Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006

No.  , 2006

(Communications, Information Technology and the Arts)

A Bill for an Act to amend the Broadcasting Services Act 1992, and for other purposes
## Contents

1. Short title .......................................................................................................................... 2
2. Commencement .................................................................................................................. 2
3. Schedule(s) ....................................................................................................................... 3

### Schedule 1—Subscription television drama

_Broadcasting Services Act 1992_  
4

### Schedule 2—Transfer of community broadcasting licences

_Broadcasting Services Act 1992_  
27

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Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006  
No.  , 2006
A Bill for an Act to amend the Broadcasting Services Act 1992, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Act 2006.

2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.
Commencement information

<table>
<thead>
<tr>
<th>Column 1</th>
<th>Column 2</th>
<th>Column 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provision(s)</td>
<td>Commencement</td>
<td>Date/Details</td>
</tr>
<tr>
<td>1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
<tr>
<td>2. Schedule 1</td>
<td>1 January 2006.</td>
<td>1 January 2006</td>
</tr>
<tr>
<td>3. Schedule 2</td>
<td>The day on which this Act receives the Royal Assent.</td>
<td></td>
</tr>
</tbody>
</table>

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
Schedule 1—Subscription television drama

Broadcasting Services Act 1992

1 Section 103A

After:

- 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.

Insert:

- 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.

2 Section 103B (paragraph (a) of the definition of Australian Content Standard)

Omit “1999”, substitute “2005”.

3 Section 103B

Insert:

<new_definitions>

carry-forward eligible drama expenditure provision means:
- subsection 103NA(2); or
- subsection 103RA(2); or
- subsection 103TA(2); or
- subsection 103UA(2); or
- subsection 103XA(2); or
- subsection 103ZAA(2).
</new_definitions>

4 Section 103B

Insert:
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:
   (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.

5 Section 103B (definition of drama program)
Repeal the definition, substitute:

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
Schedule 1 Subscription television drama

(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).

6 Section 103B (note to the definition of expenditure)

Omit “pre-production expenditure”, substitute “non-designated pre-production expenditure”.

7 Section 103B

Insert:

non-designated pre-production expenditure means pre-production expenditure other than designated script development expenditure.

8 Section 103B (paragraph (a) of the definition of pre-production expenditure)

After “screenplay”, insert “or a script outline”.

9 Section 103H

Omit “pre-production expenditure”, substitute “non-designated pre-production expenditure”.

Note: The heading to section 103H is altered by omitting “Pre-production expenditure” and substituting “Non-designated pre-production expenditure”.

10 Section 103J

Omit “pre-production expenditure” (wherever occurring), substitute “non-designated pre-production expenditure”.

11 After section 103J

Insert:

6 Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006 No. , 2006
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 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:
Schedule 1  Subscription television drama

8  Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006  No.  , 2006

(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).

12 After subsection 103L(4)
Insert:

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.

13 Subsection 103L(7)
Repeal the subsection, substitute:

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.

14 Paragraph 103M(1)(c)
After “provision of this Division”, insert “(other than a carry-forward eligible drama expenditure provision)”.

15 Paragraph 103M(3)(c)
After “provision of this Division”, insert “(other than a carry-forward eligible drama expenditure provision)”.

Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006 No. , 2006 9
16 Subsection 103N(1)

Repeal the subsection, substitute:

(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.

17 Subsection 103N(2)

Insert:

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.

18 After subsection 103N(2)

Insert:

(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.

19 Subsection 103N(3) (note)

Omit “channel provider’s new eligible drama expenditure”, substitute “sum of the channel provider’s new eligible drama expenditure and the channel provider’s carry-forward eligible drama expenditure”.

20 After section 103N
103NA Carry-forward eligible drama expenditure

(1) This section applies if:
(a) a licensee provides a subscription TV drama service; and
(b) a person is a channel provider in relation to the subscription
TV drama service because the person supplies a channel; and
(c) the channel provider’s new eligible drama expenditure
(within the meaning of section 103N) in relation to the
subscription TV drama service for a financial year exceeds
10% of the channel provider’s total program expenditure
(within the meaning of section 103N) in relation to the
channel for the financial year.

(2) For the purposes of section 103N, the channel provider’s
carry-forward eligible drama expenditure in relation to the
subscription TV drama service for the next following financial year
is so much of the excess expenditure as the channel provider
nominates for the purposes of the application of this subsection in
relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the channel
provider’s new eligible drama expenditure (within the meaning of
section 103N) in relation to the subscription TV drama service as
was incurred before 1 January 2006.

21 Paragraph 103P(1)(d)

Repeal the paragraph, substitute:
(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.
22 Subsection 103P(3) (definition of shortfall amount)

Repeal the definition, substitute:

*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.

23 Paragraph 103Q(1)(d)

Repeal the paragraph, substitute:

(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.

24 Subsection 103Q(3) (definition of shortfall amount)

Repeal the definition, substitute:

*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.

25 Subsection 103R(1)
Repeal the subsection, substitute:

(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.

26 Subsection 103R(2)
Insert:

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.

27 After subsection 103R(2)
Insert:

(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.
28 Subsection 103R(4) (note)
Omit “licensee’s new eligible drama expenditure”, substitute “sum of
the licensee’s new eligible drama expenditure and the licensee’s
carry-forward eligible drama expenditure”.

29 After section 103R
Insert:

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.

30 Paragraph 103S(1)(c)
Repeal the paragraph, substitute:
(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.

31 Subsection 103S(3) (definition of shortfall amount)

Repeal the definition, substitute:

**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.

32 Subsection 103T(1)

Repeal the subsection, substitute:

(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.
33 Subsection 103T(2)

Insert:

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.

34 At the end of section 103T

Add:

(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.

35 After section 103T

Insert:

103TA Carry-forward eligible drama expenditure

(1) This section applies if:

(a) a licensee provides a subscription TV drama service; and

(b) there is none of the following:

(i) a channel provider;

(ii) a pass-through provider;

(iii) a part-channel provider;

(iv) a part-pass-through provider;

in relation to the subscription TV drama service; and

(c) the licensee’s new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for a financial year exceeds 10% of the licensee’s total program expenditure (within the meaning of section 103T) in relation to the subscription TV drama service for the financial year.

(2) For the purposes of section 103T, the licensee’s carry-forward eligible drama expenditure in relation to the subscription TV drama service for the next following financial year is so much of...
the excess expenditure as the licensee nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(3) Paragraph (1)(c) does not apply to so much of the licensee’s new eligible drama expenditure (within the meaning of section 103T) in relation to the subscription TV drama service as was incurred before 1 January 2006.

36 Subsection 103U(1)

Repeal the subsection, substitute:

(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.

37 Subsection 103U(2)

Insert:

\[ \text{part-channel provider’s carry-forward eligible drama expenditure, in relation to the subscription TV drama service, means the part-channel provider’s carry-forward eligible drama expenditure (within the meaning of subsection 103UA(2)) for the financial year.} \]

38 After subsection 103U(2)

Insert:

(2A) The part-channel provider is not entitled to nominate, under the definition of \textit{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.

39 Subsection 103U(3) (note)
Omit “part-channel provider’s new eligible drama expenditure”, substitute “sum of the part-channel provider’s new eligible drama expenditure and the part-channel provider’s carry-forward eligible drama expenditure”.

40 After section 103U
Insert:

103UA Carry-forward eligible drama expenditure

(1) This section applies if:
(a) a licensee provides a subscription TV drama service; and
(b) a person is a part-channel provider in relation to the subscription TV drama service because the person supplies a package of programs; and
(c) the part-channel provider’s new eligible drama expenditure (within the meaning of section 103U) in relation to the subscription TV drama service for a financial year exceeds 10% of the part-channel provider’s total program expenditure (within the meaning of section 103U) in relation to the package of programs for the financial year.

(2) For the purposes of section 103U, the part-channel provider’s carry-forward eligible drama expenditure in relation to the subscription TV drama service for the next following financial year is so much of the excess expenditure as the part-channel provider nominates for the purposes of the application of this subsection in relation to the subscription TV drama service.

(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.

41 Paragraph 103V(1)(d)
Repeal the paragraph, substitute:

(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**.

**42 Subsection 103V(3) (definition of shortfall amount)**

Repeal the definition, substitute:

**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**.

**43 Paragraph 103W(1)(d)**

Repeal the paragraph, substitute:

(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.

44 Subsection 103W(3) (definition of shortfall amount)

Repeal the definition, substitute:

*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.

45 Subsection 103X(1)

Repeal the subsection, substitute:

(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.

46 Subsection 103X(2)

Insert:

*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.

47 After subsection 103X(2)

Insert:

(2A) The licensee is not entitled to nominate, under the definition of *licensee’s new eligible drama expenditure* in subsection (2), so much of the designated script development expenditure incurred by the licensee and/or the part-pass-through provider during the financial year as exceeds 10% of the licensee’s new eligible drama expenditure in relation to the subscription TV drama service.

48 Subsection 103X(4) (note)

Omit “licensee’s new eligible drama expenditure”, substitute “sum of the licensee’s new eligible drama expenditure and the licensee’s carry-forward eligible drama expenditure”.

49 After section 103X

Insert:

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.

50 Paragraph 103Y(1)(c)
Repeal the paragraph, substitute:
(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 \textit{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.

51 Subsection 103Y(3) (definition of \textit{shortfall amount})
Repeal the definition, substitute:
\textit{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.

52 Subsection 103Z(1)
Repeal the subsection, substitute:

(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.

53 Subsection 103Z(2)
   Insert:
   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.

54 At the end of section 103Z
   Add:
   (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.

55 After section 103Z
   Insert:
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.

56 Subparagraph 103ZE(1)(d)(i)

Repeal the subparagraph, substitute:

(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

24 Broadcasting Services Amendment (Subscription Television Drama and Community
Broadcasting Licences) Bill 2006 No. , 2006
57 After subsection 103ZE(1)

Insert:

(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

(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.

58 Paragraph 103ZE(2)(d)

Repeal the paragraph, substitute:

(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

59 Subparagraph 103ZE(3)(d)(i)

Repeal the subparagraph, substitute:

(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

60 After subsection 103ZE(3)

Insert:

(3A) For the purposes of subparagraph (3)(d)(i), the amount is the sum of:
Schedule 1  Subscription television drama

(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.

61 Paragraph 103ZE(4)(d)

Repeal the paragraph, substitute:
(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

62 Application of amendments

(1) Subject to subitems (2) and (3), the amendments made by this Schedule apply in relation to the operation of a subscription TV drama service in:
   (a) the financial year ending on 30 June 2006; or
   (b) a later financial year.

(2) Paragraphs (b) and (c) of the definition of drama program in section 103B of the Broadcasting Services Act 1992 do not apply in relation to expenditure incurred before 1 January 2006.

(3) The amendment made by item 8 does not apply in relation to expenditure incurred before 1 January 2006.
Schedule 2—Transfer of community broadcasting licences

Broadcasting Services Act 1992

1 After section 91

Insert:

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
Schedule 2 Transfer of community broadcasting licences

28            Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Bill 2006       No.      , 2006

(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.

2 Section 204 (after table item dealing with variation of licence conditions or imposition of new conditions (Community))

Insert:
Refusal to approve the transfer of a community broadcasting licence

Section 91A

The applicant or the proposed transferee

3 After subclause 9(2A) of Schedule 2

Insert:

(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.