked out from the day the notice was issued;
 - (ii) an additional fee of \$1,500.

(3) If:

- (a) an amount of licence fee is specified in a notice under paragraph 205C(2)(f) as an amount unpaid; and
- (b) the notice does not contain a statement that the ACMA is satisfied that the licensee deliberately miscalculated the amount of the licence fee; and
- (c) the amount unpaid is paid within 21 days after the day the notice was issued;

then:

- (d) this subsection applies in relation to the amount unpaid; and
- (e) no additional fee is due and payable by the licensee as a penalty.

(4) If an additional fee is due and payable by the licensee under subsection (1) or (2) in relation to an amount of licence fee, or such an additional fee has been paid, and an authorised person:

- (a) is satisfied that:
 - (i) the circumstances that contributed to the delay in payment of the amount were not caused directly or indirectly by an act or omission of the licensee; and

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- (ii) the licensee has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; or
 - (b) is satisfied that:
 - (i) the circumstances that contributed to the delay in payment of the amount were caused directly or indirectly by an act or omission of the licensee; and
 - (ii) the licensee has taken reasonable action to mitigate, or mitigate the effects of, those circumstances; and
 - (iii) having regard to the nature of those circumstances, it would be reasonable to remit the additional fee or part of that fee; or
 - (c) is satisfied that there are special circumstances that make it reasonable to remit the additional fee or part of that fee;

the authorised person may remit the additional fee or part of that fee.
- (5) If:
 - (a) an authorised person remits the additional fee or part of that fee; and
 - (b) the licensee has paid an amount of that fee;

the authorised person must, within 21 days after remitting that fee or part of that fee, arrange for so much of the amount as is remitted to be refunded to the licensee.
- (6) Despite subsections (1) and (2), an amount of unpaid licence fee may be recovered immediately after the due date in a court of competent jurisdiction as a debt due to the Commonwealth.
- (6A) An additional fee payable under subsection (1) or (2) may be recovered in a court of competent jurisdiction as a debt due to the Commonwealth.
- (7) If:
 - (a) judgment is entered or given in a court for the payment of an amount of unpaid licence fee; and
 - (b) interest is payable on the judgment debt; and
 - (c) an additional fee is payable in respect of the unpaid licence fee under paragraph (1)(a) or subparagraph (2)(e)(i);

the amount of the additional fee that would, but for the operation of this subsection, be so payable is reduced by the amount of the interest payable on that judgment debt.

- (8) If:
- (a) judgment is entered or given in a court for the payment of an amount that includes an amount of unpaid licence fee; and
 - (b) interest is payable on the judgment debt; and
 - (c) an additional fee is be payable in respect of the unpaid licence fee under paragraph (1)(a) or subparagraph (2)(e)(i);
- the amount of the additional fee that would, but for the operation of this subsection, be so payable is reduced by an amount worked out using the formula:

$$\text{Interest on judgment debt} \times \frac{\text{Licence fee component of judgment debt}}{\text{Judgment debt}}$$

where:

interest on judgment debt means the dollar amount representing the amount of interest payable on the judgment debt at the time the debt is paid.

licence fee component of judgment debt means the amount determined by the court to be the amount of licence fee unpaid.

- (9) In this section:

authorised person means:

- (a) the Minister; or
- (b) an officer authorised by the Minister in writing for the purposes of this section.

due date, in relation to a licence fee, means the day on which the fee becomes payable under the *Radio Licence Fees Act 1964*, the *Television Licence Fees Act 1964* or the *Datacasting Transmitter Licence Fees Act 2006*.

Part 14B Civil penalties

Division 1 Ancillary contravention of civil penalty provision

Section 205E

Part 14B—Civil penalties

Division 1—Ancillary contravention of civil penalty provision

205E Ancillary contravention of civil penalty provision

- (1) A person must not:
 - (a) attempt to contravene a civil penalty provision (other than this subsection); or
 - (b) aid, abet, counsel or procure a contravention of a civil penalty provision (other than this subsection); or
 - (c) induce, whether by threats or promises or otherwise, a contravention of a civil penalty provision (other than this subsection); or
 - (d) be in any way, directly or indirectly, knowingly concerned in, or party to, a contravention of a civil penalty provision (other than this subsection); or
 - (e) conspire with others to effect a contravention of a civil penalty provision (other than this subsection).
- (2) Subsection (1) is a civil penalty provision.

Division 2—Civil penalty orders

205EA Simplified outline

The following is a simplified outline of this Division:

- Pecuniary penalties are payable for contraventions of civil penalty provisions.

205F Civil penalty orders

- (1) If the Federal Court is satisfied that a person has contravened a civil penalty provision, the Federal Court may order the person to pay the Commonwealth a pecuniary penalty.
- (2) An order under subsection (1) is to be known as a *civil penalty order*.

Determining amount of pecuniary penalty

- (3) In determining the pecuniary penalty, the Federal Court must have regard to all relevant matters, including:
 - (a) the nature and extent of the contravention; and
 - (b) the nature and extent of any loss or damage suffered as a result of the contravention; and
 - (c) the circumstances in which the contravention took place; and
 - (d) whether the person has previously been found by a court in proceedings under this Act to have engaged in any similar conduct.

Maximum pecuniary penalty

- (4) The pecuniary penalty payable by a person in respect of a contravention of a civil penalty provision (other than subsection 205E(1)) must not exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the civil penalty provision.

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- (5) The pecuniary penalty payable by a person in respect of a contravention of subsection 205E(1) that relates to another civil penalty provision must not exceed the maximum pecuniary penalty that could have been imposed on the person if the person had been convicted of an offence against the provision of this Act that corresponds to the other civil penalty provision.

Penalties for continuing contraventions

- (6) If:
- (a) subsection 121FG(5), 121FHB(3), 121FJA(3) or 121FJD(3), section 136F or subsection 138A(3), 140A(8) or 142A(3) applies to a contravention of a civil penalty provision; and
 - (b) civil penalty orders are made against a person in respect of 2 or more contraventions of such a provision;
- the court may impose one penalty in respect of both or all of those contraventions, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each contravention.

Conduct contravening more than one civil penalty provision

- (7) If conduct constitutes a contravention of 2 or more civil penalty provisions, proceedings may be instituted under this section against a person in relation to the contravention of any one or more of those provisions. However, the person is not liable to more than one pecuniary penalty under this section in respect of the same conduct.

Civil enforcement of penalty

- (8) A pecuniary penalty is a civil debt payable to the Commonwealth. The Commonwealth may enforce the civil penalty order as if it were an order made in civil proceedings against the person to recover a debt due by the person. The debt arising from the order is taken to be a judgment debt.

205G Who may apply for a civil penalty order

- (1) Only the ACMA may apply for a civil penalty order.
- (2) Subsection (1) does not exclude the operation of the *Director of Public Prosecutions Act 1983*.

205H 2 or more proceedings may be heard together

The Federal Court may direct that 2 or more proceedings for civil penalty orders are to be heard together.

205J Time limit for application for an order

Proceedings for a civil penalty order may be started no later than 6 years after the contravention.

205K Civil evidence and procedure rules for civil penalty orders

The Federal Court must apply the rules of evidence and procedure for civil matters when hearing proceedings for a civil penalty order.

205L Civil proceedings after criminal proceedings

The Federal Court must not make a civil penalty order against a person for a contravention of a civil penalty provision if the person has been convicted of an offence constituted by conduct that is substantially the same as the conduct constituting the contravention.

205M Criminal proceedings during civil proceedings

- (1) Proceedings for a civil penalty order against a person for a contravention of a civil penalty provision are stayed if:
 - (a) criminal proceedings are started or have already been started against the person for an offence; and
 - (b) the offence is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention.
- (2) The proceedings for the order may be resumed if the person is not convicted of the offence. Otherwise, the proceedings for the order are dismissed.

205N Criminal proceedings after civil proceedings

Criminal proceedings may be started against a person for conduct that is substantially the same as conduct constituting a contravention of a civil penalty provision regardless of whether a civil penalty order has been made against the person.

Section 205P

205P Evidence given in proceedings for a civil penalty order not admissible in criminal proceedings

Evidence of information given, or evidence of production of documents, by an individual is not admissible in criminal proceedings against the individual if:

- (a) the individual previously gave the evidence or produced the documents in proceedings for a civil penalty order against the individual for a contravention of a civil penalty provision (whether or not the order was made); and
- (b) the conduct alleged to constitute the offence is substantially the same as the conduct that was claimed to constitute the contravention.

However, this does not apply to a criminal proceeding in respect of the falsity of the evidence given by the individual in the proceedings for the civil penalty order.

205PAA Mistake of fact

- (1) A person is not liable to have a civil penalty order made against the person for a contravention of a civil penalty provision (other than subsection 202(1A) or (2AA)) if:
 - (a) at or before the time of the conduct constituting the contravention, the person:
 - (i) considered whether or not facts existed; and
 - (ii) was under a mistaken but reasonable belief about those facts; and
 - (b) had those facts existed, the conduct would not have constituted a contravention of the civil penalty provision.
- (2) For the purposes of subsection (1), a person may be regarded as having considered whether or not facts existed if:
 - (a) the person had considered, on a previous occasion, whether those facts existed in the circumstances surrounding that occasion; and
 - (b) the person honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

- (3) A person who wishes to rely on subsection (1) or (2) in proceedings for a civil penalty order bears an evidential burden in relation to that matter.

Part 14C—Injunctions

205PA Simplified outline

The following is a simplified outline of this Part:

- The Federal Court may grant injunctions in relation to contraventions of subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6 (which deal with the provision of unlicensed services).
- The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity).

205Q Injunctions

If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of section 61AH or 61AMB or subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E or subclause 49(3) of Schedule 6, the Federal Court may, on the application of the ACMA, grant an injunction:

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

205R Interim injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court for an injunction under section 205Q, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that section.

No undertakings as to damages

- (2) The Federal Court is not to require an applicant for an injunction under section 205Q, as a condition of granting an interim injunction, to give any undertakings as to damages.

205S Discharge etc. of injunctions

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

205T Certain limits on granting injunctions not to apply

The power of the Federal Court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:

- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

205U Other powers of the Federal Court unaffected

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

Part 14D—Enforceable undertakings

205V Simplified outline

The following is a simplified outline of this Part:

- A person may give the ACMA an enforceable undertaking about compliance with this Act or a registered code of practice.

205W Acceptance of undertakings

- (1) The ACMA may accept any of the following undertakings:
 - (a) a written undertaking given by a person that the person will, in order to comply with this Act, take specified action;
 - (b) a written undertaking given by a person that the person will, in order to comply with this Act, refrain from taking specified action;
 - (c) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene this Act, or is unlikely to contravene this Act, in the future;
 - (d) a written undertaking given by a person that the person will, in order to comply with a registered code of practice, take specified action;
 - (e) a written undertaking given by a person that the person will, in order to comply with a registered code of practice, refrain from taking specified action;
 - (f) a written undertaking given by a person that the person will take specified action directed towards ensuring that the person does not contravene a registered code of practice, or is unlikely to contravene a registered code of practice, in the future.
- (2) The undertaking must be expressed to be an undertaking under this section.

- (3) The person may withdraw or vary the undertaking at any time, but only with the consent of the ACMA.
- (4) The ACMA may, by written notice given to the person, cancel the undertaking.
- (5) The ACMA may publish the undertaking on its Internet site.

205X Enforcement of undertakings

- (1) If:
 - (a) a person has given an undertaking under section 205W; and
 - (b) the undertaking has not been withdrawn or cancelled; and
 - (c) the ACMA considers that the person has breached the undertaking;the ACMA may apply to the Federal Court for an order under subsection (2).
- (2) If the Federal Court is satisfied that the person has breached the undertaking, the court may make any or all of the following orders:
 - (a) an order directing the person to comply with the undertaking;
 - (b) an order directing the person to pay to the ACMA, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - (c) any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - (d) any other order that the court considers appropriate.

Part 14E—Infringement notices

205XAA Simplified outline

The following is a simplified outline of this Part:

- This Part sets up a system of infringement notices for contraventions of a designated infringement notice provision as an alternative to the institution of court proceedings.

205XA Formal warning

If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may, by written notice given to the person:

- (a) inform the person accordingly; and
- (b) warn the person that the officer, or another authorised infringement notice officer, may be entitled to give the person an infringement notice relating to the contravention.

Note: See subsection 205Y(4).

205Y When an infringement notice can be given

- (1) If an authorised infringement notice officer has reasonable grounds to believe that a person has contravened a designated infringement notice provision, the officer may give the person an infringement notice relating to the contravention.
- (2) The infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place.
- (3) Subsection (1) has effect subject to subsection (4).
- (4) An authorised infringement notice officer must not give a person an infringement notice relating to a contravention of a designated infringement notice provision unless the officer, or another authorised infringement notice officer, has previously given a notice to the person under section 205XA in relation to:

- (a) the contravention; or
- (b) a similar contravention.

205Z Matters to be included in an infringement notice

An infringement notice must:

- (a) set out the name of the person to whom the notice is given; and
- (b) set out the name of the person who gave the notice; and
- (c) set out brief details relating to the alleged contravention of a designated infringement notice provision, including the date of the alleged contravention; and
- (d) contain a statement to the effect that proceedings will not be brought in relation to the alleged contravention if the penalty specified in the notice is paid to the ACMA, on behalf of the Commonwealth, within:
 - (i) 28 days after the notice is given; or
 - (ii) if the ACMA allows a longer period—that longer period; and
- (e) give an explanation of how payment of the penalty is to be made; and
- (f) set out the effect of section 205ZB; and
- (g) set out such other matters (if any) as are specified in the regulations.

205ZA Amount of penalty

The penalty to be specified in an infringement notice given to a person must be a pecuniary penalty equal to:

- (a) if the person is a commercial television broadcasting licensee or a subscription television broadcasting licensee—60 penalty units; or
- (b) in any other case—10 penalty units.

205ZB Withdrawal of an infringement notice

- (1) This section applies if an infringement notice is given to a person.
- (2) An authorised infringement notice officer may, by written notice (the *withdrawal notice*) given to the person, withdraw the infringement notice.

Section 205ZC

- (3) To be effective, the withdrawal notice must be given to the person within 28 days after the infringement notice was given.

Refund of penalty if infringement notice withdrawn

- (4) If:
- (a) the penalty specified in the infringement notice is paid; and
 - (b) the infringement notice is withdrawn after the penalty is paid;
- the Commonwealth is liable to refund the penalty.

205ZC What happens if the penalty is paid

- (1) This section applies if:
- (a) an infringement notice relating to an alleged contravention of a designated infringement notice provision is given to a person; and
 - (b) the penalty is paid in accordance with the infringement notice; and
 - (c) the infringement notice is not withdrawn.
- (2) Any liability of the person for the alleged contravention is discharged.
- (3) Proceedings may not be brought against the person for the alleged contravention.

205ZD Effect of this Part on criminal proceedings

This Part does not:

- (a) require an infringement notice to be given in relation to an alleged contravention of a designated infringement notice provision; or
- (b) affect the liability of a person to have proceedings brought against the person for an alleged contravention of a designated infringement notice provision if:
 - (i) the person does not comply with an infringement notice relating to the contravention; or
 - (ii) an infringement notice relating to the contravention is not given to the person; or
 - (ii) an infringement notice relating to the contravention is given to the person and subsequently withdrawn; or

- (c) limit a court's discretion to determine the amount of a penalty to be imposed on a person who is found in proceedings to have contravened a designated infringement notice provision.

205ZE Appointment of authorised infringement notice officer

The ACMA may, by writing, appoint a member of the staff of the ACMA as an authorised infringement notice officer for the purposes of this Act.

205ZF Regulations

The regulations may make further provision in relation to infringement notices.

Part 15—Miscellaneous

206 Broadcasting or datacasting taken to be publication in permanent form

For the purposes of the law of defamation, the broadcasting or datacasting of matter is taken to be publication of the matter in a permanent form.

207 Amounts of fees

Where the Minister or the ACMA may determine a fee under this Act, the amount of the fee so determined must not exceed the amount that the Minister or the ACMA estimates to be costs of processing the application, or doing the thing, to which the fee relates.

209 Prosecutions

- (1) An offence against this Act may be prosecuted at any time.
- (2) A prosecution for an offence against this Act the maximum penalty for which exceeds 500 penalty units for a natural person may be brought only in the Federal Court.
- (3) Subsection (2) does not apply to an offence the maximum penalty for which may include a term of imprisonment.
- (4) The Federal Court has jurisdiction to hear and determine matters arising under this Act.

210 Publication of opinions

- (1) Subject to subsection (2), if the ACMA gives an opinion under section 21 or 74, the ACMA must cause a copy of the opinion to be published in the *Gazette*.

- (2) The ACMA must not publish such an opinion until:
 - (a) in the case of an opinion under section 21—the service to which it relates has commenced; or
 - (b) in the case of an opinion under section 74—the transaction has taken place or the contract, agreement or arrangement has been entered into.

211 Service of notices

In addition to other methods of giving a notice to a person, a notice under this Act may be given to a person by telex or by facsimile transmission.

212 Special provisions for re-transmission of programs

- (1) Subject to this section, the regulatory regime established by this Act does not apply to a service that does no more than:
 - (a) re-transmit programs that are transmitted by a national broadcasting service; or
 - (b) re-transmit programs that are transmitted by a commercial broadcasting licensee or a community broadcasting licensee:
 - (i) within the licence area of that licence; or
 - (ii) outside the licence area of that licence in accordance with permission in writing given by the ACMA; or
 - (c) re-transmit programs that are transmitted by a service that does no more than transmit program material supplied by National Indigenous TV Limited.
 - (2) No action, suit or proceeding lies against a person in respect of the re-transmission by the person of programs as mentioned in subsection (1).
 - (2A) However, the rule in subsection (2) does not prevent an action, suit or proceeding against a person under the *Copyright Act 1968* for infringement of copyright subsisting in a work, a sound recording or a cinematograph film, where:
 - (a) the infringement is in respect of the re-transmission by the person of programs as mentioned in subsection (1); and
 - (b) the re-transmission is not provided by a self-help provider.
 - (2B) The rule in subsection (2) does not prevent an action, suit or proceeding against a person under the *Radiocommunications Act*
-

Section 212

1992 in relation to a breach of any of the conditions of a datacasting transmitter licence.

- (2C) The Minister may give the ACMA a written direction about the exercise of the power conferred by subparagraph (1)(b)(ii).
- (3) A reference in this section to a *re-transmission* does not include a reference to:
- (a) a re-transmission by a commercial television broadcasting licensee of the programs transmitted by any of the licensee's commercial television broadcasting services; or
 - (aa) a re-transmission by a commercial radio broadcasting licensee of the programs transmitted by any of the licensee's commercial radio broadcasting services; or
 - (b) a re-transmission by a community broadcasting licensee (other than a designated community radio broadcasting licensee) of the programs transmitted by the licensee's community broadcasting service; or
 - (ba) a re-transmission by a designated community radio broadcasting licensee of the programs transmitted by any of the licensee's community radio broadcasting services; or
 - (c) a re-transmission by the Australian Broadcasting Corporation of the programs transmitted by any of its national broadcasting services, being national broadcasting services covered by paragraph 13(1)(a); or
 - (d) a re-transmission by the Special Broadcasting Service Corporation of the programs transmitted by any of its national broadcasting services; or
 - (e) a re-transmission of program material mentioned in paragraph (1)(c) by the licensee who transmitted the program material.
- (4) In this section:

cinematograph film has the same meaning as in the *Copyright Act 1968*.

self-help provider has the meaning given by section 212A.

sound recording has the same meaning as in the *Copyright Act 1968*.

work has the same meaning as in the *Copyright Act 1968*.

212A Self-help providers

- (1) For the purposes of the application of section 212 to a particular re-transmission of programs, a *self-help provider* is:
- (a) a non-profit body which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a small community; or
 - (b) a local government body which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community located in the area served by the body; or
 - (c) a company which operates a mine and/or related infrastructure at an isolated location and which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community:
 - (i) that is located in the vicinity of the mine or infrastructure, as the case may be; and
 - (ii) that accommodates the whole or a part of the workforce for the mine or infrastructure, as the case may be; or
 - (d) a company which operates a petroleum, oil or gas installation and/or related infrastructure at an isolated location and which provides the re-transmission for the sole or principal purpose of obtaining or improving reception in a community:
 - (i) that is located in the vicinity of the installation or infrastructure, as the case may be; and
 - (ii) that accommodates the whole or a part of the workforce for the installation or infrastructure, as the case may be; or
 - (e) a person who provides the re-transmission within a building or structure for the sole or principal purpose of obtaining or improving reception for persons in the building or structure, as the case may be; or
 - (f) a person who provides the re-transmission within one or more places that are all in the same area (within the meaning of section 36 of the *Telecommunications Act 1997*) for the sole or principal purpose of obtaining or improving reception for persons in those places; or
 - (g) a person who is a declared self-help provider in relation to the re-transmission;

Section 212B

other than:

- (h) a subscription television broadcasting licensee; or
 - (i) a related body corporate of a subscription television broadcasting licensee; or
 - (j) a person who is an excluded provider in relation to the re-transmission.
- (2) Nothing in subsection (1) limits the generality of anything else in subsection (1).
- (3) Subsection (1) does not limit the generality of anything in section 212B.
- (4) In this section:

declared self-help provider has the meaning given by section 212B.

excluded provider has the meaning given by section 212B.

isolated location means a place in a State or Territory that is not at a location in, or adjacent to, an eligible urban area (within the meaning of section 140 of the *Fringe Benefits Tax Assessment Act 1986*).

non-profit body means an incorporated body that:

- (a) is not carried on for the purposes of profit or gain to its individual members; and
- (b) is prohibited by its constituent document from making any distribution of money or property to its individual members.

related body corporate has the same meaning as in the *Corporations Act 2001*.

212B Declared self-help providers and excluded providers

Declared self-help providers

- (1) The Minister may, by writing, determine that a specified person who provides a re-transmission of programs for the sole or principal purpose of obtaining or improving reception is a ***declared self-help provider*** in relation to the re-transmission for the purposes of section 212A.

- (2) The Minister may, by writing, determine that a specified person who provides a re-transmission of programs for the sole or principal purpose of obtaining or improving reception in specified circumstances is a ***declared self-help provider*** in relation to the re-transmission for the purposes of section 212A.

Excluded providers

- (3) The Minister may, by writing, determine that a specified person who provides a re-transmission of programs is an ***excluded provider*** in relation to the re-transmission for the purposes of section 212A.
- (4) The Minister may, by writing, determine that a specified person who provides a re-transmission of programs in specified circumstances is an ***excluded provider*** in relation to the re-transmission for the purposes of section 212A.

Determination has effect

- (5) A determination under this section has effect accordingly.

Disallowable instrument

- (6) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

213 Penalties for continuing offences

If an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*), the maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.

214 Procedure relating to continuing offences

- (1) Where subsection 66(2), 121FG(2) or 121FHA(2), 121FJC(2), section 136, subsection 138(4), section 140 or subsection 142(5) or subclause 49(2), 50(3), 52(2) or 53(5) of Schedule 6 applies to an offence against a provision of this Act, charges against the same

Section 215

person for any number of offences against that provision may be joined in the same information, complaint or summons if those charges are founded on the same facts or form, or are part of a series of offences of the same or a similar character.

- (2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence.

215 Guidelines relating to ACMA's enforcement powers etc.

ACMA's enforcement powers etc.

- (1) In exercising a power conferred on the ACMA by:
- (a) Division 4 of Part 8B; or
 - (b) Part 10, 13, 14B, 14C or 14D; or
 - (c) Part 8 of Schedule 6;
- the ACMA must have regard to any relevant guidelines in force under subsection (4).

Power to give infringement notices

- (2) In exercising a power conferred on an authorised infringement notice officer by Part 14E, the officer must have regard to any relevant guidelines in force under subsection (4).

Referrals to Director of Public Prosecutions

- (3) In deciding whether to refer a matter to the Director of Public Prosecutions for action in relation to a possible offence against this Act, the ACMA must have regard to any relevant guidelines in force under subsection (4).

Formulation of guidelines

- (4) The ACMA may, by legislative instrument, formulate guidelines for the purposes of subsections (1), (2) and (3).

Note: For consultation requirements, see Part 3 of the *Legislative Instruments Act 2003*.

Section 215A

- (5) The ACMA must ensure that guidelines relating to the powers conferred on the ACMA by:
 - (a) Division 4 of Part 8B; or
 - (b) Part 10, 14B or 14D; or
 - (c) Part 8 of Schedule 6;are in force under subsection (4) at all times after the commencement of this section.
- (6) The ACMA must ensure that guidelines relating to the powers conferred on an authorised infringement notice officer by Part 14E are in force under subsection (4) at all times after the commencement of this section.

215A Review—technologies for the transmission of digital radio broadcasting services and restricted datacasting services in regional licence areas etc.

- (1) Before 1 January 2011, the Minister must cause to be conducted a review of the following matters:
 - (a) the relative merits of using various terrestrial and satellite technologies capable of transmitting:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services;in regional licence areas;
 - (b) the development of those technologies (whether or not in Australia);
 - (c) the availability and price (whether or not in Australia) of:
 - (i) transmission equipment associated with those technologies; and
 - (ii) domestic reception equipment associated with those technologies;
 - (d) whether any laws of the Commonwealth should be amended in order to facilitate the transmission of:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services;in regional licence areas using those technologies.

Section 215B

- (2) In conducting a review of the matter mentioned in paragraph (1)(a), regard must be had to:
- (a) the geographic coverage that would result from the use of those technologies to transmit:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services; in regional licence areas; and
 - (b) the characteristics of:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services; that would be likely to result from the use of those technologies to transmit those services in regional licence areas.
- (3) Subsection (2) does not limit subsection (1).

Report

- (4) The Minister must cause to be prepared a report of a review under subsection (1).
- (5) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

Definitions

- (6) In this section:
- digital radio broadcasting service*** means:
- (a) a digital commercial radio broadcasting service; or
 - (b) a digital community radio broadcasting service; or
 - (c) a digital national radio broadcasting service.

regional licence area has the same meaning as in section 8AC.

215B Review—development and regulation of digital radio broadcasting services and restricted datacasting services

- (1) Before 1 January 2014, the Minister must cause to be conducted a review of the following matters:

- (a) the development of various terrestrial and satellite technologies capable of transmitting:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services;in Australia;
 - (b) the implementation of those technologies in foreign countries;
 - (c) the operation of this Act in so far as it deals with the licensing and regulation of:
 - (i) digital radio broadcasting services; and
 - (ii) restricted datacasting services.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.
- (4) In this section:
- digital radio broadcasting service* means:
- (a) a digital commercial radio broadcasting service; or
 - (b) a digital community radio broadcasting service; or
 - (c) a digital national radio broadcasting service.

216 Ministerial consultative and advisory bodies

The Minister may form consultative or advisory bodies to assist the Minister in the administration of this Act.

216A Schedule 4 (digital television broadcasting)

Schedule 4 has effect.

216B Schedule 5 (online services)

Schedule 5 has effect.

216C Schedule 6 (datacasting services)

Schedule 6 has effect.

Section 216D

216D Schedule 7 (content services)

Schedule 7 has effect.

217 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted to be prescribed by this Act; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) The regulations may prescribe penalties, not exceeding 250 penalty units for a company or 50 penalty units for a natural person, for offences against the regulations.

218 Channel sharing

- (1) The regulations may make provision for the allocation by the ACMA of additional commercial television broadcasting licences, commercial radio broadcasting licences and community broadcasting licences on the application of an existing licensee.
- (2) Those additional licences are:
 - (a) to be allocated to a person other than the licensee; and
 - (b) to allow the provision of broadcasting services with the use of the same part of the broadcasting services bands or other means of delivery as is used by the licensee.
- (3) The provisions of this Act, other than the provisions dealing with advertising for or allocating licences, apply to those additional licences.
- (4) If such an additional licence would use a part of the broadcasting services bands being used by a community broadcasting licensee, services under that licence can only be provided with the approval of the ACMA.

Schedule 1—Control and ownership of company interests

Part 1—Introduction

1 Control—general

- (1) This Schedule is intended to provide a means of finding out who is in a position to exercise control of commercial television broadcasting licences, commercial radio broadcasting licences, subscription television broadcasting licences, international broadcasting licences, datacasting transmitter licences, restricted datacasting licences, newspapers and companies and a means of tracing company interests.

This Schedule recognises that the concept of control of a licence, a newspaper or a company can be a complex one.

The holding of company interests is not the only way to be in a position to exercise control. Clauses 2 and 3 set out the rules for deciding when a position to exercise control exists. While company interests may be important in deciding that question, they are only one issue. In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people. In this respect, the definition of *associate* in section 6 of this Act is important.

A person who has company interests exceeding 15% in a company is regarded as being in a position to control the company.

Control of a company may also come about through company interests of 15% or less. This could happen where a person holds company interests of say 10% but no other person holds company interests of more than say 2% and those other persons do not act in concert.

A person may be in a position to exercise control of only the media activities of a licensee or a newspaper, but that position is nevertheless to be regarded as a position to exercise control of the licence or the newspaper.

Schedule 1 Control and ownership of company interests

Part 1 Introduction

Clause 1

- (2) Because of the complexities involved in this area, it is not possible to provide rules which will give a definite answer in all cases. Therefore, the ACMA is given a monitoring role over the broadcasting and datacasting industries and suitable powers of investigation in order to reach a conclusion as to whether a person is in a position to exercise control or not. In order to provide certainty for persons involved in those industries, the ACMA is also given, under section 74, a power to give a binding opinion on the question of control.

Part 2—When person is in a position to exercise control

2 When person is in a position to exercise control

- (1) For the purposes of this Schedule, a person is in a position to exercise control of a licence or a company if:
 - (a) the person, either alone or together with an associate of the person, is in a position to exercise control of the licensee or the company; or
 - (b) in the case of a licence (other than a datacasting transmitter licence or a restricted datacasting licence):
 - (i) the person is the licensee; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence; or
 - (ba) in the case of a datacasting transmitter licence:
 - (i) the person is the licensee; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the datacasting content transmitted by the licensee; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in transmitting datacasting services under the licence; or
 - (bb) in the case of a restricted datacasting licence:
 - (i) the person is the licensee; or

Schedule 1 Control and ownership of company interests

Part 2 When person is in a position to exercise control

Clause 2

- (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the datacasting content provided by the licensee; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing restricted datacasting services under the licence; or
 - (c) in the case of a non-licensee company—the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the company; or
 - (d) the person, either alone or together with an associate of the person, is in a position to:
 - (i) veto any action taken by the board of directors of the licensee or the company; or
 - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or
 - (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or
 - (e) the licensee or the company or more than 50% of its directors:
 - (i) act, or are accustomed to act; or
 - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.
- (2) Paragraph (1)(b) does not apply to the provision of programs by a person to a licensee under an agreement for the supply of programs to a licensee if the conditions of the agreement relate only to the programs so supplied or their promotion.

- (2A) Paragraph (1)(ba) does not apply to the provision of datacasting content by a person to a licensee under an agreement for the supply of datacasting content to the licensee if:
- (a) the conditions of the agreement relate only to the datacasting content so supplied or its promotion; and
 - (b) the content so supplied is a minority of the datacasting content transmitted by the licensee.
- (2B) Paragraph (1)(bb) does not apply to the provision of datacasting content by a person to a licensee under an agreement for the supply of datacasting content to the licensee if:
- (a) the conditions of the agreement relate only to the datacasting content so supplied or its promotion; and
 - (b) the content so supplied is a minority of the datacasting content provided by the licensee.
- (3) An employee of a licensee or of a non-licensee company is not, except through an association with another person, to be regarded as being in a position to exercise control of a licence or a company under subclause (1) purely because of being an employee.
- (4) More than one person may be in a position to exercise control of a licence or a company.
- (5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:
- (a) the licensees share any or all of the following:
 - (i) equipment;
 - (ii) studios;
 - (iii) other production facilities;
 - (iv) transmission facilities;
 - (v) human resources;
 - (vi) other resources;
 - (b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;
 - (c) the licensees have financial relationships with each other;
 - (d) both of the following subparagraphs apply:

Clause 3

- (i) the person is in a position to exercise control of one or more of the licences;
- (ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

3 When person is in a position to exercise control of a newspaper

- (1) For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:
 - (a) the person is the publisher of the newspaper; or
 - (b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:
 - (i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or
 - (ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or
 - (c) if the newspaper is published by a company:
 - (i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
 - (iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
 - (v) the company or more than 50% of its directors:
 - (A) act, or are accustomed to act; or
 - (B) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;

in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

- (2) Subparagraph (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.
- (3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under subclause (1) purely because of being an employee.

4 Special provisions for authorised lenders

- (1) Subject to subclause (2), if an authorised lender has a loan agreement with a media company:
 - (a) the agreement; and
 - (b) any other agreement or transaction that is:
 - (i) associated with the loan agreement; and
 - (ii) entered into in the ordinary course of carrying on a business of providing financial accommodation; and
 - (c) anything done under the loan agreement or under an agreement or transaction referred to in paragraph (b), being a thing done in the ordinary course of carrying on a business of providing financial accommodation;are to be disregarded in deciding whether the lender or any controller of the lender is in a position to exercise control of the media company or of any licence or newspaper of which the media company is in a position to exercise control.
- (2) Subclause (1) does not apply in relation to being in a position to exercise control of a licence if the lender or a controller of the lender:
 - (a) prevents the licensee from complying with a condition of the licence; or
 - (b) in the case of a licensee other than a datacasting transmitter licensee or a restricted datacasting licensee—controls the selection or provision of any of the programs to be broadcast by the licensee; or

Clause 4

- (ba) in the case of a datacasting transmitter licensee—controls the selection or provision of any of the datacasting content to be transmitted by the licensee; or
 - (bb) in the case of a restricted datacasting licensee—controls the selection or provision of any of the datacasting content to be provided by the licensee; or
 - (c) appoints or secures the appointment of at least half of the board of directors of the licensee; or
 - (d) vetoes the appointment of at least half of the board of directors of the licensee otherwise than:
 - (i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and
 - (ii) in the ordinary course of carrying on a business of providing financial accommodation.
- (3) Subclause (1) does not apply in relation to being in a position to exercise control of a newspaper if the lender or a controller of the lender:
- (a) controls the selection or provision of any of the material to be published in the newspaper; or
 - (b) appoints or secures the appointment of at least half of the board of directors of the media company that publishes the newspaper; or
 - (c) vetoes the appointment of at least half of the board of directors of the media company that publishes the newspaper otherwise than:
 - (i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and
 - (ii) in the ordinary course of carrying on a business of providing financial accommodation.
- (4) In this clause:
- authorised lender*** means:
- (a) an ADI (authorised deposit-taking institution) within the meaning of the *Banking Act 1959*; or
 - (b) a corporation formed under the law of a State or Territory to carry on the business of banking within Australia; or

- (c) a corporation whose sole or principal business is the provision of financial accommodation to other persons, being a corporation:
 - (i) that is a registered entity under the *Financial Sector (Collection of Data) Act 2001*; or
 - (ii) in respect of which a declaration under subclause (5) is in force; or
 - (iii) in respect of which an application for such a declaration has been made but not finally disposed of.

controller, in relation to an authorised lender, means a person who is in a position to exercise control of the lender.

loan agreement, in relation to a company, means an agreement entered into in the ordinary course of carrying on a business of providing financial accommodation under which:

- (a) financial accommodation is provided to the company; or
- (b) money is deposited with the company; or
- (c) a debt or liability (whether or not financial) of the company arises;

whether or not:

- (d) the financial accommodation, money, debt or liability is secured; or
- (e) money payable by the company under the agreement is presently payable; or
- (f) liability arising under the agreement is unconditional.

media company means:

- (a) a company that holds a commercial television broadcasting licence or a commercial radio broadcasting licence; or
- (b) a company that holds a subscription television broadcasting licence; or
- (ba) a company that holds an international broadcasting licence; or
- (bb) a company that holds a datacasting transmitter licence; or
- (bc) a company that holds a restricted datacasting licence; or
- (c) a company that publishes a newspaper; or
- (d) a company that is in a position to exercise control of such a company.

Schedule 1 Control and ownership of company interests

Part 2 When person is in a position to exercise control

Clause 4

- (5) The ACMA may, in writing, declare a corporation (whether formed inside or outside Australia) whose sole or principal business is the provision of financial accommodation to other persons to be an authorised lender for the purposes of this clause.

Part 3—Deemed control

5 Explanation of examples

In an example in this Part, a percentage written next to an arrow indicates that the person before the arrow has company interests in the company to which the arrow is pointing which exceeds that percentage.

6 The 15% rule

- (1) If a person has company interests in a company exceeding 15%, the person is to be regarded as being in a position to exercise control of the company.

7 Application of method through chain of companies

The method described in clause 6 can be applied in the case of a chain of companies. Where a company interest of more than 15% is maintained throughout the chain, the person is to be regarded as being in a position to exercise control of the last company in the chain.

Example:

Person $\xrightarrow{15\%}$ *Co. A* $\xrightarrow{15\%}$ *Co. B* $\xrightarrow{15\%}$ *Co. C* $\xrightarrow{15\%}$ *Co. D*

Here the person is to be regarded as being in a position to exercise control of Company D.

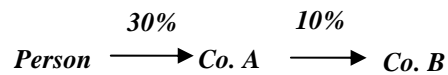
Part 4—Tracing of ownership

8 Tracing of ownership

Company interests can be traced through a chain of companies using a method known as the fractional tracing method. This method applies a formula to decide what company interest a person has.

This method is best demonstrated by an example.

Example:



The person's company interest in Company B is worked out using the formula:

$$\text{Company Interest 1} \times \text{Company Interest 2}$$

where:

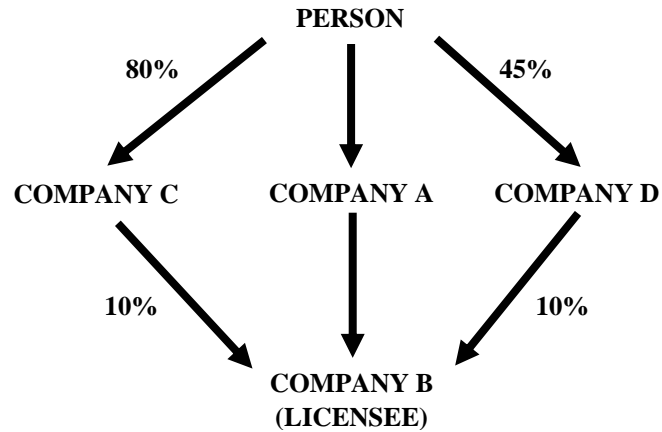
Company Interest 1 is the company interest of the person, expressed as a fraction, in Company A.

Company Interest 2 is the company interest of Company A, expressed as a fraction, in Company B.

In this case, the formula produces: $3/10 \times 1/10$, which means that the person has a 3% company interest in Company B.

Interests traced in this way can be added. If Company B is a licensee and the person had, through other chains of companies, a further 12.5% company interest in Company B, the person would be regarded as being in a position to exercise control of Company B under Part 3 of this Schedule because the person would have company interests exceeding 15% in Company B.

Example:



In this example, the person has a 15.5% company interest in Company B. This is made up of 3% (through Company A), 8% (through Company C) and 4.5% (through Company D).

This method of tracing ownership may be used through any number of companies. However, the ACMA is not required to trace every minor company interest.

Schedule 2—Standard conditions

Part 1—Interpretation

1 Definitions

In this Schedule:

Classification Board means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

election means an election to a Parliament or a local government authority of a State or Territory.

election advertisement, in relation to an election, means:

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

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

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

part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;

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

election period means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (b) in relation to any other election to a Parliament—the period that starts on:
- (i) the day on which the proposed polling day for the election is publicly announced; or
 - (ii) the day on which the writs for the election are issued; whichever happens first, and ends at the close of the poll on the polling day for the election; and
- (c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and
- (e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day.

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

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

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

referendum means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced.

Clause 1

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

required particulars, in relation to a political matter that is broadcast, means:

- (a) if the broadcasting was authorised by a political party:
 - (i) the name of the political party; and
 - (ii) the town, city or suburb in which the principal office of the political party is situated; and
 - (iii) the name of the natural person responsible for giving effect to the authorisation; and
- (b) if the broadcasting of the political matter was authorised by a person other than a political party:
 - (i) the name of the person who authorised the broadcasting of the political matter; and
 - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter.

required period, in relation to the keeping of a record in relation to political matter, means:

- (a) subject to paragraph (b), the period of 6 weeks commencing on the day on which the matter was broadcast; or
- (b) if the matter relates to an election or referendum and was broadcast during the election period in relation to the election or referendum—the period commencing on the day on which the matter was broadcast and ending:
 - (i) at the end of the period referred to in paragraph (a); or
 - (ii) if that period ends before the end of the election period in relation to the election or referendum—the day on which that election period ends;

or such longer period as the ACMA, before the end of that period, directs by notice in writing to the broadcaster concerned.

2 Interpretation—certain things do not amount to broadcasting of advertisements

- (1) For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:
- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
 - (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.
- (2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:
- (a) community information material or community promotional material; or
 - (b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on a service provided under the licence, whether or not the announcement:
 - (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
 - (ii) promotes activities, events, products, services or programs of the person; or
 - (c) material that announces or promotes a service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the service or services provided under the licence;
- is not taken to be the broadcasting of an advertisement.

Part 2—Special conditions

3 Broadcasting of political or controversial material

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election, being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.
- (3) This clause does not require a broadcaster to broadcast any matter free of charge.

3A Broadcasting of election advertisements

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If:
 - (a) a broadcaster has a licence that has a licence area; and
 - (b) an election to a Parliament is to be held; and

(c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;

the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.

(3) If:

(a) a broadcaster has a licence that does not have a licence area; and

(b) an election to a Parliament is to be held; and

(c) a broadcasting service under the licence is normally received in the area of Australia to which the election relates;

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

(4) If:

(a) a broadcaster provides a broadcasting service under a class licence; and

(b) an election to a Parliament is to be held; and

(c) the broadcasting service is normally received in the area of Australia to which the election relates;

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

4 Identification of certain political matter

(1) In this clause, *broadcaster* means:

(a) a commercial television broadcasting licensee; or

(b) a commercial radio broadcasting licensee; or

(c) a community broadcasting licensee; or

(d) a subscription television broadcasting licensee; or

(e) a person providing broadcasting services under a class licence.

(2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the ACMA.

Clause 5

- (3) A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period and must give to the ACMA any particulars of the record that the ACMA, by written notice, requires.
- (4) For the purposes of this clause, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

5 Records of matter broadcast

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a community broadcasting licensee; or
 - (d) a subscription television broadcasting licensee; or
 - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the ACMA.
- (3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:
 - (a) 6 weeks from the date on which the matter was broadcast; or
 - (b) if a complaint has been made about the matter—for 60 days from the date on which the matter was broadcast;or for such longer period as the ACMA, in special circumstances, directs in writing.

- (4) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subclause (3), the person may give to the broadcaster a notice in writing informing the broadcaster that the record may be required for the purposes of the proceedings.
- (5) If such a notice is given to a broadcaster in respect of a record, the broadcaster must, subject to this clause, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.
- (6) If the proceedings are not instituted within a period of 3 months after the notice is given to the broadcaster, subclause (5) ceases to apply to the record at the end of that period.
- (7) The obligation imposed by this clause on a broadcaster to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.
- (8) If the ACMA is of the opinion that a matter of which a record has been made under this clause is of sufficient historic interest to justify its being permanently preserved, the ACMA may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or authority specified by the ACMA, and the person to whom the direction is given must comply with the direction but is entitled to fair compensation.
- (9) A broadcaster must, without charge, make available to the ACMA, upon request, any specified record made by the broadcaster under subclause (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).

6 Advertisements relating to medicines

- (1) In this clause, *broadcaster* means:
 - (a) a commercial television broadcasting licensee; or
 - (b) a commercial radio broadcasting licensee; or
 - (c) a subscription television broadcasting licensee; or
 - (d) a person providing broadcasting services under a class licence.

Clause 6

- (2) A broadcaster must not broadcast an advertisement relating to therapeutic goods that is required to be approved under the *Therapeutic Goods Act 1989* unless the text of the advertisement has been so approved.

Part 3—Commercial television broadcasting licences

7 Conditions of commercial television broadcasting licences

- (1) Each commercial television broadcasting licence is subject to the following conditions:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
 - (ba) the licensee will comply with subsection 130V(1) (which deals with industry standards);
 - (c) except in the case of a licence allocated under subsection 40(1)—the articles of association of the licensee will at all times contain provisions under which:
 - (i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and
 - (ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and
 - (iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and

Clause 7

- (iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act;
- (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
- (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
- (f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises operation by the licensee of the radiocommunications devices used to provide broadcasting services;
- (g) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;
- (ga) the licensee will not broadcast films that are classified as “R 18+” unless the films have been modified as mentioned in paragraph 123(3A)(b);
- (h) the licensee will not use broadcasting services in the commission of an offence against another Act or a law of a State or Territory;
- (ha) the licensee will not contravene the anti-hoarding rule (within the meaning of section 146E);
- (i) the licensee will commence to provide at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;
- (ia) the licensee will comply with the requirements set out in section 205B;
- (j) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6.

- (k) the licensee will comply with the requirements of the commercial television conversion scheme in force under clause 6 of Schedule 4 other than either of the following requirements:
 - (i) a requirement covered by paragraph 6(3)(a) or (b) of that Schedule;
 - (ii) a requirement of Part B of the scheme to commence digital transmission;
- (l) the licensee will comply with so much of an implementation plan:
 - (i) given by the licensee to the ACMA in accordance with the commercial television conversion scheme in force under clause 6 of Schedule 4; and
 - (ii) approved by the ACMA;as does not relate to either of the following requirements:
 - (iii) a requirement covered by paragraph 6(3)(a) or (b) of that Schedule;
 - (iv) a requirement of Part B of the commercial television conversion scheme to commence digital transmission;
- (m) if there is a simulcast period for the licence area of the licence—the licensee will not broadcast, on the core commercial television broadcasting service, a television program in SDTV digital mode during the simulcast period for the licence area unless the program is broadcast simultaneously by the licensee in analog mode in so much of that area as is not a digital-only local market area;
- (ma) subject to subclauses (5) and (6), if there is a simulcast period for the licence area of the licence—the licensee will provide a HDTV multi-channelled commercial television broadcasting service during the simulcast period for the licence area;
- (mb) subject to subclauses (5) and (7), if:
 - (i) there is a simulcast-equivalent period for the licence area of the licence; and
 - (ii) under the regulations, the licensee is required to provide a HDTV multi-channelled commercial television broadcasting service in the licence area during that period;the licensee will comply with that requirement;

Clause 7

- (mc) subject to subclauses (5), (6) and (7), if:
 - (i) the licence was allocated under section 38A or 38B; and
 - (ii) there is a simulcast-equivalent period for the licence area of the licence;the licensee will provide a HDTV multi-channelled commercial television broadcasting service during the simulcast-equivalent period for the licence area;
- (na) the licensee will comply with standards applicable to the licence under Division 2 of Part 4 of Schedule 4 (which deals with HDTV);
- (nb) if subclause 37E(1) of Schedule 4 (which deals with HDTV quotas) applies to the licensee—the licensee will comply with that subclause;
- (o) if clause 38 of Schedule 4 (which deals with captioning of television programs for the deaf and hearing impaired) applies to the licensee—the licensee will comply with that clause;
- (oa) the licensee will comply with any standards under section 130A (which deals with technical standards for digital transmission);
- (ob) if a clause of Division 1 of Part 4A of Schedule 4 (which imposes restrictions on the televising of anti-siphoning events) applies to the licensee—the licensee will comply with that clause;
- (p) if the licensee holds a transmitter licence under section 101B, 101C, 102 or 102A of the *Radiocommunications Act 1992* that authorises the operation of a transmitter—the licensee will not operate, or permit the operation of, that transmitter to transmit in digital mode:
 - (i) a commercial broadcasting service that provides radio programs; or
 - (ii) a subscription radio broadcasting service; or
 - (iii) a subscription television broadcasting service; or
 - (iv) a subscription radio narrowcasting service; or
 - (v) a subscription television narrowcasting service; or
 - (vi) an open narrowcasting radio service; or
 - (vii) an open narrowcasting television service;

- (q) the licensee will comply with a requirement that is applicable to the licensee under section 61BB (which deals with the disclosure of cross-media relationships);
 - (r) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a commercial television broadcasting service under the licence.
- (2) Each commercial television broadcasting licence is also subject to the following conditions:
- (a) except in a case where the licence was allocated under subsection 40(1)—the licensee will provide a service or services that, when considered together with other broadcasting services available in the licence area of the licence (including another service or services operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;
 - (b) the licensee will remain a suitable licensee;
 - (c) except in a case where the licence was allocated under subsection 40(1)—the licensee will broadcast matter of a religious nature during such periods as the ACMA determines and, if the ACMA so directs, will do so without charge;
- (2A) Each commercial television broadcasting licence is also subject to the condition that the licensee will not provide commercial television broadcasting services under the licence outside the licence area of the licence unless:
- (a) the provision of those services outside that licence area occurs accidentally; or
 - (b) the provision of those services outside that licence area occurs as a necessary result of the provision of commercial television broadcasting services within the licence area; or
 - (c) both:
 - (i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and
 - (ii) the ACMA has given permission in writing; or

Clause 7

- (d) all of the following subparagraphs apply:
- (i) the first-mentioned licensee satisfies the ACMA that there is a person (the *eligible person*) who is in a commercial television broadcasting licence area (the *second licence area*) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a commercial television broadcasting service or services provided by a commercial television broadcasting licensee for the second licence area;
 - (ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;
 - (iii) the ACMA has given permission in writing.
- (4) Subclause 6(8) of Schedule 4 applies to paragraph (1)(m) of this clause in a corresponding way to the way in which it applies to paragraph 6(3)(c) of Schedule 4 and subclause 6(7) of Schedule 4.
- (5) Paragraphs (1)(ma), (mb) and (mc) do not apply to a licence if a commercial television broadcasting service provided under the licence is transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8) of Schedule 4.
- (6) Paragraphs (1)(ma) and (mc) do not apply to a licence if:
- (a) the licensee provides a commercial television broadcasting service under the licence; and
 - (b) an election under subclause 6(5A) or (5AA) of Schedule 4 is in force for the service.
- (7) Paragraphs (1)(mb) and (mc) do not apply to a licence if:
- (a) the licensee provides an exempt remote area service under the licence; and
 - (b) an election under subclause 6(7B) of Schedule 4 is in force for the service.
- (8) An expression used in:
- (a) paragraph (1)(m), (ma), (mb), (mc) or (p) or subclause (5), (6) or (7); and
 - (b) Schedule 4;

Clause 7

has the same meaning in that paragraph or subclause as it has in that Schedule.

Part 4—Commercial radio broadcasting licences

8 Standard conditions of commercial radio broadcasting licences

- (1) Each commercial radio broadcasting licence is subject to the following conditions:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
 - (ba) if the licensee provides a digital commercial radio broadcasting service under the licence—the licensee will comply with any standards under section 130AA (which deals with technical standards for digital transmission);
 - (bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);
 - (c) the articles of association of the licensee will at all times contain:
 - (i) provisions under which a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and
 - (ii) provisions under which the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and
 - (iii) provisions under which a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control

of another licence, and giving particulars of any such position; and

- (iv) provisions under which a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act;
- (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
- (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
- (f) if:
 - (i) the licence is a broadcasting services bands licence; and
 - (ii) the licence authorises the licensee to provide an analog commercial radio broadcasting service;the licensee will keep in force a licence under the *Radiocommunications Act 1992* that authorises the operation by the licensee of the radiocommunications devices used to provide that service;
- (g) the licensee will not use the broadcasting service or services in the commission of an offence against another Act or a law of a State or Territory;
- (h) the licensee will commence to provide at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;
- (ha) the licensee will comply with the requirements set out in section 205B;
 - (i) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6;
 - (j) the licensee will comply with a requirement that is applicable to the licensee under section 61BD or 61BE (which deal with the disclosure of cross-media relationships);

Clause 8

- (k) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of **broadcasting services bands** in subsection 6(1) to provide a commercial radio broadcasting service under the licence unless the service is a digital commercial radio broadcasting service.
- (2) Each commercial radio broadcasting licence is also subject to the following conditions:
- (a) the licensee will provide a service or services that, when considered together with other broadcasting services available in the licence area of the licence (including another service or services operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;
 - (b) the licensee will remain a suitable licensee;
 - (c) if a requirement under Division 5C of Part 5 (which sets out local news and information requirements) applies to the licensee—the licensee will comply with that requirement.
- (3) Each commercial radio broadcasting licence is also subject to the condition that the licensee will not provide commercial radio broadcasting services under the licence outside the licence area of the licence unless:
- (a) the provision of those services outside that licence area occurs accidentally; or
 - (b) the provision of those services outside that licence area occurs as a necessary result of the provision of commercial radio broadcasting services within the licence area; or
 - (c) both:
 - (i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and
 - (ii) the ACMA has given permission in writing; or
 - (d) all of the following subparagraphs apply:
 - (i) the first-mentioned licensee satisfies the ACMA that there is a person (the **eligible person**) who is in a commercial radio broadcasting licence area (the **second licence area**) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a commercial radio broadcasting service or services

Clause 8

- provided by a commercial radio broadcasting licensee for the second licence area;
- (ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;
 - (iii) the ACMA has given permission in writing.

Part 5—Community broadcasting licences

9 Conditions applicable to services provided under community broadcasting licences

- (1) Each community broadcasting licence is subject to the following conditions:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in this clause;
 - (c) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
 - (ca) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
 - (caa) if the licensee provides a digital community radio broadcasting service under the licence—the licensee will comply with any standards under section 130AA (which deals with technical standards for digital transmission);
 - (cb) the licensee will comply with subsection 130V(1) (which deals with industry standards);
 - (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
 - (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
 - (f) the licensee will not use the broadcasting service or services in the commission of an offence against another Act or a law of a State or Territory;
 - (g) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;

- (ga) the licensee will not broadcast films that are classified as “R 18+” unless the films have been modified as mentioned in paragraph 123(3A)(b);
 - (h) the licensee will commence the provision of at least one broadcasting service within one year of being allocated the licence or within such longer period as is notified in writing by the ACMA;
 - (i) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6;
 - (j) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a community broadcasting service under the licence unless the service is a digital community radio broadcasting service.
- (2) Each community broadcasting licence is also subject to the following conditions:
- (a) the licensee will remain a suitable licensee;
 - (b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated or was last renewed;
 - (c) the licensee will encourage members of the community that it serves to participate in:
 - (i) the operations of the licensee in providing the service or services; and
 - (ii) the selection and provision of programs under the licence;
 - (d) the licensee will provide the service or services for community purposes;
 - (e) the licensee will not operate the service or services for profit or as part of a profit-making enterprise.
- (2AA) Paragraph (2)(e) does not prevent a designated community radio broadcasting licensee from holding shares in a digital community radio broadcasting representative company (within the meaning of the *Radiocommunications Act 1992*).
- (2A) Each community broadcasting licence is also subject to the condition that the licensee will not provide community broadcasting services under the licence outside the licence area of the licence unless:
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Clause 9

- (a) the provision of those services outside that licence area occurs accidentally; or
 - (b) the provision of those services outside that licence area occurs as a necessary result of the provision of community broadcasting services within the licence area; or
 - (c) both:
 - (i) the licensee satisfies the ACMA that the provision of those services outside that licence area occurs in exceptional circumstances; and
 - (ii) the ACMA has given permission in writing; or
 - (d) all of the following subparagraphs apply:
 - (i) the first-mentioned licensee satisfies the ACMA that there is a person (the *eligible person*) who is in a community broadcasting licence area (the *second licence area*) that is not the same as the first-mentioned licence area and who is not receiving adequate reception of a community broadcasting service or services provided by a community broadcasting licensee for the second licence area;
 - (ii) the provision of the first-mentioned services outside the first-mentioned licence area occurs only to the extent necessary to provide adequate reception of the first-mentioned services to the eligible person;
 - (iii) the ACMA has given permission in writing.
- (2B) Each community broadcasting licence that has been transferred is also subject to the condition that the transferee must, within 7 days after the transfer, notify the ACMA of the transfer. A notification must be in accordance with a form approved in writing by the ACMA.
- (3) A community broadcasting licensee may broadcast sponsorship announcements on a particular community broadcasting service. However, they must not run in total for more than:
- (a) if the licensee is a community television broadcasting licensee—7 minutes in any hour of broadcasting on that service; or
 - (b) in any other case—5 minutes in any hour of broadcasting on that service.

- (4) A community television broadcasting licensee may broadcast sponsorship announcements only during periods before programs commence, after programs end or during natural program breaks.
- (5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:
 - (a) material that publicises programs to be broadcast by the licensee;
 - (b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;
 - (c) community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;
 - (d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.
- (6) Paragraph (1)(b) applies to a community broadcasting service targeted, to a significant extent, to one or more remote Indigenous communities as if the words "for which the licensee receives any consideration in cash or in kind" were inserted after "advertisements".

Part 6—Subscription television broadcasting licences

10 Conditions applicable to subscription television broadcasting licences

- (1) Each subscription television broadcasting licence is subject to the following conditions:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (b) the licensee will comply with program standards applicable under Part 9 of this Act;
 - (ba) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
 - (bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);
 - (d) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
 - (e) the licensee will not acquire the right to televise, on a subscription television broadcasting service, an event that is specified in a notice under subsection 115(1) unless:
 - (i) a national broadcaster has the right to televise the event on any of its broadcasting services; or
 - (ii) the television broadcasting services of commercial television broadcasting licensees (other than licensees who hold licences allocated under subsection 40(1)) who have the right to televise the event cover a total of more than 50% of the Australian population;
 - (ea) the licensee will comply with subsection 121E(2) (section 121E is about requiring the ACMA's permission to provide certain television services in regional areas);

- (f) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;
 - (g) the licensee will ensure that access to programs classified as “R 18+” by the Classification Board is restricted by disabling devices acceptable to the ACMA but will not broadcast such an “R 18+” classified program until the ACMA has completed extensive, Australia-wide qualitative and quantitative research on community standards of taste and decency in relation to classifications for pay television and on what levels of violence and depiction of sex should be allowed, and the ACMA has recommended, and the Parliament has, by resolution of each House, approved, the broadcast of such programs;
 - (h) the licensee will not use its subscription broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
 - (i) the licensee will comply with the requirements of clauses 3, 3A, 4 and 5;
 - (j) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a subscription television broadcasting service under the licence.
- (1A) For the purposes of subparagraph (1)(e)(ii), the percentage of the Australian population covered by the television broadcasting service or services of a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under subsection 40(1)) is the percentage most recently specified by the ACMA under paragraph 30(5)(a) for the licence area of the licensee's licence.
- (1B) For the purposes of subparagraph (1)(e)(ii), if a program supplier for a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under subsection 40(1)) has a right to televise an event, the licensee is taken also to have the right. For this purpose, ***program supplier*** means a person who:
- (a) has an agreement to supply the licensee with program material that can be televised on a commercial television broadcasting service provided by the licensee (whether or not the program material includes matter showing the event); and

Clause 10

- (b) supplies the licensee with a substantial proportion of all the program material that is televised on a commercial television broadcasting service provided by the licensee (whether or not the material is supplied under the agreement mentioned in paragraph (a)).
- (2) Each subscription television broadcasting licence is also subject to the following conditions:
 - (a) the licensee will remain a suitable licensee;
 - (b) subscription fees will continue to be the predominant source of revenue for the service.

Part 7—Services provided under class licences

11 Conditions applicable to broadcasting services provided under class licences

- (1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:
 - (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
 - (ab) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the person will comply with subsection 121E(2) (section 121E is about requiring the ACMA’s permission to provide certain television services in regional areas);
 - (b) the person will comply with program standards applicable to the licence under Part 9 of this Act;
 - (ba) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
 - (baa) in the case of a person who provides:
 - (i) a subscription radio broadcasting service; or
 - (ii) a subscription radio narrowcasting service; or
 - (iii) an open narrowcasting radio service;
transmitted using a digital modulation technique—the licensee will comply with standards under section 130AA (which deals with technical standards for digital transmission);
 - (bb) the licensee will comply with standards under subsection 130V(1) (which deals with industry standards);
 - (c) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
 - (d) the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6;

Clause 11

- (e) the person will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide broadcasting services under the licence.
- (2) The provision by a person of a subscription broadcasting service or a subscription narrowcasting service under a class licence is also subject to the condition that subscription fees will continue to be the predominant source of revenue for the service.
- (3) The provision by a person of an open narrowcasting television service under a class licence is also subject to the following conditions:
 - (a) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;
 - (b) the licensee will not broadcast films that are classified as “R 18+” unless the films have been modified as mentioned in paragraph 123(3C)(b).
- (4) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board.