Communications Legislation Amendment (Enforcement Powers) Bill 2006

No. , 2006

(Communications, Information Technology and the Arts)

A Bill for an Act to amend the law relating to communications, and for other purposes
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A Bill for an Act to amend the law relating to communications, and for other purposes

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the Communications Legislation Amendment (Enforcement Powers) 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>Provision(s)</th>
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<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>
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<tr>
<td>2. Schedule 1</td>
<td>A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 3 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</td>
<td></td>
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</table>

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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Amendments

Broadcasting Services Act 1992

1 Subsection 6(1)
   Insert:
   
   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.

2 Subsection 6(1)
   Insert:
   
   civil penalty order means an order under subsection 205F(1).

3 Subsection 6(1)
   Insert:
   
   civil penalty provision means a provision declared by this Act to
   be a civil penalty provision.

4 Subsection 6(1)
   Insert:
   
   designated infringement notice provision means a provision
   declared by this Act to be a designated infringement notice
   provision.

5 Subsection 6(1)
   Insert:
   
   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.

6 Subsection 6(1)
Schedule 1  Amendments
Part 1  Amendments

Insert:

infringement notice means an infringement notice under section 205Y.

7 Subsection 6(1)

Insert:

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

8 Subsection 6(1)

Insert:

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.

9 After paragraph 41(2)(a)

Insert:

(aa) a breach of a civil penalty provision occurring; or

10 At the end of subsection 41(3)

Add:

; 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).

11 At the end of Division 6 of Part 5

Add:

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.

12 After paragraph 83(2)(a)
Insert:
(aa) a breach of a civil penalty provision occurring; or

13 At the end of subsection 83(3)
Add:
; 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).

14 After paragraph 92D(2)(a)
Insert:
(aa) a breach of a civil penalty provision occurring; or

15 At the end of subsection 92D(3)
Add:
; 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).

16 After paragraph 98(2)(a)
Insert:
(aa) a breach of a civil penalty provision occurring; or

17 At the end of subsection 98(3)
Add:
; 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).

18 After paragraph 121FC(1)(a)
Insert:
(aa) a breach of a civil penalty provision occurring; or
19  At the end of subsection 121FC(2)

Add:

; 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).

20  At the end of section 121FG

Add:

(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.

21  Section 121FH

Repeal the section, substitute:

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

(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.

22 After section 121FJ

Insert:

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.

(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.

23 Subsection 132(1)
Omit “(1)”.

24 Subsection 132(1)
Omit “been allocated a licence, under Part 7,,”, substitute “a licence”.

25 Subsection 132(1) (penalty)
Repeal the penalty, substitute:
Penalty: 2,000 penalty units.

26 Subsection 132(2)
Repeal the subsection.

27 After Division 1 of Part 10
Insert:

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.

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.

28 Sections 137 and 138

Repeal the sections, substitute:

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 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.

29 Paragraph 139(1)(c)
After “subclause 7(1)”, insert “(other than paragraph 7(1)(ia))”.

30 After subsection 139(1)
Insert:

(1A) A person commits an offence if:
   (a) the person is a commercial television broadcasting licensee;
   (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.

31 Paragraph 139(3)(c)
After “subclause 8(1)”, insert “(other than paragraph 8(1)(ha))”.

32 After subsection 139(3)
Insert:

(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.

33 After section 140

Insert:

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 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
Schedule 1  Amendments
Part 1  Amendments

(including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

34 Sections 141 and 142

Repeal the sections, substitute:

141 Remedial directions—licence conditions, class licences and codes of practice

License 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;
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.

(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.
35 Division 5 of Part 10

Repeal the Division.

36 After paragraph 147(a)

Insert:

(aa) breached a civil penalty provision; or

37 After subparagraph 149(2)(b)(i)

Insert:

(ia) a breach of a civil penalty provision; or

38 After subsection 202(1)

Insert:

(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.

39 After subsection 202(2)

Insert:

(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.

40 Subsection 202(2A)

Omit “and (2)”, substitute “, (1A), (2) and (2AA)”.

41 Subsection 202(2A) (note)


1 Omit “A”, substitute “In criminal proceedings, a”.

42 After subsection 202(2A)

Insert:

(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.

43 At the end of section 205B

Add:

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.

44 Subsection 205D(1)

Repeal the subsection, substitute:

(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.

45 Paragraph 205D(2)(e)

Repeal the paragraph, substitute:

(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.

46 After subsection 205D(6)

Insert:
(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.

47 Paragraphs 205D(7)(c) and (8)(c)

Omit “subsection (1) or (2)”, substitute “paragraph (1)(a) or subparagraph (2)(e)(i)”.

48 After Part 14A

Insert:

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:
Communications Legislation Amendment (Enforcement Powers) Bill 2006 No. , 2006

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.

(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.
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 (which deal with the provision of unlicensed services).

205Q Injunctions

If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of subsection 121FG(3) or section 136A, 136B, 136C, 136D or 136E, 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.
Schedule 1 Amendments
Part 1 Amendments

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;

(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.
Schedule 1  Amendments
Part 1  Amendments

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.

(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.

Communications Legislation Amendment (Enforcement Powers) Bill 2006 No. 1, 2006
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.

49 Subsection 214(1)

Omit “121FH(3), section 136, subsection 138(2) or section 140”, substitute “121FHA(2), 121FJC(2), section 136, subsection 138(4), section 140 or subsection 142(5)”.

50 After section 214

Insert:
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;
   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.

(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;
   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.
Radiocommunications Act 1992

51 At the end of section 231
Add:

(9) Part 5.8 provides that a person may give the ACMA an enforceable undertaking about compliance with this Act.

52 At the end of Chapter 5
Add:

Part 5.8—Enforceable undertakings

298B 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.

298C 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.

(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.

298D Enforcement of undertakings

(1) If:

(a) a person has given an undertaking under section 298C; 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 2—Application of amendments

53 Application—additional fees
The amendments of section 205D of the Broadcasting Services Act 1992 made by this Schedule apply to an additional fee that relates to a licence fee if the due date for the licence fee is after the date on which this item commences.

54 Application—infringement notices
Part 14E of the Broadcasting Services Act 1992 applies in relation to a contravention that occurs after this item commences.