



# **Radiocommunications Act 1992**

**Act No. 174 of 1992 as amended**

This compilation was prepared on 1 January 2009  
taking into account amendments up to Act No. 117 of 2008

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

The operation of amendments that have been incorporated may be  
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**An Act about management of the radiofrequency spectrum, and other matters**

**Chapter 1—Preliminary**

**Part 1.1—Formal matters**

**1 Short title** [see Note 1]

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

**2 Commencement**

This Act commences on 1 July 1993.

## **Part 1.2—Object of this Act**

### **3 The object of this Act**

The object of this Act is to provide for management of the radiofrequency spectrum in order to:

- (a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum;
- (b) make adequate provision of the spectrum:
  - (i) for use by agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services; and
  - (ii) for use by other public or community services;
- (c) provide a responsive and flexible approach to meeting the needs of users of the spectrum;
- (d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;
- (e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum;
- (f) support the communications policy objectives of the Commonwealth Government;
- (g) provide a regulatory environment that maximises opportunities for the Australian communications industry in domestic and international markets;
- (h) promote Australia's interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum.

### **4 Outline of this Act**

In order to achieve this object:

- (a) Chapter 2 provides for radio frequency planning that involves preparation of:
  - (i) a spectrum plan and frequency band plans (see Part 2.1); and

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- (ii) marketing plans and conversion plans (see Part 2.2); and
- (b) Chapter 3 provides for licensing radiocommunications under:
  - (i) spectrum licences (see Part 3.2); and
  - (ii) apparatus licences (see Part 3.3); and
  - (iii) class licences (see Part 3.4);
- (c) Chapter 3 also provides for registration of licences (see Part 3.5); and
- (ca) Chapter 3 also provides for the re-allocation of parts of the spectrum (see Part 3.6); and
- (d) Chapter 4 provides for general regulatory requirements aimed at:
  - (i) providing for standards and other technical regulation (see Part 4.1); and
  - (ii) regulating various acts relating to radio emissions, particularly those involving interference with radiocommunications (see Part 4.2); and
  - (iii) settling interference disputes (see Part 4.3); and
  - (iv) providing for restricted use zones (see Part 4.4); and
- (e) Chapter 5 provides for various other matters dealing with the administration and enforcement of this Act.

## Part 1.3—Interpretative provisions

### 5 Definitions

In this Act, unless the contrary intention appears:

*AAT* means the Administrative Appeals Tribunal.

*ACCC* means the Australian Competition and Consumer Commission.

*ACMA* means the Australian Communications and Media Authority.

*advisory guideline* means an advisory guideline made under section 262.

*aircraft* includes a balloon.

*apparatus licence* means an apparatus licence issued under Part 3.3.

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

*apply*, in relation to a label, has a meaning affected by section 9A.

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

*Australian aircraft* means an aircraft that is in Australian control or is registered in accordance with the Civil Aviation Regulations as an Australian aircraft.

*Australian space object* means a space object that the ACMA determines in writing to be an Australian space object for the purposes of this Act. A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

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

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

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

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

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

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

***BSA control rules*** means:

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

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

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

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

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

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

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

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

**category 3 digital radio multiplex transmitter licence** means a transmitter licence for one or more multiplex transmitters that are for use for transmitting either or both of the following services in a designated BSA radio area:

- (a) one or more digital national radio broadcasting services;
- (b) one or more restricted datacasting services, where each relevant restricted datacasting licence is held by a national broadcaster.

**certificate** means:

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

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



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

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

**channel A datacasting transmitter licence** has the meaning given by section 98A.

**channel B datacasting transmitter licence** has the meaning given by section 98B.

**class licence** means a class licence issued under Part 3.4.

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

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

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

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

**Commonwealth officer** means.

- (a) a Minister; or
- (b) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise:
  - (i) is in the service or employment of the Commonwealth, the Administration of a Territory or an authority of the Commonwealth; or
  - (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or a Territory; or
- (c) a member of the Defence Force; or
- (d) the Commissioner of the Australian Federal Police, a Deputy Commissioner of the Australian Federal Police, an AFP employee or a special member of the Australian Federal Police (all within the meaning of the *Australian Federal Police Act 1979*); or
- (e) a member of the police force of a Territory.

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

**conciliator** means a person appointed under section 202.

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

**conversion plan** means a plan prepared under section 38.

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

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

**datacasting transmitter licence** means a transmitter licence for a transmitter that is for use for transmitting a datacasting service, but does not include:

- (a) a transmitter licence issued under section 101B, 101C, 102 or 102A; or
- (aa) a digital radio multiplex transmitter licence; or
- (b) an NBS transmitter licence; or
- (c) a prescribed transmitter licence.

**datacasting transmitter licence fee** means a fee imposed under the *Datacasting Transmitter Licence Fees Act 2006*.

**Department** means:

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

**designated BSA radio area** means:

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

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

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

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

***device*** has the meaning given in subsection 9(1).

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

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

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

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

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

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

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

***digital radio moratorium period*** has the same meaning as in the *Broadcasting Services Act 1992*.

***digital radio multiplex transmitter licence*** means:

- (a) a category 1 digital radio multiplex transmitter licence; or
- (b) a category 2 digital radio multiplex transmitter licence; or
- (c) a category 3 digital radio multiplex transmitter licence.

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

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

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***domestic digital television receiver*** means domestic reception equipment that:

- (a) is not a hand-held device; and
- (b) is capable of receiving television programs transmitted in:
  - (i) SDTV digital mode; or
  - (ii) HDTV digital mode; and
- (c) has such other characteristics (if any) as are specified in a legislative instrument made by the ACMA under this paragraph.

For the purposes of paragraph (b), disregard clause 6 of Schedule 6 to the *Broadcasting Services Act 1992*.

***EMC standard*** means a standard made solely for the purposes of either or both of the following:

- (a) paragraph 162(3)(b);
- (b) paragraph 162(3)(e).

***environment*** means the physical environment.

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

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

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

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

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

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

***foundation digital radio multiplex transmitter licence*** means:

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

***frequency band*** means any contiguous range of radio frequencies.

***frequency band plan*** means a plan prepared under section 32.

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

**import** means import into Australia.

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

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

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

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

**inspector** has the meaning given in section 267.

**interference** means:

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

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

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

**label** has a meaning affected by section 9A.

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

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**licensee** means:

- (a) in relation to a spectrum licence—the person specified in the licence as the licensee, whether the licence was originally issued to that person or subsequently assigned to him or her; or
- (b) in relation to an apparatus licence—the person who holds the licence;

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

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

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

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

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

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

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

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

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

**non-standard device** has the meaning given in subsection 9(2).

**non-standard transmitter** has the meaning given in subsection 9(3).

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

***part***, in relation to a spectrum licence, means:

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

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

***permit*** means a permit issued under section 167.

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

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

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

***qualified company*** means a company that:

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

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

***radiocommunication*** has the meaning given in section 6.

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

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

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

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

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

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

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

**reception**, in relation to radio emission, includes interception.

**Register**, except in section 183, means the Register of Radiocommunications Licences established under section 143.

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

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

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

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

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

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

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

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

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

**spectrum licence** means a spectrum licence issued under Part 3.2.



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

**spectrum plan** means:

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

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

**standard** means a standard made under section 162.

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

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

and includes a member of the police force of a State.

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

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

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

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

**this Act** includes the regulations.

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

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

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

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

**6 Definition of *radiocommunication***

- (1) For the purposes of this Act, *radiocommunication* is:
  - (a) radio emission; or
  - (b) reception of radio emission;for the purpose of communicating information between persons and persons, persons and things or things and things.
- (2) The reference in subsection (1) to communicating information includes communicating information between a part of a thing and:
  - (a) another part of the same thing; or
  - (b) the same part of that thing;(as, for example, in the operation of a radar device).

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

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

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

- (c) anything (whether artificial or natural) that is designed or intended for use for the purpose of radiocommunication by means of the reflection of radio emissions and that the ACMA determines in writing to be a ***radiocommunications transmitter*** for the purposes of this Act.
- (3) For the purposes of this Act, a ***radiocommunications receiver*** is:
  - (a) anything designed or intended for use for the purposes of radiocommunication by means of the reception of radio emission; or
  - (b) anything (other than a line within the meaning of the *Telecommunications Act 1997*) designed or intended to be ancillary to, or associated with, such a thing for the purposes of that use; or
  - (c) anything (whether artificial or natural) that is designed or intended for use for the purpose of radiocommunication by means of the reflection of radio emissions and that the ACMA determines in writing to be a ***radiocommunications receiver*** for the purposes of this Act.
- (4) This Act does not preclude the same thing from being both a radiocommunications receiver and a radiocommunications transmitter, or any other kind of transmitter, for the purposes of this Act.
- (5) A determination by the ACMA under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **8 Definitions of *radio emission* and *transmitter***

- (1) For the purposes of this Act, a ***radio emission*** is any emission of electromagnetic energy of frequencies less than 420 terahertz without continuous artificial guide, whether or not any person intended the emission to occur.
- (2) For the purposes of this Act, a ***transmitter*** is:
  - (a) anything designed or intended for radio emission; or
  - (b) any other thing, irrespective of its use or function or the purpose of its design, that is capable of radio emission.

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**9 Definitions of *device*, *non-standard device* and *non-standard transmitter***

- (1) For the purposes of this Act, a *device* is:
  - (a) a radiocommunications transmitter; or
  - (b) any other transmitter; or
  - (c) a radiocommunications receiver; or
  - (d) any other thing any use or function of which is capable of being interfered with by radio emission.
- (2) For the purposes of this Act, a *non-standard device* is a device that:
  - (a) if the device has not been altered or modified in a material respect after its manufacture or, if it has been imported, after its importation—does not comply with a standard that was applicable to it when it was manufactured or imported, as the case may be; or
  - (b) if the device was so altered or modified—does not comply with a standard that was applicable to it when it was so altered or modified.
- (3) For the purposes of this Act, a *non-standard transmitter* is a transmitter that is a non-standard device.

**9A Application of labels**

- (1) A reference in this Act to a *label* includes a reference to a statement.
- (2) For the purposes of this Act, a label is taken to be *applied* to a thing if:
  - (a) the label is affixed to the thing; or
  - (b) the label is woven in, impressed on, worked into or annexed to the thing; or
  - (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is supplied; or
  - (d) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

## **9B Digital mode**

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

## **9C Digital community radio broadcasting representative company**

- (1) For the purposes of this Act, a company is the *digital community radio broadcasting representative company* for a particular designated BSA radio area if:
- (a) the company is a qualified company; and
  - (b) the incumbent digital community radio broadcasting licensees for the designated BSA radio area have given the ACMA a joint written notice electing that this paragraph apply to the company; and
  - (c) before the company was formed, the promoters of the company invited each incumbent digital community radio broadcasting licensee for the area to subscribe for shares in the company on the basis that:
    - (i) the incumbent digital community radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares; and
    - (ii) no other persons would be entitled to subscribe for shares in the company; and
  - (d) the invitations referred to in paragraph (c) were:
    - (i) published on the ACMA's Internet site; and
    - (ii) open for a period of at least 90 days beginning on or after the commencement of this section; and
  - (e) there was no discrimination between subscribers for shares in the company in relation to the consideration payable for the issue of the shares concerned; and
  - (f) the total amount of money payable as consideration for the issue of the shares in the company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (c) are published, would be required for the viable operation of the company; and
  - (g) none of the recipients of an invitation referred to in paragraph (c) were subject to duress as to whether the invitation should be accepted; and

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

- (iii) carrying out activities incidental to the purposes mentioned in subparagraphs (i) and (ii); and
- (l) the company complies with such other conditions (if any) as are specified in the regulations.

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

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

## **9D Incumbent digital radio broadcasting licensees**

### *Incumbent digital commercial radio broadcasting licensee*

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

### *Incumbent digital community radio broadcasting licensee*

- (2) For the purposes of this Act, if the licensee of a designated community radio broadcasting licence held the licence at the commencement of this section, the licensee is an ***incumbent digital community radio broadcasting licensee***.

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**10 Public or community services**

- (1) For the purposes of this Act, a *public or community service* is a service provided by a body or organisation of a kind specified by the Minister, by written instrument, to be bodies or organisations for the purposes of this section.
- (2) Each such body or organisation must either be:
  - (a) an authority of the Commonwealth, a State or a Territory; or
  - (b) a body or organisation that:
    - (i) is not carried on for the purpose of profit or gain to its members; and
    - (ii) applies its profits (if any) or other income in achieving its objects; and
    - (iii) does not provide for making any distribution, whether in money, property or otherwise, to its members.
- (3) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**10A ACMA determinations about space objects**

- (1) Despite the definition of *space object* in section 5, the ACMA may make a written determination that a particular object is not a *space object* for the purposes of this Act.

Note: Under subsection 33(3A) of the *Acts Interpretation Act 1901*, objects may be specified by reference to a particular class or classes of objects.
- (2) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**11 References to offences against this Act etc.**

- (1) A reference in this Act to an offence against this Act or to an offence against a provision of this Act includes a reference to an offence against section 6 of the *Crimes Act 1914*, or an ancillary offence (within the meaning of the *Criminal Code*), that relates to this Act or that provision, as the case requires.
- (1A) A reference in this Act to an *offence against this Act* includes a reference to an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.



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- (2) A reference in this Act to a conviction of an offence includes a reference to:
- (a) making an order under section 19B of the *Crimes Act 1914* in relation to the offence; or
  - (b) payment, under regulations made under paragraph 314(2)(d), of a penalty in relation to the offence.

## **Part 1.4—Application of this Act**

### **12 Outline of this Part**

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

## **Division 1—General**

### **13 Crown to be bound**

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

## **Division 2—Provisions relating to location and similar matters**

### **14 Operation of this Division**

This Division has effect subject to Division 4.

### **15 Application to external Territories**

This Act extends to all the external Territories.

### **16 Application outside Australia**

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

- (3) Section 195 applies without limitation outside Australia (whether or not in a foreign country).
- (4) A determination under paragraph 16(1)(ca) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **17 Offshore areas**

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

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

## **17A Western Greater Sunrise area**

- (1) Subject to subsection (2), this Act applies in relation to the Western Greater Sunrise area as if references in this Act to Australia, when used in a geographical sense, included references to the Western Greater Sunrise area.
- (2) The extended application given to this Act by subsection (1) extends only in relation to:
  - (a) acts, matters and things directly or indirectly connected with exploration of, or exploitation of the resources of, either or both of the Greater Sunrise unit reservoirs; and

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(b) acts done by or in relation to, and matters, circumstances and things affecting, any person who is in the Western Greater Sunrise area for a reason directly or indirectly connected with such exploration or exploitation.

(3) In this section:

*Greater Sunrise unit reservoirs* has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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

**18 Application to the atmosphere etc.**

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

## **Division 3—Provisions extending the concept of radiocommunication**

### **19 Operation of this Division**

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

### **20 Radio transmissions for the purpose of measurement**

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

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

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

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



(d) any other measurement transmitter;  
in the same way as it applies in relation to a radiocommunications transmitter.

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

- (3) This section does not apply with respect to:
- (a) State banking that does not extend beyond the limits of the State concerned; or
  - (b) State insurance that does not so extend.

- (4) In this section:

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

- (a) banking within the meaning of paragraph 51(xiii) of the Constitution; or
- (b) insurance within the meaning of paragraph 51(xiv) of the Constitution.

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

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

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

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

## 21 Astronomical and meteorological observations

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

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**22 Lighthouses etc.**

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

## **Division 4—Matters to which this Act does not apply**

### **23 Foreign space objects, vessels and aircraft**

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

### **24 Defence research and intelligence**

- (1) This Act does not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer in relation to the operation of an organisation:
  - (a) that is part of the Defence Force or part of the Department of Defence; and

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- (b) the purpose of which relates to:
  - (i) research for purposes connected with defence; or
  - (ii) intelligence.
- (2) This Act does not apply in relation to anything done or omitted to be done by or on behalf of:
  - (a) the Australian Secret Intelligence Service; or
  - (b) the Australian Security Intelligence Organisation.

**25 Special defence undertakings**

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

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

**26 Additional exemption for defence matters**

- (1) Subject to subsection (2), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Department of Defence, if:
  - (a) the act or omission takes place in the performance of one of his or her functions or duties as such a member or officer; and
  - (b) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
    - (i) military command and control; or
    - (ii) intelligence; or
    - (iii) weapons systems.
- (2) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to a member of the Defence Force, or to an officer of the Department of Defence, in the performance of one of his or her functions or duties as mentioned in subsection (1).

**27 Exemption for defence, law enforcement and emergency personnel**

- (1) This section applies to a person performing a function or duty in relation to:
- (a) the defence, security or international relations of:
    - (i) Australia; or
    - (ii) a foreign country whose naval, military or air force is acting in co-operation with the Defence Force of Australia; or
  - (b) the Australian Federal Police or the police force of a State or Territory; or
  - (baa) the performance of the functions of the Integrity Commissioner (within the meaning of the *Law Enforcement Integrity Commissioner Act 2006*); or
  - (ba) one of the following bodies:
    - (i) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 1988* of New South Wales;
    - (ii) the Western Australian Anti-Corruption Commission established by the *Anti-Corruption Commission Act 1988* of Western Australia; or
  - (bb) one of the following bodies:
    - (i) the New South Wales Crime Commission established by the *New South Wales Crime Commission Act 1985* of New South Wales;
    - (ii) the Crime and Misconduct Commission established by the *Crime and Misconduct Act 2001* of Queensland; or
  - (bc) the Australian Crime Commission established by section 7 of the *Australian Crime Commission Act 2002*; or
  - (bd) the New South Wales Police Integrity Commission established by the *Police Integrity Commission Act 1996* of New South Wales; or
  - (be) a body that:
    - (i) performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption (whether or not the body also performs other functions); and
    - (ii) is covered by a written determination made by the ACMA for the purposes of this paragraph; or
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- (c) a fire-fighting, civil defence or rescue organisation; or
  - (d) an ambulance service; or
  - (e) the Royal Flying Doctor Service; or
  - (f) any other organisation whose sole or principal purpose involves securing the safety of persons during an emergency.
- (2) The ACMA may determine in writing that acts or omissions by members of a class of persons to whom this section applies are exempt from either or both of the following:
- (a) all or any of Parts 3.1, 4.1 and 4.2;
  - (b) specified provisions of those Parts.
- The exemption may be expressed to apply generally or in specified circumstances.
- (3) A determination under paragraph (1)(be) or subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) For the purposes of subparagraph (1)(be)(i), *serious crime* is conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.

**28 Use of devices by the ACMA**

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

## **Chapter 2—Radio frequency planning**

### **29 Outline of this Chapter**

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

## Part 2.1—Spectrum plans and frequency band plans

### 30 Spectrum plans

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

*used* includes:

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

### 31 Planning of broadcasting services bands

- (1) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
  - (a) designate a part of the spectrum as being primarily for broadcasting purposes or restricted datacasting services, or both; and
  - (b) refer it to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.
- (1A) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
  - (a) designate a part of the spectrum as being partly for the purpose of:
    - (i) digital radio broadcasting services; and



- (ii) restricted datacasting services; and
  - (b) refer that part of the spectrum to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.
- (1B) Subsection (1A) does not limit subsection (1).
- (1C) The Minister may, by written instrument, determine that a designation under subsection (1A) ceases to be in force at a specified time.
- (1D) The Minister may, by written instrument, determine that a designation under subsection (1A) has effect only in relation to one or more specified areas of Australia.
- (2) If a subsection (1) or (1A) designation is in force in relation to a particular part of the spectrum, the ACMA may make a written determination that licences, or specified kinds of licences, can be issued in specified circumstances in relation to that part of the spectrum, or in relation to a specified part or parts of that part of the spectrum.
- (3) In making or varying a subsection (2) determination, the ACMA must:
  - (a) promote the objects, and have regard to the matters, described in section 23 of the *Broadcasting Services Act 1992*; and
  - (b) promote the object of this Act, to the extent this is not inconsistent with paragraph (a).
- This subsection has effect subject to subsection (4).
- (4) A subsection (2) determination (including as varied) must not be inconsistent with the spectrum plan.
- (5) Subject to subsections (3) and (4), the ACMA may, by written instrument, vary a subsection (2) determination.
- (6) The ACMA may, by written instrument, revoke a subsection (2) determination.
- (7) An instrument under subsection (1), (1A), (1C), (1D), (5) or (6) is not a legislative instrument.
- (8) A determination under subsection (2) is not a legislative instrument.

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**32 Frequency band plans**

- (1) The ACMA may, by written instrument, prepare frequency band plans, each relating to one or more frequency bands.
- (2) However, if a frequency band plan relates to a frequency band that is:
  - (a) within a part of the spectrum referred to the ACMA under subsection 31(1) or (1A); and
  - (b) wholly or partly covered by a frequency allotment plan prepared under section 25 of the *Broadcasting Services Act 1992*;the frequency band plan must be consistent with the frequency allotment plan.
- (3) A frequency band plan must not be inconsistent with the spectrum plan.
- (4) A frequency band plan:
  - (a) must make provision in relation to the purpose or purposes for which the band or bands may be used; and
  - (b) without limiting paragraph (a), may provide for:
    - (i) the one or more purposes for which any part of a band (including any particular frequency or frequency channel) may be used; and
    - (ii) parts of the spectrum to be reserved for provision of public or community services.
- (5) A frequency band plan:
  - (a) may be of general application or may be limited as provided in the plan; and
  - (b) without limiting paragraph (a), may apply:
    - (i) with respect to a specified area; and
    - (ii) with respect to a specified period.
- (6) In this section:

*used* includes:

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

### **33 Publication etc. of plans**

- (1) Before preparing a spectrum plan or a frequency band plan, the ACMA must, by notice published in the *Gazette*:
  - (a) state that a draft of the plan is available for public comment; and
  - (b) state how copies of the draft may be obtained; and
  - (c) invite interested parties to make representations about the draft plan on or before the day specified in the notice; and
  - (d) specify an address or addresses to which representations about the draft plan may be sent.
- (2) The day specified under paragraph (1)(c) must be at least one month later than the day on which the notice is published.
- (3) A person may, not later than the day specified under paragraph (1)(c), make representations to the ACMA about the draft plan.
- (4) The ACMA:
  - (a) must give due consideration to any representations so made; and
  - (b) may, having considered the representations, alter the draft plan.
- (5) The requirements of this section do not apply to the draft plan as altered under paragraph (4)(b).
- (6) This section does not apply to the preparation of a plan if the ACMA is satisfied that the preparation of the plan is a matter of urgency.

### **34 Revocation and variation of plans**

- (1) The ACMA may, at any time, revoke or vary a spectrum plan or frequency band plan.
- (2) Section 33 applies to such a revocation or variation as if references in that section to the draft of a plan were references to the proposal for such a revocation or variation.
- (3) In the case of a variation, the plan as varied must comply with any requirements under section 30 or 32, as the case requires.

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**35 Disallowance of plans**

A spectrum plan prepared under section 30 and frequency band plans, and revocations and variations under section 34, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Part 2.2—Conversion plans and marketing plans**

### **36 Designation of parts of the spectrum for spectrum licences**

- (1) The Minister may, after consultation with the ACMA, give to the ACMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.
- (2) The notice is to be expressed to apply with respect to one or more specified areas.
- (3) The ACMA may, at the Minister's request or on its own initiative, make recommendations to the Minister about notices that should be given.
- (4) Before making a recommendation, the ACMA must give members of the public reasonable opportunity to make representations to the ACMA about the recommendation it should make.
- (5) The Minister must not give a notice that relates wholly or partly to a part of the spectrum referred to the ACMA under subsection 31(1) or (1A), unless the part of the spectrum that the notice relates to is covered by a determination under subsection 31(2).
- (6) If there is in force a spectrum re-allocation declaration stating that a particular part of the spectrum is subject to re-allocation with respect to a particular area, then, during the re-allocation period for the declaration, the Minister must not give a notice under this section that relates wholly or partly to that part of the spectrum with respect to the whole or a part of that area.
- (7) If, at the beginning of the re-allocation period for a spectrum re-allocation declaration:
  - (a) the declaration states that a particular part of the spectrum is subject to re-allocation with respect to a particular area; and
  - (b) a notice is in force under this section designating a particular part of the spectrum to be allocated by issuing spectrum licences with respect to a particular area; and
  - (c) the part and area covered by the declaration overlap, to any extent, with the part and area covered by the notice;

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then:

- (d) the notice; and
- (e) any conversion plan prepared by the ACMA on receiving the notice; and
- (f) any marketing plan prepared by the ACMA on receiving the notice;

cease to have effect at the beginning of that period, to the extent of the overlap.

(8) If:

- (a) because of subsection (7), Subdivision A of Division 1 of Part 3.2 ceases to apply to a particular apparatus licence at a particular time; and
- (b) before that time, the ACMA gave the licensee an offer under section 56 to issue a spectrum licence to replace the apparatus licence;

subsection (7) does not prevent:

- (c) the licensee accepting the offer; or
- (d) the ACMA issuing the spectrum licence.

### **37 Preparation or variation of frequency band plans**

The ACMA may, before preparing a conversion plan or a marketing plan under this Part, prepare a frequency band plan under section 32, or vary a frequency band plan under section 34, in order to assist it in preparing the conversion plan or marketing plan.

### **38 Conversion plans**

- (1) On receiving a notice designating a specified part of the spectrum to be allocated by issuing spectrum licences, the ACMA must, by written instrument, prepare a conversion plan that sets out the procedures and timetable for issuing spectrum licences to replace existing apparatus licences that authorise operation of radiocommunications devices:
  - (a) at frequencies within that part of the spectrum; and
  - (b) within the area or areas specified in the notice.

- (2) The conversion plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the plan applies.
- (3) The conversion plan may contain such other additional matters as the ACMA thinks fit.
- (4) The conversion plan must not be inconsistent with:
  - (a) the spectrum plan; or
  - (b) a frequency band plan that relates, wholly or partly, to the part of the spectrum to which the conversion plan relates.
- (5) This section does not apply if there are no apparatus licences to which such a conversion plan would apply.

### **39 Marketing plans—unencumbered spectrum**

- (1) On receiving a notice designating a part of the spectrum to be allocated by issuing spectrum licences, the ACMA must also, by written instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices:
  - (a) at frequencies, within that part of the spectrum, that will not be used under spectrum licences issued in accordance with the conversion plan; and
  - (b) within the area or areas specified in the notice.
- (2) The marketing plan is to apply to:
  - (a) spectrum licences that might be issued that do not replace apparatus licences; and
  - (b) spectrum licences that are issued under section 58.
- (3) The marketing plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the plan applies.
- (4) Without limiting the matters that the marketing plan may contain, it may indicate:
  - (a) the procedures to be followed for issuing spectrum licences in accordance with the plan; and
  - (b) the timetable for issuing spectrum licences in accordance with the plan; and

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- (c) how the spectrum dealt with under the plan is to be apportioned amongst the spectrum licences to be issued; and
  - (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and
  - (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.
- (5) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated by auction, by tender, for a pre-determined price or for a negotiated price.
- (6) The marketing plan must not be inconsistent with:
- (a) the spectrum plan; or
  - (b) a frequency band plan that relates, wholly or partly, to the part of the spectrum to which the marketing plan relates.

**39A Marketing plans—re-allocation of spectrum**

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



- (b) the timetable for issuing spectrum licences in accordance with the plan; and
  - (c) how the spectrum dealt with under the plan is to be apportioned among the spectrum licences to be issued; and
  - (d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and
  - (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.
- (6) Subsection (5) does not, by implication, limit the matters that the marketing plan may indicate.
- (7) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated by auction, by tender, for a pre-determined price or for a negotiated price.
- (8) The marketing plan must not be inconsistent with:
- (a) the spectrum plan; or
  - (b) a frequency band plan that relates, wholly or partly, to the part or parts of the spectrum to which the marketing plan relates.

#### **40 Consultation on draft plans**

- (1) The ACMA may, before preparing a conversion plan or a marketing plan:
- (a) make available to the public, in any way it thinks appropriate, copies of a draft of the plan; and
  - (b) invite interested parties to make representations to the ACMA about the draft plan.
- (2) This section does not limit any other action the ACMA may take in consulting with persons about a conversion plan or a marketing plan.

#### **41 Delays in preparing plans**

- (1) If the ACMA thinks that preparation of a conversion plan or a marketing plan may be unduly delayed because of difficulties in preparing the plan so far as it relates to some of the frequencies

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within the part of the spectrum in respect of which the plan is to be prepared, the ACMA may:

- (a) decide that, in order not to delay the preparation of a plan in relation to frequencies for which the difficulties do not apply, the task of preparing the plan should be divided into one of preparing more than one plan; and
  - (b) prepare those plans at different times.
- (2) Each of the plans so prepared is taken to have been prepared under section 38, 39 or 39A, as the case requires, and this Part applies to the preparation of each plan accordingly.

#### **42 Variation of plans**

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

#### **43 Publication of plans**

- (1) As soon as practicable after preparing or varying a conversion plan or a marketing plan, the ACMA must cause to be published in the *Gazette* a notice setting out details of where copies of the plan, or an up-to-date version of the plan, can be purchased at a reasonable cost.
- (2) The ACMA must take all reasonable steps to ensure that members of the public can obtain copies as set out in the notice.

#### **44 Expressions of interest in spectrum licences**

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

## **Part 2.3—Digital radio channel plans**

### **44A Preparation of digital radio channel plans**

- (1) Before issuing the first digital radio multiplex transmitter licence for a designated BSA radio area, the ACMA must, by legislative instrument, prepare a plan that:
  - (a) allots a frequency channel or channels in relation to the designated BSA radio area for use by digital radio multiplex transmitter licensees, where each allotted frequency channel has a bandwidth of at least 1.536 MHz; and
  - (b) reserves a frequency channel of at least 1.536 MHz bandwidth for a category 3 digital radio multiplex transmitter licence for the designated BSA radio area to be issued in accordance with subsection 102E(2); and
  - (c) determines which of the following types of licences, or which combination of the following types of licences, are to be issued for the designated BSA radio area:
    - (i) category 1 digital radio multiplex transmitter licence;
    - (ii) category 2 digital radio multiplex transmitter licence; and
  - (d) if a particular type of licence mentioned in paragraph (c) is to be issued for the designated BSA radio area—determines whether:
    - (i) a single licence of that type is to be issued for the designated BSA radio area; or
    - (ii) 2 or more licences of that type are to be issued for the designated BSA radio area; and
  - (e) determines technical specifications of multiplex transmitters operated under digital radio multiplex transmitter licences for the designated BSA radio area.
- (2) The plan must be consistent with:
  - (a) the spectrum plan; and
  - (b) any relevant frequency band plans; and
  - (c) any relevant frequency allotment plans prepared under section 25 of the *Broadcasting Services Act 1992*; and

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- (d) any relevant licence area plans prepared under section 26 of the *Broadcasting Services Act 1992*; and
  - (e) any relevant digital channel plans (within the meaning of clause 7A of Schedule 4 to the *Broadcasting Services Act 1992*) made under the commercial television conversion scheme; and
  - (f) any relevant digital channel plans (within the meaning of clause 22A of Schedule 4 to the *Broadcasting Services Act 1992*) made under the national television conversion scheme.
- (3) A plan under subsection (1) is to be known as the ***digital radio channel plan*** for the designated BSA radio area.
- (4) A copy of a digital radio channel plan is to be made available on the ACMA's Internet site.

*Consultation*

- (5) Before preparing a plan under subsection (1), the ACMA must:
- (a) publish a draft of the plan on the ACMA's Internet site; and
  - (b) invite members of the public to make submissions to the ACMA about the draft plan within a specified period of at least 30 days; and
  - (c) consider any submissions the ACMA receives from members of the public within that period.

*Variation of digital radio plans*

- (6) The ACMA may, by legislative instrument, vary a digital radio channel plan.
- (7) Before varying a digital radio channel plan under subsection (6), the ACMA must:
- (a) publish a draft of the variation on the ACMA's Internet site; and
  - (b) invite members of the public to make submissions to the ACMA about the variation within a specified period of at least 30 days; and
  - (c) consider any submissions the ACMA receives from members of the public within that period.

*ACMA must have regard to authorised digital radio broadcasting services*

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

*Frequency channels to be in the same frequency band*

- (10) The ACMA must, as far as practicable, ensure that all the frequency channels allotted or reserved by a digital radio channel plan for a particular designated BSA radio area are in the same frequency band.

*Technical specifications not to discriminate between digital radio multiplex transmitter licensees*

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

*Definitions*

- (12) In this section:

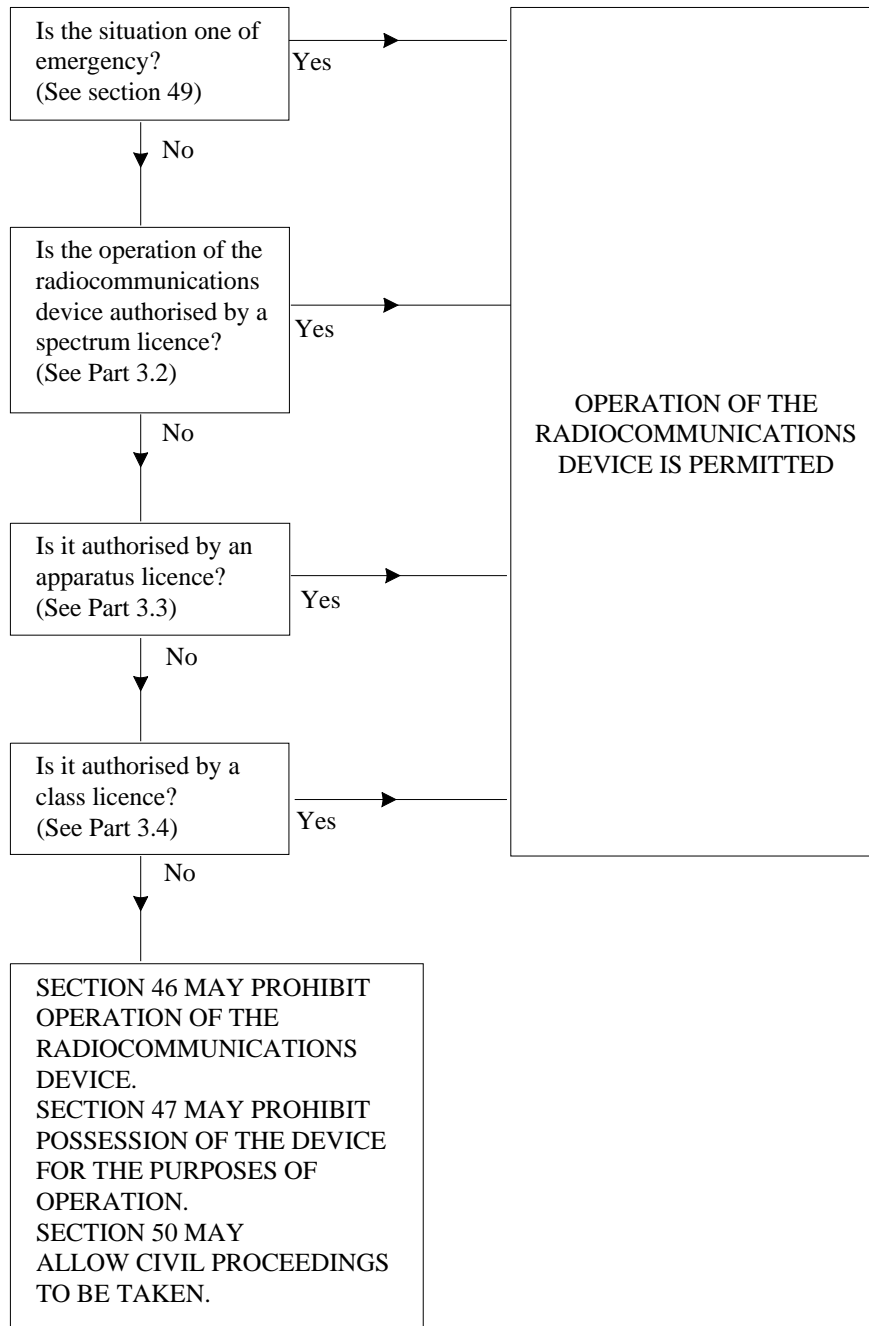
**commercial television conversion scheme** has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**national television conversion scheme** has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

## Chapter 3—Licensing of radiocommunications

### 45 Outline of this Chapter

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



## **Part 3.1—Unlicensed radiocommunications**

### **Division 1—Offences**

#### **46 Unlicensed operation of radiocommunications devices**

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

Penalty:

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

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

#### **47 Unlawful possession of radiocommunications devices**

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

Penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter:



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

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

#### **48 Additional provisions about possession of radiocommunications devices**

- (1) Without limiting section 47, a person is taken, for the purposes of that section, to have a radiocommunications device in his or her possession for the purpose of operation if it is in his or her possession, otherwise than for the purpose of supply to another person, and can be operated merely by doing one or more of the following:
- (a) connecting the device to an electric power supply by means of an electric plug or other electrical connection;
  - (b) connecting a microphone to the device by inserting a microphone plug into the device;
  - (c) switching on the device;
  - (d) switching on any other equipment relevant to the device's operation;
  - (e) adjusting settings by manipulating the device's external switches, dials or other controls;
  - (f) connecting the device to an antenna.
- (2) Subsection (1) only applies in the absence of any evidence to the contrary.
- (3) A reference in this Division to a person having a radiocommunications device in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

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**49 Emergency operation etc. of radiocommunications devices**

- (1) A person does not contravene section 46 or 47 by operating a radiocommunications device, or having a radiocommunications device in his or her possession, in the reasonable belief that the operation or possession was necessary for the purpose of:
  - (a) securing the safety of a vessel, aircraft or space object that was in danger; or
  - (b) dealing with an emergency involving a serious threat to the environment; or
  - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
  - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (2) In proceedings for an offence against section 46 or 47, the burden of proving any of the matters referred to in subsection (1) lies on the defendant.
- (3) Nothing in this section limits the scope of the expression “reasonable excuse” in section 46 or 47.

## Division 2—Civil proceedings

### 50 Civil proceedings

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

## **Part 3.2—Spectrum licences**

### **51 Outline of this Part**

- (1) This Part is about spectrum licences, under which licensees are authorised to use parts of the spectrum.
- (2) Division 1 is about issuing spectrum licences, in particular:
  - (a) converting apparatus licences into spectrum licences under conversion plans and (in some cases) marketing plans (Subdivision A); and
  - (b) issuing spectrum licences under marketing plans (Subdivision B); and
  - (c) what spectrum licences will contain (Subdivision C); and
  - (d) how section 50 and related provisions of the *Trade Practices Act 1974* apply to the issue of spectrum licences (Subdivision D).
- (3) Division 2 is about varying spectrum licences.
- (4) Division 3 is about suspending and cancelling spectrum licences.
- (5) Division 4 is about re-issuing spectrum licences.
- (6) Division 5 is about trading spectrum licences.
- (7) Division 6 enables the ACMA to resume spectrum licences:
  - (a) by agreement with the licensee (Subdivision A); or
  - (b) by the compulsory process set out in the Schedule (Subdivision B).

## **Division 1—Issuing spectrum licences**

### **Subdivision A—Converting apparatus licences into spectrum licences**

#### **52 Application of this Subdivision**

- (1) This Subdivision applies to an apparatus licence if the apparatus licence authorises the operation of a radiocommunications device:
  - (a) at frequencies within a part of the spectrum to which a conversion plan applies; and
  - (b) within an area to which the conversion plan applies.
- (2) The holder of such an apparatus licence is referred to in this Subdivision as the *licensee*.

#### **53 Preparation of draft spectrum licences**

- (1) As soon as practicable after preparing a conversion plan, the ACMA must, in respect of each apparatus licence to which this Subdivision applies as a result of the conversion plan, prepare a draft of a spectrum licence to replace the apparatus licence.
- (2) The draft spectrum licence must, so far as is practicable, authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than, they are authorised under the apparatus licence to be replaced.

#### **54 Notification of draft spectrum licences**

- (1) The ACMA must give to the licensee:
  - (a) a copy of the draft spectrum licence; and
  - (b) a notice inviting the licensee to make representations about the draft spectrum licence on or before the day specified in the notice.
- (2) The day specified in the notice must be at least one month later than the day on which the notice is given to the licensee.

### **55 Representations about draft spectrum licences**

- (1) The licensee may, on or before the day specified in the notice, make representations to the ACMA about the proposed spectrum licence.
- (2) The ACMA:
  - (a) must give due consideration to any representations so made; and
  - (b) may, having considered the representations, alter the draft spectrum licence.

### **56 Offer of spectrum licences**

- (1) The ACMA must, as soon as practicable after the day specified in the notice, give to the licensee a written offer to issue to the licensee a spectrum licence to replace the licensee's apparatus licence.
- (2) The offer must:
  - (a) identify the spectrum licence that the ACMA proposes to issue; and
  - (b) specify the amount of spectrum access charge that the licensee must pay to the Commonwealth for the spectrum licence; and
  - (c) specify the day on which the offer will close.

Note: Spectrum access charges are determined under Part 5.7.
- (3) The day specified in the offer must be at least one month later than the day on which the offer is given to the licensee.

### **57 Issuing of spectrum licences on acceptance of offers**

- (1) The ACMA must issue the spectrum licence to the licensee if, on or before the day specified in the offer, the licensee gives the ACMA a written notice:
  - (a) accepting the offer; and
  - (b) agreeing to pay the amount of spectrum access charge specified in the offer.

Note: Spectrum access charges are determined under Part 5.7.

- (2) The spectrum licence comes into force on the day specified in the licence.
- (3) Immediately before it comes into force, the apparatus licence that it is to replace ceases to be in force.

### **58 Failures to accept offers**

- (1) If the licensee:
  - (a) notifies the ACMA, on or before the day specified in the offer, that the licensee does not accept the offer; or
  - (b) fails to give the ACMA notice under section 57 before that day;the ACMA may allocate the spectrum licence in the manner provided for in sections 60 to 63, and issue the spectrum licence accordingly.
- (2) The spectrum licence comes into force on the day specified in the licence.
- (3) Immediately before it comes into force, the apparatus licence that it is to replace ceases to be in force.
- (4) If the licensee had paid an apparatus licence tax for the apparatus licence, the ACMA must refund to the licensee such portion of the tax as corresponds to the part of the period of the apparatus licence that had, immediately before the licence ceased to be in force, not elapsed.

### **59 Compliance with plans**

- (1) The ACMA must ensure that, in issuing a spectrum licence under this Subdivision, the ACMA had complied with any requirements relating to:
  - (a) issuing the licence; or
  - (b) the procedures to be followed prior to its issue;that are imposed by the relevant conversion plan.
- (2) In addition to subsection (1), if the spectrum licence is issued under section 58, the ACMA must also ensure that it has complied with any requirements relating to:
  - (a) issuing the licence; or

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- (b) the procedures to be followed prior to its issue; that are imposed by the relevant marketing plan.
- (3) Failure to comply with this section does not affect the validity of a spectrum licence.

**Subdivision B—Issuing spectrum licences**

**60 Procedures for allocating spectrum licences**

- (1) The ACMA must determine, in writing, the procedures to be applied in allocating spectrum licences under this Subdivision:
  - (a) by auction; or
  - (b) by tender; or
  - (c) by allocation for a pre-determined price or a negotiated price.
- (2) The procedures for allocation by auction may, for example, deal with any of the following matters:
  - (a) the types of auction;
  - (b) advertising of auctions;
  - (c) entry fees for prospective bidders;
  - (d) reserve prices (if any);
  - (e) deposits (if any) payable by successful bidders;
  - (f) methods of payment for licences.
- (3) The procedures for allocation by tender may, for example, deal with any of the following matters:
  - (a) the types of tender;
  - (b) advertising of tenders;
  - (c) entry fees for prospective tenderers;
  - (d) reserve prices (if any);
  - (e) the method for resolving which of 2 or more equal tenders is to be successful;
  - (f) deposits (if any) payable by successful tenderers;
  - (g) methods of payment for licences.
- (4) The procedures for allocation for a pre-determined or negotiated price may, for example, deal with any of the following matters:
  - (a) the way in which prices are to be determined or negotiated;
  - (b) advertising of proposed allocations;



(c) methods of payment for licences.

(5) Procedures determined under subsection (1) may:

(a) impose limits on the aggregate of the parts of the spectrum that, as a result of the allocation of spectrum licences under this Subdivision, may be used by:

(i) any one person; or

(ii) a specified person; or

(b) impose limits on the aggregate of the parts of the spectrum that, as a result of the allocation of spectrum licences under this Subdivision, may, in total, be used by the members of a specified group of persons.

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

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

(a) a specified part of the spectrum;

(b) a specified area;

(c) a specified population reach.

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

(6A) Procedures that impose limits as mentioned in subsection (5) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.

(7) Procedures determined under subsection (1) may require the ACMA to give specified information to the ACCC.

(8) Subsections (5), (6), (6A) and (7) do not, by implication, limit subsection (1).

(9) The ACMA must not determine procedures imposing a limit as mentioned in subsection (5) unless the ACMA is directed to do so by the Minister under subsection (10).

(10) The Minister may give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection (5).

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- (11) A direction under subsection (10) must be published in the *Gazette*.
- (12) The ACMA must exercise its powers under subsection (1) in a manner consistent with any directions given by the Minister under subsection (10).
- (13) Subsection (10) does not, by implication, limit the Minister's power to give directions otherwise than under that subsection.
- (14) Before determining procedures under subsection (1), the ACMA must consult the ACCC about whether the procedures should include a requirement mentioned in subsection (7) and, if so, the nature of the requirement.

**61 Preparation of draft spectrum licences**

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

**62 Issue of spectrum licences**

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

Note: Spectrum access charges are determined under Part 5.7.

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

### **63 Compliance with marketing plans**

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

### **Subdivision C—Contents of spectrum licences**

#### **64 Authorisation to use part of the spectrum**

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

#### **65 Duration of spectrum licences**

- (1) A spectrum licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.
- (2) Subject to Division 3, a spectrum licence remains in force for the period specified in the licence.
- (3) The licence may specify any period up to 15 years.

#### **66 Core conditions of spectrum licences**

- (1) A spectrum licence must include the following core conditions:

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

**67 Conditions about payment of charges**

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

- (a) charges fixed by determinations made under section 60 of the *Australian Communications and Media Authority Act 2005*;
- and

- (b) spectrum access charges fixed by determinations made under section 294; and
- (c) amounts of spectrum licence tax.

### **68 Conditions about third party use**

- (1) Except as provided by this section, the licensee of a spectrum licence may authorise other persons to operate radiocommunications devices under the licence.
- (2) A spectrum licence:
  - (a) must include a condition that any operation of a radiocommunications device under the licence by a person other than the licensee must comply with any rules made under subsection (3); and
  - (b) must include a condition that the licensee must notify any persons whom he or she authorises to operate radiocommunications devices under the licence of their obligations under this Act, in particular:
    - (i) if applicable, the registration requirements under Part 3.5 for operation of radiocommunications devices under the licence; and
    - (ii) any rules made under subsection (3).
- (3) The ACMA may, by written instrument, make rules about the operation of radiocommunications devices under spectrum licences by persons other than licensees, including rules about the way in which licensees may authorise those persons to operate radiocommunications devices under spectrum licences.
- (4) Rules are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **68A Authorisation under spectrum licence is to be treated as acquisition of asset**

For the purposes of section 50 and subsections 81(1) and (1A) and 88(9), 89(5A) and 90(9) of the *Trade Practices Act 1974*, the authorisation, in accordance with subsection 68(1) of this Act, of a person to operate radiocommunications devices under a spectrum licence is taken to be an acquisition by the person of an asset of another person.

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**69 Conditions about registration of radiocommunications transmitters**

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

**69A Conditions about residency etc.**

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

- (3) In this section:

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

*authorised person* means a person authorised under section 68 by the licensee of a spectrum licence to operate radiocommunications devices under the licence.

*permanent establishment* has the same meaning as in:

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

### **71 Other conditions of spectrum licences**

- (1) The ACMA may include such other conditions in a spectrum licence as it thinks fit.
- (2) The ACMA's power under this section is not limited by sections 67 to 69A.

### **Subdivision D—Rules about section 50 and related provisions of the Trade Practices Act**

#### **71A Issue of spectrum licence is to be treated as acquisition of asset**

- (1) For the purposes of section 50 and subsections 81(1), 88(9), 89(5A) and 90(9) of the *Trade Practices Act 1974*, the issue of a spectrum licence to a person is taken to be an acquisition by the person of an asset of another person.
- (2) Subsection (1) does not apply to the re-issue of a spectrum licence under section 82.

## **Division 2—Varying spectrum licences**

### **72 Variation with agreement**

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

### **73 Variation without agreement**

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

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



## **Division 3—Suspending and cancelling spectrum licences**

### **74 Application of this Division**

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

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

### **75 Suspending spectrum licences**

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

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

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

### **76 Period of suspension**

- (1) Subject to subsection (2), the suspension of the spectrum licence, unless it is sooner revoked, ceases:
  - (a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she is convicted of the offence—on the expiration of 14 days after the date of the conviction; or
  - (b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or

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- (c) in any other case—on the expiration of 28 days after the suspension.
- (2) If:
  - (a) the notice of suspension specifies a day as the day on which the suspension of the spectrum licence ceases; and
  - (b) that day occurs before the day fixed under subsection (1);the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.
- (3) In subsection (1):

*proceedings* does not include proceedings by way of appeal or review.

**77 Cancelling spectrum licences**

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

Note: Cancellations of spectrum licences are reviewable under Part 5.6.
- (2) The notice must give the reasons for cancelling the licence.

## **Division 4—Re-issuing spectrum licences**

### **78 Notice of spectrum licences that are about to be re-issued**

The ACMA must, from time to time, cause to be published in the *Gazette* a notice that:

- (a) states where information about the spectrum licences that will expire during the 2 years immediately following publication of the notice, and the parts of the spectrum to which they relate, may be obtained; and
- (b) invites expressions of interest from persons who wish to have issued to them spectrum licences relating to those parts of the spectrum.

### **79 Preparation of draft spectrum licences for re-issue**

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

### **80 Procedures for re-allocating spectrum licences**

The procedures determined under section 60 apply, so far as they are capable of applying, to re-allocating spectrum licences under this Division in the same way that they apply to allocating spectrum licences under Subdivision B of Division 1.

### **81 Re-issue of spectrum licences**

- (1) The ACMA may re-allocate a spectrum licence in accordance with the procedures determined under section 60 (as they apply because of section 80), but not otherwise.

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- (2) The ACMA must issue the spectrum licence to the person to whom it is re-allocated if the person:
  - (a) pays to the ACMA the spectrum access charge for issuing the licence; or
  - (b) reaches an agreement with the ACMA for payment of that spectrum access charge.

**82 Re-issue of spectrum licences to the same licensees in the public interest**

- (1) The ACMA may, without following the procedures determined under section 60 (as they apply because of section 80), re-issue a spectrum licence to the person to whom it was previously issued if:
  - (a) the licence was used in the provision of a service included in a class of services specified in a determination under subsection (3); or
  - (b) the ACMA is satisfied that special circumstances exist as a result of which it is in the public interest for that person to continue to hold the licence.
- (2) Subsection (1) does not imply that the ACMA must issue such a spectrum licence without the person:
  - (a) paying to the ACMA the spectrum access charge for issuing the licence; or
  - (b) reaching an agreement with the ACMA for payment of that spectrum access charge.
- (3) The Minister may determine, by written instrument, a specified class of services for which re-issuing spectrum licenses to the same licensees would be in the public interest.
- (4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The ACMA must notify the licensee in writing if the core conditions of the re-issued licence differ from the core conditions of the licence it replaces.
  - Note: Changes in the core conditions of such re-issued licences are reviewable decisions under Part 5.6.
- (6) This section does not prevent a spectrum licence being issued under section 81 to a person to whom it was previously issued.

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

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

**84 Commencement of re-issued spectrum licences**

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

## **Division 5—Trading spectrum licences**

### **85 Trading spectrum licences**

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

### **86 Registration of assignments etc.**

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

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

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

- (2) A licence as varied, or a new licence issued, under subsection (1) must comply with the requirements of Subdivision C of Division 1.
- (3) Subdivision D of Division 1 applies to the issue of a new licence under subsection (1) of this section.

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

### **88 Rules about assignments etc.**

- (1) The ACMA may determine, by written instrument, rules:
  - (a) for assignments of spectrum licences; and
  - (b) setting out the circumstances in which spectrum licences are to be varied, issued or cancelled under section 87.
- (2) The rules may, for example, restrict assignments of spectrum licences that were issued for the provision of public or community services.
- (3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 6—Resuming spectrum licences**

### **Subdivision A—Resuming spectrum licences by agreement**

#### **89 ACMA may resume spectrum licences by agreement**

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

#### **90 Effect of resumption**

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

### **Subdivision B—Resuming spectrum licences by compulsory process**

#### **91 ACMA may resume spectrum licences compulsorily**

- (1) Subject to subsection (2), the ACMA may resume a spectrum licence, or a part of a spectrum licence.



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

## **92 Effect of resumption**

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

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

## **93 Payment of compensation**

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

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**94 Interest payable on resumption etc.**

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

**95 Reaching agreements during the compulsory process**

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

## **Part 3.3—Apparatus licences**

### **96 Outline of this Part**

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

## **Division 1—Types of apparatus licences**

### **97 Transmitter licences and receiver licences**

- (1) The ACMA may issue:
  - (a) transmitter licences; and
  - (b) receiver licences.
- (2) A transmitter licence authorises:
  - (a) the person specified in the licence as the licensee; and
  - (b) subject to Division 4, any person authorised by that person under section 114;to operate specified radiocommunications transmitters, or radiocommunications transmitters of a specified kind.
- (3) A receiver licence authorises:
  - (a) the person specified in the licence as the licensee; and
  - (b) subject to Division 4, any person authorised by that person under section 114;to operate specified radiocommunications receivers, or radiocommunications receivers of a specified kind.
- (4) Operation of a radiocommunications device is not authorised by the relevant apparatus licence if it is not in accordance with the conditions of the licence.

### **98 Types of transmitter licences and receiver licences**

- (1) The ACMA may determine, by written instrument, the types of transmitter licences and the types of receiver licences that it may issue.
- (2) The ACMA must not issue an apparatus licence that is not a transmitter licence or receiver licence of a type so determined.
- (2A) For the purposes of this Act, the type of an apparatus licence is to be ascertained solely by reference to a determination.
- (3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **98A Channel A datacasting transmitter licence**

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a *channel A datacasting transmitter licence* for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a *channel A datacasting transmitter licence* for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

### **98B Channel B datacasting transmitter licence**

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a *channel B datacasting transmitter licence* for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a *channel B datacasting transmitter licence* for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

### **98C Foundation category 1 digital radio multiplex transmitter licence**

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

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- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

**98D Foundation category 2 digital radio multiplex transmitter licence**

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

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

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

foundation category 1 digital radio multiplex transmitter licence that has been previously issued for that area.

- (4) Subsection (1) does not prevent the ACMA from making a declaration under subsection 98D(1) in relation to a category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area if the ACMA proposes to cancel a foundation category 2 digital radio multiplex transmitter licence that has been previously issued for that area.

- (5) In this section:

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

## Division 2—Issuing apparatus licences

### 99 Applications for apparatus licences

- (1) A person may apply in writing to the ACMA for an apparatus licence of the type specified in the application.
- (2) The application must be in a form approved by the ACMA.
- (3) The ACMA may approve different forms for the different types of apparatus licence.

### 100 Issuing apparatus licences

- (1) Subject to sections 100B, 101B, 101C, 102, 102A, 102B, 102C, 102D, 102E and 102F, upon such application being made, the ACMA may issue to the applicant an apparatus licence of the type applied for.
- (1A) The ACMA must not issue a temporary community transmitter licence except under section 101A. For the purposes of this subsection, a *temporary community transmitter licence* is an apparatus licence that authorises operation of one or more radiocommunications transmitters for transmitting a community broadcasting service in accordance with a temporary community broadcasting licence.
- (2) The ACMA must not issue an apparatus licence authorising operation of a radiocommunications transmitter within a part of the spectrum designated under subsection 31(1) or (1A) unless:
  - (a) the issue of the licence is in accordance with a decision of the ACMA under subsection 34(1) or (3) of the *Broadcasting Services Act 1992*; or
  - (b) the issue of the licence is in accordance with a determination under subsection 31(2) of this Act; or
  - (c) the licence is a digital radio multiplex transmitter licence.
- (3) Subsection (2) does not prevent the ACMA from issuing an apparatus licence authorising operation of a radiocommunications transmitter for transmitting a broadcasting service if:



- (a) the licence authorises operation of the transmitter only within a part of the spectrum that constitutes capacity reserved under paragraph 31(1)(a) of the *Broadcasting Services Act 1992*; and
  - (b) the broadcasting service in question is a broadcasting service of a kind for which the capacity has been so reserved.
- (3A) An NBS transmitter licence cannot be issued to any person other than:
  - (a) the Australian Broadcasting Corporation; or
  - (b) the Special Broadcasting Service Corporation; or
  - (c) the Commonwealth.
- (3B) The ACMA must not issue a transmitter licence authorising operation of a radiocommunications transmitter for transmitting an international broadcasting service unless there is in force an international broadcasting licence that authorises the provision of that service.
- (3C) If:
  - (a) a provisional international broadcasting certificate is in force in relation to an application for a transmitter licence; and
  - (b) the application for the licence is made by the holder of the certificate; and
  - (c) the conditions set out in the certificate are satisfied;the ACMA must not refuse to issue the transmitter licence unless the ACMA is satisfied that there are exceptional circumstances that warrant the refusal.
- (4) In deciding whether to issue an apparatus licence, the ACMA must have regard to:
  - (a) all matters that it considers relevant; and
  - (b) without limiting paragraph (a), the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the licence.
- (4A) The ACMA, in deciding whether to issue an apparatus licence, may have regard to a frequency assignment certificate issued by a person accredited under section 263 to issue such certificates for the purposes of this section, stating that the operation of a device under the licence:

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- (a) on a specified frequency or frequencies, or on a specified frequency channel; and
  - (b) at a specified constancy; and
  - (c) at a specified location; and
  - (d) subject to specified technical conditions;
- will satisfy any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.
- (5) In deciding whether to issue an apparatus licence, the ACMA may also have regard to whether, in the 2 years before the application, the applicant has been the holder of an apparatus licence that has been cancelled otherwise than under section 153H.
  - (6) Without limiting subsection (4), in deciding whether to issue a transmitter licence, the ACMA must have regard to the following additional matters:
    - (a) if a licence that the ACMA may issue as a result of the application would be a licence in respect of which persons operating the transmitters are required under section 119 to be qualified operators in relation to the licence—whether:
      - (i) the applicant; or
      - (ii) each person specified by the applicant as a person whom the applicant proposes to authorise under the licence to operate the transmitters;is a qualified operator in relation to such a licence;
    - (b) whether the ACMA is satisfied that the proposed operation of the transmitters is not reasonably likely to cause:
      - (i) death of, or injury to, persons; or
      - (ii) loss of, or damage to, property.
  - (7) If the ACMA refuses to issue the licence, it must give the applicant a written notice of the refusal, together with a statement of its reasons.

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

**100A NBS transmitter licences—authorisation of datacasting services**

- (1) If:
- (a) an NBS transmitter licence is or was issued under section 100; and
  - (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a national television broadcasting service in digital mode using one or more channels;
- the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting datacasting services in digital mode using those channels.
- (1B) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service in digital mode using those channels has no effect unless the licensee holds a BSA datacasting licence authorising the provision of that service.

- (2) In this section:

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

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

**100B NBS transmitter licences required to be issued under digital conversion schemes**

- (1) If the ACMA is required, under a scheme in force under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992*, to issue an NBS transmitter licence to a national broadcaster, the ACMA must issue to the broadcaster an NBS transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting the national broadcasting service or services concerned in digital mode.
- (2) If an NBS transmitter licence is issued under this section, the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting datacasting services in digital mode using the channel or channels concerned.

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(2B) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service in digital mode using the channel or channels concerned has no effect unless the licensee holds a BSA datacasting licence authorising the provision of that service.

(3) In this section:

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

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

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

**100C NBS transmitter licences—authorisation of radio broadcasting services**

(1) If:

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

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

(2) In this section:

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

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

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

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

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

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

(1) If:

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

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

(2) In this section:

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

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

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

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

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

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

(1) If:

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

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

(2) In this section:

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

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

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

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

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

**101 Testing of radiocommunications devices**

- (1) If the ACMA thinks it necessary for the purposes of paragraph 100(4)(b), the ACMA may, by written notice given to the applicant for a transmitter licence or a receiver licence, request the applicant to:

- (a) submit to the ACMA the radiocommunications device specified in the notice, at a time and place specified in the notice, for testing; or
  - (b) permit the ACMA, or a recognised testing authority, to test the radiocommunications device so specified.
- (2) A radiocommunications device submitted under paragraph (1)(a) for testing must be returned to the applicant within a reasonable time.

#### **101A Transmitter licences for temporary community broadcasting**

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

#### **101B Transmitter licence—application if multi-channelling election is in force in relation to remote licence area**

- (1) If:
- (a) a commercial television broadcasting licence (the *related licence*) allocated under section 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and
  - (b) an election under subclause 6(7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence;
- the licensee of the related licence may, before the end of whichever of the following periods is applicable:
- (c) the simulcast period for the licence area;
  - (d) the simulcast-equivalent period for the licence area;
- apply in writing to the ACMA for the issue of a transmitter licence under this section.
- (2) An application under subsection (1) must be in a form approved by the ACMA.

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*Issue of transmitter licence*

- (3) If:
- (a) an application is made under subsection (1); and
  - (b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;
- the ACMA must:
- (c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee of the related licence; and
  - (d) issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.
- (4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.
- (5) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

*Definitions*

- (6) In this section:

*simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**101C Transmitter licence—application before the end of the simulcast period etc. if multi-channelling election is in force**

- (1) If:
- (a) a commercial television broadcasting licence (the *related licence*) allocated under section 38A or 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and



- (b) an election under subclause 6(5A), (5AA) or (7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence; and
- (c) no transmitter licence has been issued to the licensee of the related licence under section 101B;

the licensee of the related licence may, before the end of whichever of the following periods is applicable:

- (d) the simulcast period for the licence area;
- (e) the simulcast-equivalent period for the licence area;

apply in writing to the ACMA for the issue of a transmitter licence under this section.

- (2) An application under subsection (1) must be in a form approved by the ACMA.

*Issue of transmitter licence*

- (3) If:
  - (a) an application is made under subsection (1); and
  - (b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;

the ACMA must issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

- (4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.
- (5) The transmitter licence comes into force at the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the related licence.
- (6) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

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*Consequences of revocation of election*

- (7) If:
- (a) an application is made under subsection (1); and
  - (b) the election referred to in paragraph (1)(b) is revoked before the ACMA makes a decision on the application;
- the application is taken never to have been made.
- (8) If:
- (a) a transmitter licence is issued under subsection (3); and
  - (b) the election referred to in paragraph (1)(b) is subsequently revoked;
- the transmitter licence is cancelled.

*Definitions*

- (9) In this section:

*simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**102 Transmitter licences for certain broadcasting services**

- (1) Subject to subsections (2AA) and (2AB), if a broadcasting services bands licence (the *related licence*) is allocated to a person under Part 4 or 6 of the *Broadcasting Services Act 1992*, the ACMA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in accordance with the related licence.
- (2) If the related licence is transferred, that transmitter licence is taken to be issued to the person to whom the related licence is transferred.
- (2AA) Subsection (1) does not apply if:
- (a) the related licence is a commercial radio broadcasting licence allocated on or after the digital radio start-up day for the BSA licence area; and

- (b) the related licence is subject to a condition that the related licensee may only provide digital commercial radio broadcasting services under the related licence.

(2AB) Subsection (1) does not apply if:

- (a) the related licence is a designated community radio broadcasting licence allocated on or after the digital radio start-up day for the BSA licence area; and
- (b) the related licence is subject to a condition that the related licensee may only provide digital community radio broadcasting services under the related licence.

(2AC) If:

- (a) the related licence is a commercial radio broadcasting licence allocated before the digital radio start-up day for the BSA licence area; and
- (b) under the *Broadcasting Services Act 1992*, the related licence authorises the related licensee to provide digital commercial radio broadcasting services;

then, after the digital radio start-up day for the BSA licence area, the transmitter licence does not authorise the operation of a radiocommunications transmitter for transmitting those services.

(2AD) If:

- (a) the related licence is a designated community radio broadcasting licence allocated before the digital radio start-up day for the BSA licence area; and
- (b) under the *Broadcasting Services Act 1992*, the related licence authorises the related licensee to provide digital community radio broadcasting services;

then, after the digital radio start-up day for the BSA licence area, the transmitter licence does not authorise the operation of a radiocommunications transmitter for transmitting those services.

(2A) If:

- (a) a transmitter licence (the *first transmitter licence*) was issued under this section; and
- (b) the first transmitter licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a particular commercial television broadcasting service (the *first service*) in accordance with a commercial

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television broadcasting licence held by a person (the *first BSA licence*); and

- (c) another commercial television broadcasting licence (the *additional BSA licence*) is allocated to the person under section 38A or 38B of the *Broadcasting Services Act 1992*; and
- (d) the first BSA licence and the additional BSA licence relate to the same licence area (within the meaning of whichever of those sections is applicable); and
- (e) the additional BSA licence authorises the provision of one or more other commercial television broadcasting services (the *additional services*); and
- (f) the first service and at least one of the additional services are the subject of an election under subclause 6(5A) of Schedule 4 to the *Broadcasting Services Act 1992*;

then:

- (g) despite subsection (1), the ACMA is not required to issue to the person a new transmitter licence in relation to any of the additional services; and
  - (h) the first transmitter licence is taken to authorise the operation of the transmitter or transmitters concerned for transmitting the additional services in accordance with the additional BSA licence.
- (2B) Despite subsection (1), the ACMA is not required to issue a new transmitter licence for a commercial television broadcasting service if:
- (a) the service is provided under a licence that was allocated under subsection 38B(6), (7), (8) or (9) of the *Broadcasting Services Act 1992*; and
  - (b) a multi-channelling election is in force for the relevant remote area service.
- (2C) The operation of a transmitter or transmitters for transmitting the commercial television broadcasting service or services under that commercial television broadcasting licence is, if a multi-channelling election is in force for the relevant remote area service, taken to be authorised by the transmitter licence held by the company that made the election for the relevant licence area.

- (2D) If the ACMA approves the revocation of the multi-channelling election, the ACMA must issue a new transmitter licence to the licensee that revoked the election authorising the operation of a transmitter or transmitters for transmitting, in digital mode, the commercial television broadcasting service or services provided under the licence (the *related licence*) for which that election was made.
- (2E) The new licence comes into force on the day from which the revocation takes effect.
- (2EA) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.
- (2F) A transmitter licence issued under subsection (1) to a joint-venture company that is allocated a commercial television broadcasting licence under subsection 38B(5) of the *Broadcasting Services Act 1992* is, if a multi-channelling election is in force for the relevant remote area service, taken to authorise the operation of the transmitter or transmitters concerned for transmitting:
- (a) the commercial television broadcasting service or services provided under that commercial television broadcasting licence; and
  - (b) the commercial television broadcasting services provided by either or both of the 2 existing licensees referred to in subsection 38B(1) of that Act for the relevant licence area.
- (2G) If:
- (a) under subclause 6(5BA) of Schedule 4 to the *Broadcasting Services Act 1992*, the licensee of a commercial television broadcasting licence (the *related licence*) gives the ACMA a notice of revocation of an election; and
  - (b) the ACMA approves the revocation under clause 7B of Schedule 4 to that Act;
- the ACMA must issue to the licensee of the related licence a new transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.
- (2H) The new transmitter licence comes into force on the day on which the revocation takes effect.
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- (2J) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.
- (3) If:
- (a) a transmitter licence is or was issued under this section; and
  - (b) the licence authorises the operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in digital mode using one or more channels;
- the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting datacasting services in digital mode using those channels.
- (5) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service in digital mode using those channels has no effect unless:
- (a) the licensee holds a BSA datacasting licence authorising the provision of that service; or
  - (b) the service is a designated teletext service.
- (6) In this section and section 102A:

*exempt remote area service* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*multi-channelling election* means an election under subclause 6(7B) of Schedule 4 to the *Broadcasting Services Act 1992*.

**102A Transmitter licences required to be issued under digital conversion schemes**

- (1) If the ACMA is required, under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, to issue a transmitter licence to a person who holds a commercial television broadcasting licence (the *related licence*), the ACMA must issue to the person a transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service or services concerned in digital mode in accordance with the related licence.

- (2) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.
- (2A) If:
- (a) a transmitter licence (the *first transmitter licence*) is or was issued under this section; and
  - (b) the first transmitter licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a particular commercial television broadcasting service (the *first service*) in accordance with a commercial television broadcasting licence held by a person (the *first BSA licence*); and
  - (c) either before or after the issue of the first transmitter licence, another commercial television broadcasting licence (the *additional BSA licence*) is or was allocated to the person under section 38A or 38B of the *Broadcasting Services Act 1992*; and
  - (d) the first BSA licence and the additional BSA licence relate to the same licence area (within the meaning of whichever of those sections is applicable); and
  - (e) the additional BSA licence authorises the provision of one or more other commercial television broadcasting services (the *additional services*); and
  - (f) the first service and at least one of the additional services are the subject of an election under subclause 6(5A) or (5AA) of Schedule 4 to the *Broadcasting Services Act 1992*;
- the first transmitter licence is taken to authorise the operation of the transmitter or transmitters concerned for transmitting any of the additional services in accordance with the additional BSA licence.
- (2B) The operation of a transmitter or transmitters for transmitting a commercial television broadcasting service in digital mode under a licence allocated under subsection 38B(6), (7), (8) or (9) of the *Broadcasting Services Act 1992* to an existing licensee is, if a multi-channelling election is in force for the relevant exempt remote area service, taken to be authorised by the transmitter licence held by the licensee for the relevant licence area.
- (2C) The holder of a transmitter licence issued under this section must surrender the licence if:
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- (a) a commercial television broadcasting licence is allocated under subsection 38B(5) of the *Broadcasting Services Act 1992*; and
  - (b) the holder is one of the 2 existing licensees referred to in subsection 38B(1) of that Act; and
  - (c) a multi-channelling election is made for the relevant exempt remote area service.
- (2D) If the ACMA approves the revocation of a multi-channelling election for a licensee of a commercial television broadcasting licence (the *related licence*), the ACMA must issue a new transmitter licence to the licensee that revoked the election authorising the operation of a transmitter or transmitters for transmitting the commercial television broadcasting service or services provided by the licensee in digital mode.
- (2E) The new licence comes into force on the day from which the revocation takes effect.
- (3) If a transmitter licence is issued under this section, the licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting datacasting services in digital mode using the channel or channels concerned.
- (5) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service in digital mode using the channel or channels concerned has no effect unless:
- (a) the licensee holds a BSA datacasting licence authorising the provision of that service; or
  - (b) the service is a designated teletext service.

**102AA Transmitter licences—authorisation of HDTV multi-channelled commercial television broadcasting services during the simulcast period etc.**

- (1) If:
- (a) immediately before 1 January 2007, there was in force a transmitter licence issued under section 102 or 102A; and
  - (b) the transmitter licence is held by the licensee of a commercial television broadcasting licence (the *related licence*); and
  - (c) the transmitter licence authorises the operation of one or more specified radiocommunications transmitters for



transmitting a commercial television broadcasting service in digital mode using one or more channels; and

- (d) the licensee of the related licence provides, or proposes to provide, a HDTV multi-channelled commercial television broadcasting service in accordance with the related licence;

the transmitter licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting the HDTV multi-channelled commercial television broadcasting service, using those channels, during whichever of the following periods is applicable:

- (e) the simulcast period for the licence area of the related licence;  
(f) the simulcast-equivalent period for the licence area of the related licence.

- (2) In this section:

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

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

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

*simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**102AB Transmitter licence—authorisation of SDTV  
multi-channelled commercial television broadcasting  
services during so much of the simulcast period etc. as  
occurs on or after 1 January 2009**

- (1) If:
- (a) immediately before 1 January 2009, there was in force a transmitter licence issued under section 102 or 102A; and
- (b) the transmitter licence is held by the licensee of a commercial television broadcasting licence (the *related licence*); and

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- (c) the transmitter licence authorises the operation of one or more specified radiocommunications transmitters for transmitting:
    - (i) the core commercial television broadcasting service in digital mode; and
    - (ii) a HDTV multi-channelled commercial television broadcasting service;  
in accordance with the related licence, using one or more channels; and
  - (d) the licensee of the related licence provides, or proposes to provide, a SDTV multi-channelled commercial television broadcasting service in accordance with the related licence;  
the transmitter licence is also taken to authorise the operation of the transmitter or transmitters concerned for transmitting the SDTV multi-channelled commercial television broadcasting service, using those channels, during whichever of the following periods is applicable:
    - (e) the simulcast period for the licence area of the related licence;
    - (f) the simulcast-equivalent period for the licence area of the related licence.
- (2) In this section:

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

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

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

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

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

*simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**102AC Transmitter licences—authorisation of commercial television broadcasting services after the end of the simulcast period etc.**

(1) If:

- (a) a transmitter licence issued under section 102 was in force immediately before the end of whichever of the following periods is applicable to the licence area of a commercial television broadcasting licence (the *related licence*):
  - (i) the simulcast period for the licence area;
  - (ii) the simulcast-equivalent period for the licence area; and
- (b) the transmitter licence is held by the licensee of the related licence; and
- (c) immediately before the end of the applicable period, the transmitter licence authorised the operation of one or more specified radiocommunications transmitters for transmitting one or more commercial television broadcasting services in accordance with the related licence, using one or more channels;

then, after the end of the applicable period, the transmitter licence authorises the operation of the transmitter or transmitters concerned for transmitting:

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

in accordance with the related licence, using those channels.

(2) In this section:

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

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

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

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

*simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

*simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**102B Datacasting transmitter licences**

The ACMA must not issue a datacasting transmitter licence to a person unless:

- (a) the person is a qualified company; and
- (b) if the issue of the licence is not under a price-based allocation system determined under section 106—the ACMA is satisfied that the issue of the licence would not result in a breach of any of the BSA control rules.

**102C Category 1 digital radio multiplex transmitter licences**

- (1) The ACMA must not issue a category 1 digital radio multiplex transmitter licence to a person unless the person is a qualified company.
- (2) The ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106 unless:
  - (a) the licensee is an eligible joint venture company; and
  - (b) the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.
- (3) The ACMA must not issue a foundation category 1 digital radio multiplex transmitter licence for a particular designated BSA radio area in accordance with a price-based allocation system determined under section 106 unless:
  - (a) the ACMA has, by notice published on its Internet site at least 150 days before the issue of the licence, invited applications from eligible joint venture companies for the issue of the licence otherwise than in accordance with a

price-based allocation system determined under section 106;  
and

- (b) either:
- (i) no applications were received from eligible joint venture companies after the publication of the notice; or
  - (ii) one or more applications were received from eligible joint venture companies after the publication of the notice, but the ACMA refused, under section 100, to issue the licence to any of the applicants.
- (4) The ACMA must not issue a category 1 digital radio multiplex transmitter licence (other than a foundation category 1 digital radio multiplex transmitter licence) for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106.

*Eligible joint venture company*

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

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- broadcasting licensees would, in aggregate, hold seven-ninths of the shares in the first-mentioned company; and
- (vi) assuming that the invitation were to be accepted by each invitee—the digital community radio broadcasting representative company would hold two-ninths of the shares in the first-mentioned company; and
- (b) in a case where not all of the invitations referred to in paragraph (a) were accepted—before the company was formed, the promoters of the first-mentioned company invited each person who had accepted an invitation referred to in paragraph (a) to subscribe for the remaining shares in the first-mentioned company; and
  - (c) the invitations referred to in paragraph (a) were:
    - (i) published on the ACMA’s Internet site; and
    - (ii) open for a period of at least 120 days beginning on or after the commencement of this section; and
  - (d) there was no discrimination between subscribers for shares in the first-mentioned company in relation to the consideration payable for the issue of the shares concerned; and
  - (e) the total amount of money payable as consideration for the issue of the shares in the first-mentioned company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (a) are published, would be required for the commercially viable operation of the first-mentioned company if it were assumed that a foundation category 1 digital radio multiplex transmitter licence had been issued to the first-mentioned company at that time; and
  - (f) none of the recipients of an invitation referred to in paragraph (a) or (b) were subject to duress as to whether the invitation should be accepted.
- (6) The promoters of a company may request the ACMA to publish on its Internet site the invitations referred to in paragraph (5)(a).
  - (7) The ACMA must comply with a request under subsection (6) if the ACMA is satisfied that the request was made in good faith.

*Fee*

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

**102D Category 2 digital radio multiplex transmitter licences**

- (1) The ACMA must not issue a category 2 digital radio multiplex transmitter licence to a person unless the person is a qualified company.
- (2) The ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106 unless:
- (a) the licensee is an eligible joint venture company; and
  - (b) the application for the licence is accompanied by the fee determined by the ACMA by legislative instrument.
- (3) The ACMA must not issue a foundation category 2 digital radio multiplex transmitter licence for a particular designated BSA radio area in accordance with a price-based allocation system determined under section 106 unless:
- (a) the ACMA has, by notice published on its Internet site at least 150 days before the issue of the licence, invited applications from eligible joint venture companies for the issue of the licence otherwise than in accordance with a price-based allocation system determined under section 106; and
  - (b) either:
    - (i) no applications were received from eligible joint venture companies after the publication of the notice; or
    - (ii) one or more applications were received from eligible joint venture companies after the publication of the notice, but the ACMA refused, under section 100, to issue the licence to any of the applicants.
- (4) The ACMA must not issue a category 2 digital radio multiplex transmitter licence (other than a foundation category 2 digital radio multiplex transmitter licence) for a particular designated BSA radio area otherwise than in accordance with a price-based allocation system determined under section 106.

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*Eligible joint venture company*

(5) For the purposes of the application of this section to a particular designated BSA radio area, a company is an *eligible joint venture company* if:

(a) before the company was formed, the promoters of the company initially invited:

(i) each incumbent digital commercial radio broadcasting licensee for the designated BSA radio area; and

(ii) if there is a digital community radio broadcasting representative company for the designated BSA radio area—the digital community radio broadcasting representative company; and

(iii) each national broadcaster;

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

(iv) the incumbent digital commercial radio broadcasting licensees who accepted the invitation would be issued with an equal number of shares; and

(v) the only persons entitled to subscribe for shares in the first-mentioned company are the incumbent digital commercial radio broadcasting licensees, the digital community radio broadcasting representative company and the national broadcasters; and

(vi) assuming that the invitation were to be accepted by each invitee—the incumbent digital commercial radio broadcasting licensees would, in aggregate, hold five-ninths of the shares in the first-mentioned company; and

(vii) assuming that the invitation were to be accepted by each invitee—the digital community radio broadcasting representative company would hold two-ninths of the shares in the first-mentioned company; and

(viii) assuming that the invitation were to be accepted by each invitee—each national broadcaster would hold one-ninth of the shares in the first-mentioned company; and

(b) in a case where not all of the invitations referred to in paragraph (a) were accepted—before the company was formed, the promoters of the first-mentioned company invited each person who had accepted an invitation referred

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- to in paragraph (a) to subscribe for the remaining shares in the first-mentioned company; and
- (c) the invitations referred to in paragraph (a) were:
    - (i) published on the ACMA's Internet site; and
    - (ii) open for a period of at least 120 days beginning on or after the commencement of this section; and
  - (d) there was no discrimination between subscribers for shares in the first-mentioned company in relation to the consideration payable for the issue of the shares concerned; and
  - (e) the total amount of money payable as consideration for the issue of the shares in the first-mentioned company is not substantially in excess of the total amount that, as at the time the invitations referred to in paragraph (a) are published, would be required for the commercially viable operation of the first-mentioned company if it were assumed that a foundation category 2 digital radio multiplex transmitter licence had been issued to the first-mentioned company at that time; and
  - (f) none of the recipients of an invitation referred to in paragraph (a) or (b) were subject to duress as to whether the invitation should be accepted.
- (6) The promoters of a company may request the ACMA to publish on its Internet site the invitations referred to in paragraph (5)(a).
- (7) The ACMA must comply with a request under subsection (6) if the ACMA is satisfied that the request was made in good faith.

*National broadcasters*

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

*Fee*

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

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**102E Category 3 digital radio multiplex transmitter licences**

*Holder of a category 3 digital radio multiplex licence*

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

*Obligation to issue a category 3 digital radio multiplex licence*

- (2) If:
- (a) a digital radio channel plan is in force for a designated BSA radio area; and
  - (b) a qualified company applies under section 99 for a category 3 digital radio multiplex transmitter licence for the designated BSA radio area; and
  - (c) the requirements of paragraph (1)(a) or (b) of this section are satisfied in relation to the qualified company;
- the ACMA must, under section 100, issue the category 3 digital radio multiplex transmitter licence to the company unless there is already a category 3 digital radio multiplex transmitter licence for the designated BSA radio area.

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

- (3) A national broadcaster may hold shares in a company that:
- (a) is the holder of a category 3 digital radio multiplex transmitter licence; or
  - (b) is an applicant for the issue of a category 3 digital radio multiplex transmitter licence; or

- (c) proposes to apply for the issue of a category 3 digital radio multiplex transmitter licence.

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

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

**103 Duration of apparatus licences**

- (1) An apparatus licence (other than an apparatus licence issued under subsection 101C(3), 102(2D), 102(2G) or 102A(2D)) comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.
- (2) Subject to Division 6, an apparatus licence (other than an apparatus licence issued under section 101A, 101B, 101C, 102 or 102A, a datacasting transmitter licence or a digital radio multiplex transmitter licence) remains in force for the period specified in the licence.
- (3) The licence may specify any period not exceeding 5 years.
- (4) A transmitter licence issued under section 101A:
- (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and

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- (b) does not have effect while the related licence referred to in that section is suspended.
- (4AA) A transmitter licence issued under section 101B:
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and
  - (b) does not have effect while the related licence referred to in that section is suspended.
- (4AB) A transmitter licence issued under section 101C:
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and
  - (b) does not have effect while the related licence referred to in that section is suspended.
- (4A) A transmitter licence issued under subsection 102(1):
  - (a) subject to paragraphs (b) and (c), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended; and
  - (c) does not have effect after the later of the following dates, if the related licence is a CTV licence within the meaning of the *Broadcasting Services Act 1992*:
    - (i) 31 December 2006; or
    - (ii) the date specified in a written determination by the Minister.
- (4B) A determination under subparagraph (4A)(c)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4C) A transmitter licence issued under subsection 102(2D):
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4D) A transmitter licence issued under subsection 102(2G):
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

- (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4E) A transmitter licence issued under subsection 102A(1):
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4F) A transmitter licence issued under subsection 102A(2D):
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.
- (5) Subject to Divisions 6 and 6A, a datacasting transmitter licence remains in force for 10 years.
- (6) Subject to Division 6, a digital radio multiplex transmitter licence remains in force for 15 years.

#### **104 Compliance with plans**

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

### **105 Parts of the spectrum allocated for spectrum licences**

- (1) Subject to subsection (2), the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices at frequencies that are within a part of the spectrum that is designated under section 36 to be allocated by issuing spectrum licences.
- (2) The ACMA may issue such an apparatus licence:
  - (a) to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
  - (b) if it is satisfied that the special circumstances of the particular case justify the issuing of the licence.

### **106 Price-based allocation system for certain transmitter licences**

- (1) The ACMA may determine in writing a price-based allocation system for allocating and/or issuing specified transmitter licences (other than licences issued under section 101A or NBS transmitter licences).
- (2) A system so determined:
  - (a) may apply generally or in respect of a particular area; and
  - (b) may apply only in relation to a specified range of frequencies; and
  - (c) may require payment of an application fee, but not a fee that would be such as to amount to taxation.
- (3) A system so determined may:
  - (a) impose limits on the number of transmitter licences that the ACMA may issue to:
    - (i) any one person; or
    - (ii) a specified person; or
  - (b) impose limits on the number of transmitter licences that the ACMA may, in total, issue to the members of a specified group of persons.

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

- (4) A limit imposed as mentioned in subsection (3) may be expressed to apply in relation to any or all of the following:
- (a) a specified part of the spectrum;
  - (b) a specified area;
  - (c) a specified population reach.
- For example, a system might impose a limit of one transmitter licence per person in the band between 1800 MHz and 1900 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (3).
- (5) A system so determined may provide that, if the issue of a licence is covered by section 153M (which deals with re-allocation of spectrum), the ACMA may defer the issue of the licence until the relevant frequencies become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
- (5A) A system so determined must provide that a person is not eligible to apply for a channel A datacasting transmitter licence unless the person meets specified requirements.
- (6) A system so determined may require the ACMA to give specified information to the ACCC.
- (6A) The ACMA must not issue a datacasting transmitter licence under a system so determined if the ACMA is satisfied that the issue of the licence would result in a breach of one or more of the BSA control rules.
- (7) Subsections (2), (3), (4), (5), (5A), (6) and (6A) do not, by implication, limit subsection (1).
- (8) The ACMA must not determine a system imposing a limit as mentioned in subsection (3) unless the ACMA is directed to do so by the Minister under subsection (9).
- (9) The Minister may give written directions to the ACMA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection (3).
- (9A) The Minister may give written directions to the ACMA in relation to the exercise of the power conferred by subsection (5A).
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- (10) A direction under subsection (9) or (9A) must be published in the *Gazette*.
- (11) The ACMA must exercise its powers under subsection (1) in a manner consistent with directions given by the Minister under subsection (9) or (9A).
- (12) Before determining a price-based allocation system under subsection (1), the ACMA must consult the ACCC about whether the procedures should include a requirement mentioned in subsection (6) and, if so, the nature of the requirement.
- (13) If a transmitter licence is issued under a system so determined, the ACMA must publish in the *Gazette*:
  - (a) the successful applicant's name; and
  - (b) the amount that the applicant agreed to pay to the Commonwealth for issue of the licence.
- (14) If:
  - (a) a transmitter licence of a kind specified for the purposes of subsection (1) would authorise a person to operate a radiocommunications transmitter; and
  - (b) this Act or any other law requires that a person operating a transmitter:
    - (i) of that kind; or
    - (ii) for a purpose for which the transmitter is to be used; be within a specified class of persons;the Minister may give the ACMA a written direction requiring the ACMA, in determining a price-based allocation system, to limit the persons eligible to apply for such a transmitter licence to:
  - (c) persons within that specified class; or
  - (d) persons not within, but eligible to be within, that class; or
  - (e) persons within that class and persons not within, but eligible to be within, that class.
- (15) The ACMA must comply with a direction under subsection (14).
- (16) A direction under subsection (14) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.



- (17) Subsections (9) and (14) do not, by implication, limit the Minister's power to give directions otherwise than under those subsections.

**106A Issue of apparatus licence is to be treated as acquisition of asset of a person for the purposes of section 50 of the Trade Practices Act**

- (1) For the purposes of section 50 and subsections 81(1), 88(9), 89(5A) and 90(9) of the *Trade Practices Act 1974*, the issue of an apparatus licence to a person is taken to be an acquisition by the person of an asset of another person.
- (2) Subsection (1) does not apply to a transmitter licence issued under section 101B, 101C, 102 or 102A or to an NBS transmitter licence.
- (3) Subsection (1) does not apply to the issue of an apparatus licence if the licence is issued by way of renewal of an existing apparatus licence (see Division 7).

## Division 3—Conditions of apparatus licences

### 107 General conditions

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

Note: Inclusion of conditions under paragraph (1)(g) is a reviewable decision under Part 5.6.
- (3) This section does not apply to:
  - (a) transmitter licences issued under section 101A, 101B, 101C, 102 or 102A; or
  - (b) datacasting transmitter licences; or
  - (c) digital radio multiplex transmitter licences.
- (4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

- (5) If the issue of an apparatus licence is covered by section 153M (which deals with re-allocation of spectrum), a condition of the licence may provide for the progressive authorisation of the operation of the radiocommunications device under the licence. The progressivity is to be based on the times when a particular part or parts of the spectrum become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
- (6) Subsection (5) does not, by implication, limit anything in subsection (1).

### **108 Additional conditions for transmitter licences**

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

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- (da) must not operate, or permit operation of, the transmitter for transmitting an international broadcasting service unless there is in force an international broadcasting licence authorising the provision of that service; and
  - (e) if the licence is a licence in respect of which persons operating the transmitter are required under section 119 to be qualified operators in relation to the licence—must not operate the transmitter unless he or she is such a qualified operator; and
  - (f) must comply with subsection 269A(2) of the *Navigation Act 1912*; and
  - (g) must comply with any direction:
    - (i) that relates to operation of the transmitter; and
    - (ii) to which subsection (3) applies.
- (3) This subsection applies to a direction that:
- (a) is given, in a way not inconsistent with any relevant guidelines under section 112, either orally or in writing; and
  - (b) is given by:
    - (i) a member of the Australian Federal Police; or
    - (ii) a member of the police force of a State or Territory; or
    - (iii) an officer of the Defence Force; or
    - (iv) an officer of the Australian Coastal Surveillance Centre; or
    - (v) an officer who is included in a class of officers specified in the regulations, and who is an officer of an organisation specified in the regulations the sole or principal purpose of which is to deal with natural disasters; and
  - (c) is reasonably necessary for the purposes of:
    - (i) securing the safety of a vessel, aircraft or space object that is in danger; or
    - (ii) dealing with an emergency involving a serious threat to the environment; or
    - (iii) dealing with an emergency involving risk of death of, or injury to, persons; or
    - (iv) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

- (4) This section does not limit the kinds of conditions that may be specified under paragraph 107(1)(f) or (g) or imposed under paragraph 111(a).
- (5) This section does not apply to:
  - (a) transmitter licences issued under section 101A, 101B, 101C, 102 or 102A; or
  - (b) datacasting transmitter licences; or
  - (c) digital radio multiplex transmitter licences.

### **108A Conditions of transmitter licences for temporary community broadcasters**

- (1) A transmitter licence issued under section 101A is subject to the following conditions:
  - (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
    - (i) charges fixed by determinations under section 293; and
    - (ii) amounts of apparatus licence tax;
  - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
  - (d) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
  - (e) such conditions (if any) as the ACMA determines, by written instrument, in relation to licences issued under section 101A;
  - (f) such other conditions as are specified in the licence.

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

- (2) The conditions of the licence, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the related licence as referred to in section 101A.
- (3) A determination under paragraph (1)(e) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**109 Conditions of transmitter licences for certain broadcasting services**

- (1) A transmitter licence issued under section 101B, 101C, 102 or 102A is subject to the following conditions:
  - (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
    - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
    - (ii) amounts of apparatus licence tax;
  - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
  - (d) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in accordance with any relevant technical specifications determined by the ACMA under subsection 26(1) of the *Broadcasting Services Act 1992*;
  - (e) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
  - (f) such other conditions as are specified in the licence.
- (1A) The conditions of a licence issued under section 101B, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101B.
- (1B) The conditions of a licence issued under section 101C, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101C.
- (2) The conditions of a licence issued under section 102 or 102A, including any further conditions imposed under paragraph 111(a), must not be inconsistent with the related licence as referred to in section 102 or 102A.

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

### **109A Conditions of datacasting transmitter licences**

- (1) A datacasting transmitter licence is subject to the following conditions:
- (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
    - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
    - (ii) amounts of apparatus licence tax;
  - (ba) if the licence is a channel A datacasting transmitter licence—a condition that the licensee will meet all obligations of the licensee to pay amounts of datacasting transmitter licence fee;
  - (bb) if the licence is a channel A datacasting transmitter licence—a condition that the licensee will comply with the requirements of section 205BA of the *Broadcasting Services Act 1992*;
  - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
  - (d) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, the transmitter except on a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence;
  - (e) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter except within:
    - (i) a part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992*; or
    - (ii) a part of the spectrum covered by a determination under subsection 34(1) of the *Broadcasting Services Act 1992* because of paragraph 34(1)(fa) of that Act;
  - (f) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;

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- (g) if the licence is neither a channel A datacasting transmitter licence nor a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 1 year after the allocation of the licence or within such longer period as is notified in writing by the ACMA;
- (ga) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 18 months after the allocation of the licence or within such longer period as is notified in writing by the ACMA;
- (gb) a condition that the licensee, or a person so authorised, will comply with any standards under section 130A of the *Broadcasting Services Act 1992* (which deals with technical standards for digital transmission);
- (gc) a condition that the licensee, or a person so authorised, will comply with subsection 130V(1) of the *Broadcasting Services Act 1992* (which deals with industry standards);
- (i) a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter on or after 1 January 2007 for transmitting a datacasting service unless:
  - (i) there is in force a BSA datacasting licence, or another licence allocated by the ACMA under the *Broadcasting Services Act 1992*, authorising the provision of that service; or
  - (ii) that service is provided in accordance with a class licence under the *Broadcasting Services Act 1992*; or
  - (iii) that service is a BSA exempt re-transmission service;
- (ia) if the licence is a channel A datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless:
  - (i) the service is provided under, and in accordance with the conditions of, a BSA datacasting licence, and the service is capable of being received by a domestic digital television receiver; or
  - (ii) the service is an open narrowcasting television service that is capable of being received by a domestic digital television receiver; or



- (iii) the service is a community television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ib) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the datacasting service is:
  - (i) a commercial broadcasting service; or
  - (ii) a subscription television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ic) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the licensee or the person so authorised is:
  - (i) a company that holds a commercial television broadcasting licence; or
  - (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or
  - (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;and the datacasting service is capable of being received by a domestic digital television receiver;
- (id) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service provided under a BSA datacasting licence if the holder of the BSA datacasting licence is:
  - (i) a company that holds a commercial television broadcasting licence; or
  - (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or

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- (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;
- and the datacasting service is capable of being received by a domestic digital television receiver;
- (ie) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if:
    - (i) the service is a BSA exempt re-transmission service; and
    - (ii) the service is capable of being received by a domestic digital television receiver;
  - (if) if the licence is a channel A datacasting transmitter licence or a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless that service is transmitted in digital mode (within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*);
  - (ij) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4A in relation to the licence;
  - (j) a condition that the licensee, and any person so authorised, will at all times have a constitution;
  - (k) such other conditions as are specified in the licence.
- (1A) The ACMA must not notify a longer period for the purposes of paragraph (1)(g) or (ga) unless the ACMA is satisfied that there are exceptional circumstances that warrant the longer period.
- (1B) For the purposes of subparagraph (1)(ib)(ii), it is immaterial whether a domestic digital television receiver is capable of receiving subscription television broadcasting services when used:
- (a) in isolation; or
  - (b) in conjunction with any other equipment.

- (1C) A condition specified in a licence under paragraph (1)(k) may deal with the commencement or continuity of transmission of datacasting services.
- (1D) Subsection (1C) does not limit paragraph (1)(k).
- (1E) Paragraphs (1)(g) and (ga) do not limit subsection (1C).

*Constitution of licensee to contain certain provisions*

- (2) A datacasting transmitter licence is subject to the condition that the licensee's constitution will at all times contain provisions under which:
  - (a) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of the *Broadcasting Services Act 1992*; and
  - (b) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of the *Broadcasting Services Act 1992* continuing; and
  - (c) a person who becomes the holder of shares in the licensee is required to provide to the licensee a statutory declaration:
    - (i) stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares; and
    - (ii) stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of a commercial television broadcasting licence, and giving particulars of any such position; and
  - (d) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to the person's eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of the *Broadcasting Services Act 1992*; and
  - (e) the licensee may secure the disposal of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in paragraph (c) or (d).

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*Constitution of authorised company to contain certain provisions*

- (3) A datacasting transmitter licence is subject to the condition that the constitution of a company authorised by the licensee to operate a radiocommunications transmitter under the licence will at all times contain provisions under which:
- (a) a person is not eligible to continue to be the holder of shares in the company if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of the *Broadcasting Services Act 1992*; and
  - (b) the company may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of the *Broadcasting Services Act 1992* continuing; and
  - (c) a person who becomes the holder of shares in the company is required to provide to the company a statutory declaration:
    - (i) stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares; and
    - (ii) stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of a commercial television broadcasting licence, and giving particulars of any such position; and
  - (d) a person holding shares in the company may be required by the company, from time to time, to provide to the company statutory declarations concerning matters relevant to the person's eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of the *Broadcasting Services Act 1992*; and
  - (e) the company may secure the disposal of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in paragraph (c) or (d).

*Application of control rules*

- (4) Schedule 1 to the *Broadcasting Services Act 1992* applies for the purposes of subparagraphs (1)(ic)(ii), (iii) and (v), (1)(id)(ii), (iii) and (v), (2)(c)(ii) and (3)(c)(ii) of this section in a corresponding way to the way in which it applies for the purposes of Part 5 of that Act.

- (5) Subsections (2) and (3) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

*Ministerial directions*

- (6) The Minister may give the ACMA a written direction about the exercise of the power conferred by paragraph (1)(k) to specify conditions in a channel A datacasting transmitter licence.

**109B Conditions of digital radio multiplex transmitter licences—  
general**

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

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operation of, a multiplex transmitter under the licence for transmitting a service unless:

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

- (ii) the service is a restricted datacasting service, and there is in force a restricted datacasting licence authorising the provision of the service;
- (i) if the licence is a foundation category 1 digital radio multiplex transmitter licence—a condition that the licensee, or a person so authorised, will:
  - (i) commence to transmit a service covered by subparagraph (f)(i) or (ii) on the digital radio start-up day for the designated BSA radio area concerned; and
  - (ii) transmit a service covered by subparagraph (f)(i) or (ii) at all times after the commencement referred to in subparagraph (i) of this paragraph;
- (j) if the licence is a foundation category 2 digital radio multiplex transmitter licence—a condition that the licensee, or a person so authorised, will:
  - (i) commence to transmit a service covered by subparagraph (g)(i), (ii) or (iii) on the digital radio start-up day for the designated BSA radio area concerned; and
  - (ii) transmit a service covered by subparagraph (g)(i), (ii) or (iii) at all times after the commencement referred to in subparagraph (i) of this paragraph;
- (k) a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, a multiplex transmitter under the licence for transmitting a service unless that service is transmitted using a digital modulation technique;
- (l) a condition that the licensee must not carry on any activities other than activities that consist of:
  - (i) operating a multiplex transmitter under the licence; and
  - (ii) activities that are related to the operation of the multiplex transmitter;
- (m) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, a multiplex transmitter under the licence otherwise than in accordance with any relevant technical specifications determined by the relevant digital radio channel plan;
- (n) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;

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

*Implementation plans*

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

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

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

*Continuity of transmission*

- (6) The ACMA may, by legislative instrument, specify circumstances in which a digital radio multiplex transmitter licensee, or a person authorised by such a licensee, is taken, for the purposes of



subparagraph (1)(i)(ii), to be transmitting a service covered by subparagraph (1)(f)(i) or (ii).

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

*Ministerial directions*

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

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

*Compliance with access regime etc.*

- (1) A category 1 digital radio multiplex transmitter licence and a category 2 digital radio multiplex transmitter licence are subject to the following conditions:
  - (a) a condition that the licensee, and each person authorised by the licensee to operate a multiplex transmitter under the licence, will comply with any applicable obligations under Division 4B;
  - (b) a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4B in relation to the licence;
  - (c) a condition that the licensee, and any person so authorised, will not give access to multiplex capacity under the licence otherwise than in compliance with:
    - (i) the standard access obligations (if any) that are applicable to the licence; or

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- (ii) the excess-capacity access obligations (if any) that are applicable to the licence; or
- (iii) the distributed-capacity access obligations (if any) that are applicable to the licence.

*Proceeds of auctions*

(2) If:

- (a) a foundation digital radio multiplex transmitter licence was issued otherwise than in accordance with a price-based allocation system determined under section 106; and
- (b) the licensee receives the net proceeds of an auction mentioned in subsection 118NT(6);

the licence is subject to the following conditions:

- (c) the licensee will set aside the net proceeds of the auction in a separate account with an ADI (within the meaning of the *Banking Act 1959*);
- (d) the licensee will not apply those net proceeds except for the purpose of:
  - (i) promoting the digital radio broadcasting platform in Australia; or
  - (ii) discharging a liability of the licensee to pay a fee or charge in relation to the maintenance or operation of the account; or
  - (iii) discharging a liability incurred by the licensee in connection with the auction (other than a liability to comply with an obligation under Division 4B).

*Definition*

(3) In this section:

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

**109D Conditions of foundation digital radio multiplex transmitter licences**

*Scope*

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

- (a) the licence was issued otherwise than in accordance with a price-based allocation system determined under section 106; and
- (b) the digital radio moratorium period for the designated BSA radio area has not ended.

*Ownership of shares in licensee*

- (2) The licence is subject to the condition that the licensee must take all reasonable steps to ensure that a person does not hold shares in the licensee unless the person is:
  - (a) in any case—an incumbent digital commercial radio broadcasting licensee for the designated BSA radio area; or
  - (b) in any case—the digital community radio broadcasting representative company for the designated BSA radio area; or
  - (c) in any case—the holder of a digital commercial radio broadcasting licence allocated in accordance with subsection 35D(3) of the *Broadcasting Services Act 1992*; or
  - (d) in the case of a foundation category 2 digital radio multiplex transmitter licence—a national broadcaster.

*Issue of shares to digital community radio broadcasting representative company*

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

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the licensee must:

- (e) by written notice given to the representative company, offer to issue to the representative company a number of shares in the licensee such that, if the offer were accepted, the representative company would hold two-ninths of the shares in the licensee; and
- (f) ensure that the offer is made within 30 days after the licensee receives the request; and
- (g) keep the offer open for at least 120 days after the offer is made; and
- (h) ensure that the rights and restrictions (if any) attached to the shares the subject of the offer are the same as the rights and restrictions (if any) attached to the shares held by existing shareholders in the licensee; and
- (i) ensure that the offer price per share does not exceed the amount worked out using the formula:

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

where:

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

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

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

**110 Conditions relating to interference**

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

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

### **111 Changes to licence conditions**

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

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

- (2) The notice given under subsection (1) must specify that:
  - (a) the licensee may request a statement of reasons for the change; and
  - (b) a request must be made within 28 days of receipt of the notice.
- (3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.
- (4) If the ACMA receives a request in accordance with subsection (3), the ACMA must give the person a statement of reasons within 28 days of receipt of that request.
- (5) If the ACMA is required, under a scheme in force under clause 6 or 19 of Schedule 4 to the *Broadcasting Services Act 1992*, to vary

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the conditions of a transmitter licence, the ACMA must, by written notice given to the licensee, vary those conditions accordingly.

*Ministerial directions*

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

**112 Guidelines relating to conditions etc.**

- (1) The ACMA may, by written instrument, make guidelines:
  - (a) that it is to apply in exercising its powers under sections 107, 108 and 111; or
  - (b) for the purposes of paragraph 108(3)(a).
- (2) In exercising its powers under sections 107, 108 and 111, the ACMA must comply with any relevant guidelines that are in force.
- (3) Subject to subsection (4), a guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Despite paragraph 46A(1)(c) of that Act, a guideline is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

**113 Contravention of conditions**

- (1) A person is guilty of an offence if:
  - (a) an apparatus licence relates to the person; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the licence.

Penalty: 100 penalty units.

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

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

(3) In this section:

*engage in conduct* means:

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

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

- (1) If the operation of subsection 109D(3) would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **Division 4—Third party users**

### **114 Licensees may authorise third party users**

- (1) Subject to subsections (2), (3), (3AA), (3A), (3B), (3D) and (3F), a licensee of an apparatus licence may, by written instrument, authorise other persons to operate radiocommunications devices under the licence.
- (2) The licensee must not authorise a person if to do so would be inconsistent with determinations of the ACMA under section 115.
- (3) The licensee must not authorise a person if:
  - (a) the person has been issued an apparatus licence that:
    - (i) was or is of the same type as the licensee's licence; and
    - (ii) authorised operation of radiocommunications devices of the same kind as those to which the licensee's licence relates; and
  - (b) the person's licence:
    - (i) is suspended; or
    - (ii) has been cancelled within the last 2 years.
- (3AA) The licensee must not authorise a person if:
  - (a) the licence is a digital radio multiplex transmitter licence; and
  - (b) the person is not a qualified company.
- (3A) The licensee must not authorise a person if:
  - (a) the licence is a datacasting transmitter licence; and
  - (b) the person is not a qualified company.
- (3B) The licensee must not authorise a person if:
  - (a) the licence is a datacasting transmitter licence; and
  - (b) the licensee did not, at least 30 days before the authorisation took place, give to the ACMA a written notice stating the licensee's intention to authorise the person.
- (3C) If:
  - (a) the ACMA receives a notice of intention under subsection (3B); and



- (b) the ACMA is satisfied that the authorisation would result in a breach of the BSA control rules;  
the ACMA may, by written notice given to the licensee within 30 days after the notice of intention was sent to the ACMA, direct the licensee not to authorise the person.
- (3D) The licensee must not authorise a person in breach of a direction under subsection (3C).
- (3E) If:
- (a) the ACMA receives a notice of intention under subsection (3B); and
  - (b) the ACMA is satisfied that the authorisation would not result in a breach of the BSA control rules;
- the ACMA must, by written notice given to the licensee, inform the licensee accordingly.
- (3F) If the licensee gives a notice of intention to the ACMA under subsection (3B), the licensee must not authorise the person concerned until whichever of the following first happens:
- (a) the licensee receives a notice from the ACMA in relation to the authorisation under subsection (3C) or (3E);
  - (b) the end of 30 days after the notice of intention was sent to the ACMA.
- (4) Authorising other persons does not prevent the licensee doing anything in accordance with the licence.

**114A Authorisation under apparatus licence is to be treated as acquisition of asset of a person for the purposes of section 50 of the Trade Practices Act**

For the purposes of section 50 and subsections 81(1) and (1A) and 88(9), 89(5A) and 90(9) of the *Trade Practices Act 1974*, the authorisation, in accordance with subsection 114(1) of this Act, of a person to operate radiocommunications devices under an apparatus licence is taken to be an acquisition by the person of an asset of another person.

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**115 Determinations limiting authorisation of third party users**

- (1) The ACMA may, by written instrument, determine:
  - (a) categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices; or
  - (b) classes of persons who must not be so authorised; or
  - (c) circumstances in which persons must not be so authorised.
- (2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**116 Revocation of authorisations**

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

Note: Directions to revoke an authorisation are reviewable under Part 5.6.
- (2) The notice must give the reasons for the direction.
- (3) As soon as practicable and, in any event, within 7 days after service of the notice, the licensee must revoke the authorisation.
- (4) The licensee must not further authorise the person under section 114 until the direction is:
  - (a) revoked under subsection 289(1) of this Act or as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
  - (b) set aside by a court or the AAT.
- (5) If:
  - (a) a person has been authorised under section 114 in relation to a particular licence; and
  - (b) at the time of the authorisation, the person was the licensee of another apparatus licence of the same type that authorised operation of radiocommunications devices of the same kind as those to which the first-mentioned licence relates; and
  - (c) the other licence is suspended or cancelled;the authorisation is taken to have been revoked on the day on which the other licence is suspended or cancelled.

### **117 Licensees must keep records of authorisations**

- (1) A licensee of an apparatus licence who authorises a person under section 114 must:
  - (a) cause a copy of the authorisation to be kept in Australia; and
  - (b) retain the copy for at least one year after the authorisation ceases to be in force.

Penalty: 20 penalty units.

- (2) Subsection (1) is an offence of strict liability.

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

### **118 Licensees must notify authorised persons of certain matters**

- (1) As soon as practicable and, in any event, within 7 days after the licensee of an apparatus licence is given:
  - (a) a notice under section 111 relating to changes in licence conditions; or
  - (b) a notice under subsection 116(1) requiring an authorisation under section 114 to be revoked; or
  - (c) a notice under subsection 126(1) or 128C(1) suspending the licence; or
  - (d) a notice under subsection 128(1) or 128B(1), or section 128D, cancelling the licence;

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

Penalty: 20 penalty units.

- (1A) Subsection (1) is an offence of strict liability.

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

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

## **Division 4A—Access to channel B datacasting transmitter licences**

### **118A Access to channel B datacasting transmitter licences**

A reference in this Division to *access* to a channel B datacasting transmitter licence is a reference to access to services that enable or facilitate the transmission of one or more content services under the licence, where the access is provided for the purpose of enabling one or more content service providers to provide one or more content services.

Note: *Content service provider* and *content service* are defined in section 118M.

### **118B Applicant for channel B datacasting transmitter licences must give the ACCC an access undertaking**

- (1) A person is not eligible to apply for a channel B datacasting transmitter licence unless:
  - (a) the person has given the ACCC a written undertaking that, in the event that the licence is issued to the person, each of the following persons:
    - (i) the first holder of the licence;
    - (ii) any person authorised by the first holder of the licence to operate radiocommunications transmitters under the licence;
    - (iii) any future holder of the licence;
    - (iv) any person authorised by a future holder of the licence to operate radiocommunications transmitters under the licence;will:
    - (v) comply with such obligations in relation to access to the licence as are ascertained in accordance with the undertaking; and
    - (vi) do so on such terms and conditions as are agreed with the holder of the licence (or the person so authorised) or, failing agreement, on such terms and conditions as are ascertained in accordance with the undertaking; and
  - (b) the ACCC has accepted the undertaking.

- (2) The undertaking must be in a form approved in writing by the ACCC.
- (3) The undertaking must be accompanied by the fee (if any) specified in the Procedural Rules. The amount of the fee must not be such as to amount to taxation.
- (4) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.
- (5) The Procedural Rules may make provision for or in relation to a time limit for giving the undertaking.

### **118C Further information about access undertaking**

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

### **118D ACCC to accept or reject access undertaking**

- (1) This section applies if a person gives an access undertaking to the ACCC.

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*Decision to accept or reject access undertaking*

- (2) After considering the access undertaking, the ACCC must:
  - (a) accept the access undertaking; or
  - (b) reject the access undertaking.
- (3) If the ACCC rejects the access undertaking, the ACCC may give the person a written notice advising the person that, if the person:
  - (a) makes such alterations to the access undertaking as are specified in the notice; and
  - (b) gives the altered access undertaking to the ACCC within the time limit allowed by the Procedural Rules;the ACCC will accept the altered access undertaking.

*Notice of decision*

- (4) If the ACCC accepts the access undertaking, the ACCC must give the person a written notice stating that the access undertaking has been accepted.
- (5) If the ACCC rejects the access undertaking, the ACCC must give the person a written notice:
  - (a) stating that the access undertaking has been rejected; and
  - (b) setting out the reasons for the rejection.

**118E Duration of access undertaking etc.**

- (1) If:
  - (a) a person gives an access undertaking to the ACCC in relation to a channel B datacasting transmitter licence; and
  - (b) the ACCC accepts the access undertaking; and
  - (c) the licence is issued to the person;the access undertaking:
  - (d) comes into force when the licence is issued; and
  - (e) remains in force while the licence is in force; and
  - (f) is suspended while the licence is suspended.
- (2) To avoid doubt, if:
  - (a) an access undertaking is in force in relation to a channel B datacasting transmitter licence; and
  - (b) the licence is transferred;

then:

- (c) the transfer does not result in the lapse of the access undertaking; and
- (d) the transferee, and any person authorised by the transferee to operate radiocommunications transmitters under the licence, is bound by the access undertaking.

(3) If:

- (a) a channel B datacasting transmitter licence is renewed; and
- (b) immediately before the expiry of the original licence, an access undertaking was in force in relation to the original licence;

the access undertaking:

- (c) remains in force while the new licence is in force, as if:
  - (i) it were an access undertaking in relation to the new licence; and
  - (ii) each reference in the access undertaking to a holder of the original licence were a reference to a holder of the new licence; and
- (d) is suspended while the new licence is suspended.

### **118F Variation of access undertakings**

- (1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.
- (2) The licensee may give the ACCC a variation of the access undertaking.

#### *Decision to accept or reject variation*

- (3) After considering the variation, the ACCC must decide to:
  - (a) accept the variation; or
  - (b) reject the variation.
- (4) If the ACCC rejects the variation, the ACCC may give the person a written notice advising the person that, if the person:
  - (a) makes such alterations to the variation as are specified in the notice; and
  - (b) gives the altered variation to the ACCC within the time limit allowed by the Procedural Rules;

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the ACCC will accept the altered variation.

*Notice of decision*

- (5) If the ACCC accepts the variation, the ACCC must give the licensee a written notice:
  - (a) stating that the variation has been accepted; and
  - (b) setting out the terms of the variation.
- (6) If the ACCC rejects the variation, the ACCC must give the licensee a written notice:
  - (a) stating that the variation has been rejected; and
  - (b) setting out the reasons for the rejection.

**118G Further information about variation of access undertaking**

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



### **118H Decision-making criteria**

#### *Acceptance of access undertaking*

- (1) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept access undertakings.
- (2) In deciding whether to accept access undertakings, the ACCC must apply criteria determined under subsection (1).

#### *Acceptance of variation of access undertaking*

- (3) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept variations of access undertakings.
- (4) In deciding whether to accept variations of access undertakings, the ACCC must apply criteria determined under subsection (3).

### **118J Register of access undertakings**

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

### **118K Enforcement of access undertakings**

- (1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.
- (2) If:
  - (a) the ACCC; or
  - (b) any person (the *affected person*) whose interests are affected by the access undertaking;thinks that a person (the *third person*) has breached the access undertaking, the ACCC or affected person may apply to the Federal Court for an order under subsection (3).

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- (3) If the Federal Court is satisfied that the third person has breached the access undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the third person to comply with the access undertaking;
  - (b) an order directing the third person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (c) any other order that the Court thinks appropriate.
- (4) The Federal Court may discharge or vary an order granted under this section.

**118L Procedural Rules**

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

- (4) The Procedural Rules may make provision for or in relation to a matter by empowering the ACCC to make decisions of an administrative character.
- (5) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking if:
  - (a) the ACCC is satisfied that the access undertaking:
    - (i) is frivolous; or
    - (ii) is vexatious; or
    - (iii) was not given in good faith; or
  - (b) the ACCC has reason to believe that the access undertaking was given for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Division.
- (6) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking given by a person in relation to a channel B datacasting transmitter licence if (apart from section 118B) the person is not eligible to apply for the licence.
- (7) Subsections (3), (4), (5) and (6) do not limit subsection (1).

### **118M Definitions**

In this Division:

***access*** has the meaning given by section 118A.

***access undertaking*** means an undertaking under section 118B.

***content service*** means a service covered by subparagraph 109A(1)(i)(i) or (ii), but does not include a service covered by subparagraph 109A(1)(ib)(i) or (ii).

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

***Procedural Rules*** means Procedural Rules made under section 118L.

## Division 4B—Access to digital radio multiplex transmitter licences

### Subdivision A—Introduction

#### 118N Simplified outline

The following is a simplified outline of this Division:

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

#### 118NA Scope

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

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

#### 118NB Definitions

In this Division:

***access undertaking*** means an undertaking under section 118ND.

**content service** means:

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

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

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

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

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

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

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

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

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

For the purposes of this definition, in working out so much of the gross transmission capacity of a multiplex transmitter as is

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available for the transmission of content services, include transmission capacity used to provide error protection for those content services.

*Procedural Rules* means Procedural Rules made under section 118PO.

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

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

**118NC National broadcasters**

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

**Subdivision B—Access undertakings**

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

- (1) A digital radio multiplex transmitter licensee must, within 3 months after the issue of the licence, give the ACCC a written undertaking that each of the following persons:
  - (a) the first holder of the licence;
  - (b) any person authorised by the first holder of the licence to operate a multiplex transmitter under the licence;
  - (c) any future holder of the licence;
  - (d) any person authorised by a future holder of the licence to operate a multiplex transmitter under the licence;will comply with such terms and conditions as are ascertained in accordance with the undertaking in relation to:
  - (e) the standard access obligations (if any) that are, or may become, applicable to the licence; and
  - (f) the excess-capacity access obligations (if any) that are, or may become, applicable to the licence; and
  - (g) the distributed-capacity access obligations (if any) that are, or may become, applicable to the licence.

- (2) The undertaking must be in a form approved in writing by the ACCC.
- (3) The undertaking must be accompanied by the fee (if any) specified in the Procedural Rules. The amount of the fee must not be such as to amount to taxation.
- (4) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.

#### **118NE Further information about access undertakings**

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

#### **118NF ACCC to accept or reject access undertakings**

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

##### *Decision to accept or reject access undertaking*

- (2) After considering the access undertaking, the ACCC must:
  - (a) accept the access undertaking; or

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

*Notice of decision*

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



- (c) if the ACCC gives a notice under subsection (5)—stating that the notice has been given.

**118NG Duration of access undertakings etc.**

*Duration of access undertaking accepted by ACCC*

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

*Duration of access undertaking determined by ACCC*

- (2) If, under subsection 118NF(5), the ACCC determines that an undertaking is the access undertaking in relation to a digital radio multiplex transmitter licence, the access undertaking:
- (a) comes into force when the determination is made; and
  - (b) remains in force while the licence is in force; and
  - (c) is suspended while the licence is suspended.

*Transfer of digital radio multiplex transmitter licence*

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

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*Renewal of digital radio multiplex transmitter licence*

- (5) If:
- (a) a digital radio multiplex transmitter licence is renewed; and
  - (b) immediately before the expiry of the original licence, an access undertaking was in force in relation to the original licence;
- the access undertaking:
- (c) remains in force while the new licence is in force, as if:
    - (i) it were an access undertaking in relation to the new licence; and
    - (ii) each reference in the access undertaking to a holder of the original licence were a reference to a holder of the new licence; and
  - (d) is suspended while the new licence is suspended.
- (6) Subsection (5) does not prevent the variation of an access undertaking.

**118NH Variation of access undertakings**

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

*Decision to accept or reject variation*

- (3) After considering the variation, the ACCC must:
- (a) accept the variation; or
  - (b) reject the variation.
- (4) Before accepting the variation, the ACCC must:
- (a) publish a copy of the variation on the ACCC's Internet site; and
  - (b) invite members of the public to make submissions to the ACCC about the variation within a specified period; and

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

*Notice of decision*

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

*Requirement to give variation*

- (10) The ACCC must not, under paragraph (2)(b), impose a requirement (the **current requirement**) on the licensee to give the ACCC a variation of the access undertaking unless:
  - (a) the current requirement is imposed by a written notice given to the licensee on or after 1 January 2015; and

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- (b) the ACCC is satisfied that the access undertaking would be rejected if it were given to the ACCC when the current requirement is imposed; and
  - (c) no previous requirement was imposed on the licensee under paragraph (2)(b) during the 5-year period ending immediately before the current requirement was imposed.
- (11) If the licensee does not give the ACCC a variation of the access undertaking when required to do so by the ACCC under paragraph (2)(b), the ACCC may, by written notice given to the licensee, vary the access undertaking.
- (12) Before giving a notice under subsection (11), the ACCC must:
- (a) publish a copy of the notice on the ACCC's Internet site; and
  - (b) invite members of the public to make submissions to the ACCC about the notice within a specified period; and
  - (c) consider any submissions the ACCC receives from members of the public within that period.

**118NI Further information about variation of access undertakings**

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

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

### **118NJ Decision-making criteria**

#### *Acceptance of access undertaking*

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

#### *Acceptance of variation of access undertaking*

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

### **118NK Register of access undertakings**

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

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

**118NL Standard access obligations**

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

**118NM Excess-capacity access obligations**

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

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

### **118NN Distributed-capacity access obligations**

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

### **118NO Compliance with access obligations**

- (1) This section applies if a digital radio multiplex transmitter licensee, or a person authorised by the licensee to operate a multiplex transmitter under the licence, is required to comply with:
  - (a) the standard access obligations (if any) that are applicable to the licence; or
  - (b) the excess-capacity access obligations (if any) that are applicable to the licence; or
  - (c) the distributed-capacity access obligations (if any) that are applicable to the licence.

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- (2) The digital radio multiplex transmitter licensee, or the person so authorised, must comply with the obligations on such terms and conditions as are ascertained in accordance with an access undertaking in force in relation to the licence.

**118NP Other obligations**

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

- (a) the technical and operational quality of the services supplied to the content service providers; and
- (b) the technical and operational quality and timing of the fault detection, handling and rectification supplied to the content service providers;

for the purposes of facilitating the use of that multiplex capacity.

**118NQ Standard access entitlements of commercial broadcasters**

*Scope*

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

*Standard access entitlements*

- (2) If:
  - (a) an incumbent digital commercial radio broadcasting licensee for the designated BSA radio area, by written notice given to the digital radio multiplex transmitter licensee, claims access to one-ninth of multiplex capacity under the digital radio multiplex transmitter licence; and
  - (b) the notice is given within 30 days after the issue of the digital radio multiplex transmitter licence;

the incumbent digital commercial radio broadcasting licensee:

- (c) is entitled to access to one-ninth of multiplex capacity under the digital radio multiplex transmitter licence (which entitlement is called a *standard access entitlement*); and



- (d) may only use that standard access entitlement for the purpose of providing, under the digital commercial radio broadcasting licence, one or more digital commercial radio broadcasting services in the designated BSA radio area; and
  - (e) is not entitled to transfer the digital commercial radio broadcasting licensee's standard access entitlement.
- (3) Subsection (2) has effect subject to subsections (5), (6) and (7).
- (4) If the digital radio multiplex transmitter licensee receives a subsection (2) notice, the licensee must, within 7 days after receiving the notice, give a copy of the notice to the ACCC.
- (5) An incumbent digital commercial radio broadcasting licensee for the designated BSA radio area must not give a subsection (2) notice to the digital radio multiplex transmitter licensee if:
- (a) the incumbent digital radio broadcasting licensee has given another subsection (2) notice to the digital radio multiplex transmitter licensee; or
  - (b) the incumbent digital commercial radio broadcasting licensee has given a subsection (2) notice to the licensee of another digital radio multiplex transmitter licence for the designated BSA radio area.
- (6) If subsection (2) notices would result in demand from incumbent digital commercial radio broadcasting licensees for access to multiplex capacity under the first-mentioned digital radio multiplex transmitter licence being greater than so much of the multiplex capacity under the first-mentioned digital radio multiplex transmitter licence as is neither:
- (a) reserved under subsection 118NR(2) (which deals with community broadcasters); nor
  - (b) covered by a standard access entitlement arising under subsection 118NS(2) (which deals with national broadcasters);
- the ACCC may, by written notice given to a particular incumbent digital commercial radio broadcasting licensee before the digital radio start-up day for the designated BSA radio area:
- (c) cancel the licensee's subsection (2) notice; and
  - (d) determine that this section has effect as if the licensee's subsection (2) notice had never been given; and

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- (e) determine that this section has effect as if the licensee had given a notice under subsection (2) in relation to another foundation digital radio multiplex transmitter licence for the designated BSA radio area.

*Transfer of standard access entitlements—notice under subsection 35D(2) of the Broadcasting Services Act 1992*

(7) If:

- (a) a digital commercial radio broadcasting licensee for the designated BSA radio area holds a standard access entitlement; and
- (b) the digital commercial radio broadcasting licensee is given a notice under subsection 35D(2) of the *Broadcasting Services Act 1992*;

then:

- (c) the standard access entitlement is transferred to the ACMA when the notice is given; and
- (d) if, as a result of the giving of the notice, the ACMA allocates a digital commercial radio broadcasting licence (the *new licence*) in accordance with subsection 35D(3) of the *Broadcasting Services Act 1992*:
  - (i) the standard access entitlement is transferred to the licensee of the new licence; and
  - (ii) the licensee of the new licence may only use that standard access entitlement for the purpose of providing, under the new licence, one or more digital commercial radio broadcasting services in the designated BSA radio area.

- (8) Subsection (7) has effect subject to section 118NV.

- (9) If a standard access entitlement is transferred to the ACMA under paragraph (7)(c), the ACMA must not use the standard access entitlement.

**118NR Standard access entitlements of community broadcasters**

*Scope*

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

*Reservation of multiplex capacity*

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

*Standard access entitlements—applicable fraction of multiplex capacity*

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

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- (6) A notice given by a digital community radio broadcasting representative company cannot be in force under subsection (3) at the same time as:
- (a) another notice given by the company is in force under subsection (3); or
  - (b) a notice given by the company is in force under subsection (7) or (10).

*Standard access entitlements—designated fraction of multiplex capacity*

- (7) If:
- (a) the digital community radio broadcasting representative company for the designated BSA radio area, by written notice given to the licensee of the digital radio multiplex transmitter licence, nominates 2 or more digital community radio broadcasting licensees for the purposes of this subsection; and
  - (b) the notice is in force;
- each nominated digital community radio broadcasting licensee:
- (c) is entitled to access to the designated fraction of the multiplex capacity reserved under subsection (2) (which entitlement is called a *standard access entitlement*); and
  - (d) may only use that standard access entitlement for the purpose of providing, under the digital community radio broadcasting licence, one or more digital community radio broadcasting services in the designated BSA radio area; and
  - (e) is not entitled to transfer the digital community radio broadcasting licensee's standard access entitlement.
- (8) For the purposes of subsection (7), the *designated fraction* is as follows:

$$1$$

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Number of nominated digital community radio broadcasting licensees

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

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

*Standard access entitlements—half of multiplex capacity*

- (10) If:
- (a) the digital community radio broadcasting representative company for the designated BSA radio area, by written notice given to the licensee of the digital radio multiplex transmitter licence, nominates a single digital community radio broadcasting licensee for the purposes of this subsection; and
  - (b) the notice is in force;
- the nominated digital community radio broadcasting licensee:
- (c) is entitled to access to half of the multiplex capacity reserved under subsection (2) (which entitlement is called a ***standard access entitlement***); and
  - (d) may only use that standard access entitlement for the purpose of providing, under the digital community radio broadcasting licence, one or more digital community radio broadcasting services in the designated BSA radio area; and
  - (e) is not entitled to transfer the digital community radio broadcasting licensee's standard access entitlement.
- (11) A notice given by a digital community radio broadcasting representative company cannot be in force under subsection (10) at the same time as:
- (a) another notice given by the company is in force under subsection (10); or
  - (b) a notice given by the company is in force under subsection (3) or (7).

*Subsequent notices*

- (12) If:
- (a) a digital community radio broadcasting representative company gives a notice (the ***first notice***) under subsection (3); and
  - (b) the first notice is in force;
- the company must not give another notice under subsection (3) or a notice under subsection (7) or (10) unless the other notice under

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subsection (3) or the notice under subsection (7) or (10), as the case may be:

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

(13) If:

- (a) a digital community radio broadcasting representative company gives a notice (the *first notice*) under subsection (7); and
- (b) the first notice is in force;

the company must not give another notice under subsection (7) or a notice under subsection (3) or (10) unless the other notice under subsection (7) or the notice under subsection (3) or (10), as the case may be:

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

(14) If:

- (a) a digital community radio broadcasting representative company gives a notice (the *first notice*) under subsection (10); and
- (b) the first notice is in force;

the company must not give another notice under subsection (10) or a notice under subsection (3) or (7) unless the other notice under subsection (10) or the notice under subsection (3) or (7), as the case may be:

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

*Revocation of notices*

- (15) If a notice given by a digital community radio broadcasting representative company under subsection (3), (7) or (10) is in force:

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

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this section does not prevent that digital community radio broadcasting licensee from being nominated in:

- (c) in the case of the revocation of a notice given under subsection (3):
  - (i) a fresh notice under subsection (3); or
  - (ii) a notice under subsection (7) or (10); and
- (d) in the case of the revocation of a notice given under subsection (7):
  - (i) a fresh notice under subsection (7); or
  - (ii) a notice under subsection (3) or (10); and
- (e) in the case of the revocation of a notice given under subsection (10):
  - (i) a fresh notice under subsection (10); or
  - (ii) a notice under subsection (3) or (7).

*No variation of notices*

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

*Limit on nomination*

- (19) The nomination of a digital community radio broadcasting licensee for the purposes of subsection (3), (7) or (10) has no effect if the licensee has already been nominated for the purposes of any of those subsections in the subsection's application to another digital radio multiplex transmitter licence for the designated BSA radio area.

*Transitional*

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

**118NS Standard access entitlements of national broadcasters**

*Scope*

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



*Standard access entitlements*

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

**118NT Excess-capacity access entitlements etc.**

*Scope*

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

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under the digital radio multiplex transmitter licence exceeds the aggregate of:

- (i) the fractions of multiplex capacity relating to standard access entitlements that have come into existence under subsections 118NQ(2) and 118NS(2); and
- (ii) the fractions of multiplex capacity reserved under subsection 118NR(2);

and an access undertaking is in force in relation to the licence.

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

- (2) If paragraph (1)(a) applies, the digital radio multiplex transmitter licensee must:
  - (a) within 90 days after the digital radio start-up day for the designated BSA radio area, ascertain the level of demand for access to that excess multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and
  - (b) by notice published on the licensee's Internet site:
    - (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
    - (ii) invite content service providers to express an interest in having access to that excess multiplex capacity.

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

- (3) If paragraph (1)(b) applies, the following provisions have effect:
  - (a) the digital radio multiplex transmitter licensee may ascertain the level of demand for access to that excess multiplex capacity from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and
  - (b) if the licensee proposes to ascertain the level of demand as mentioned in paragraph (a)—the digital radio multiplex transmitter licensee must, by notice published on the licensee's Internet site:

- (i) give at least 30 days notice of the licensee's intention to ascertain the level of demand as mentioned in paragraph (a); and
- (ii) invite content service providers to express an interest in having access to that excess multiplex capacity.

*Demand falls short of excess multiplex capacity*

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

*Demand is greater than excess multiplex capacity*

- (6) If the demand from interested content service providers for access to that excess multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, is greater than that excess multiplex capacity, the digital radio multiplex transmitter licensee must:
  - (a) use an open and transparent auction process to determine which content service providers are to have access to which

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- fractions of multiplex capacity for the purpose of providing one or more content services in the designated BSA radio area; and
- (b) do so before the end of the 60-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable.
- (7) If, as a result of an auction process mentioned in subsection (6), a content service provider is to have access to a particular fraction of multiplex capacity, the content service provider:
- (a) is entitled to access to that fraction of multiplex capacity (which entitlement is called an *excess-capacity access entitlement*); and
- (b) may only use that excess-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
- (c) may transfer that excess-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (8) The excess-capacity access entitlement referred to in paragraph (7)(a) commences:
- (a) at the end of the 30-day period beginning on the day on which the auction process mentioned in subsection (6) is completed; or
- (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.
- (9) For the purposes of the application of paragraph (8)(a) to a content service provider, the auction process mentioned in subsection (6) is completed when the content service provider makes the relevant auction payment.
- (10) If an excess-capacity access entitlement is transferred as mentioned in paragraph (4)(c) or (7)(c):
- (a) the excess-capacity access entitlement may be further transferred, or successively transferred, so long as the holder for the time being of the excess-capacity access entitlement is a content service provider who is entitled to provide content services in the designated BSA radio area; and

- (b) the holder for the time being of the excess-capacity access entitlement is entitled to access to the relevant fraction of multiplex capacity under the digital radio multiplex transmitter licence for the purpose of providing one or more content services in the designated BSA radio area.

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

### **118NU Distributed-capacity access entitlements etc.**

#### *Scope*

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

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

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

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

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

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from content service providers who are entitled to provide one or more content services in the designated BSA radio area; and

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

*Demand falls short of multiplex capacity*

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

*Demand is greater than multiplex capacity*

- (6) If the demand from interested content service providers for access to multiplex capacity, as ascertained under whichever of subsection (2) or (3) is applicable, is greater than the multiplex capacity, the digital radio multiplex transmitter licensee must:
- (a) use an open and transparent auction process to determine which content service providers are to have access to which fractions of multiplex capacity for the purpose of providing one or more content services in the designated BSA radio area; and
  - (b) do so before the end of the 60-day period beginning on the day on which the demand from interested content service providers is ascertained under whichever of subsection (2) or (3) is applicable.
- (7) If, as a result of an auction process mentioned in subsection (6), a content service provider is to have access to a particular fraction of multiplex capacity, the content service provider:
- (a) is entitled to access to that fraction of multiplex capacity (which entitlement is called a *distributed-capacity access entitlement*); and
  - (b) may only use that distributed-capacity access entitlement for the purpose of providing one or more content services in the designated BSA radio area; and
  - (c) may transfer that distributed-capacity access entitlement to another content service provider who is entitled to provide one or more content services in the designated BSA radio area.
- (8) The distributed-capacity access entitlement referred to in paragraph (7)(a) commences:
- (a) at the end of the 30-day period beginning on the day on which the auction process mentioned in subsection (6) is completed; or
  - (b) if the digital radio multiplex transmitter licensee agrees to an earlier time—at that earlier time.
- (9) For the purposes of the application of paragraph (8)(a) to a content service provider, the auction process mentioned in subsection (6) is completed when the content service provider makes the relevant auction payment.
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- (10) If a distributed-capacity access entitlement is transferred as mentioned in paragraph (4)(c) or (7)(c):
- (a) the distributed-capacity access entitlement may be further transferred, or successively transferred, so long as the holder for the time being of the distributed-capacity access entitlement is a content service provider who is entitled to provide content services in the designated BSA radio area; and
  - (b) the holder for the time being of the distributed-capacity access entitlement is entitled to access to the relevant fraction of multiplex capacity under the digital radio multiplex transmitter licence for the purpose of providing one or more content services in the designated BSA radio area.
- (11) This section has effect subject to section 118NV.

**118NV Capacity cap—digital commercial radio broadcasting licensees**

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



2

Number of digital radio multiplex transmitter licences  $\times 9$

### **118NW Suspension of access entitlements**

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

### **118NX Transfer of digital radio multiplex transmitter licence**

#### *Standard access entitlement*

- (1) To avoid doubt, if:
  - (a) a content service provider has a standard access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and
  - (b) the licence is transferred;the transfer does not affect the continuity of the standard access entitlement.
- (2) Subsection (1) does not prevent:
  - (a) the transfer of a standard access entitlement under subsection 118NQ(7) or 118NS(2) or (3); or
  - (b) the revocation of a notice given under subsection 118NR(3), (7) or (10).

#### *Excess-capacity access entitlement*

- (3) To avoid doubt, if:
  - (a) a content service provider has an excess-capacity access entitlement in relation to a fraction of multiplex capacity under a digital radio multiplex transmitter licence; and

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- (b) the licence is transferred;  
the transfer does not affect the continuity of the excess-capacity access entitlement.
- (4) Subsection (3) does not prevent the transfer of an excess-capacity access entitlement.

*Distributed-capacity access entitlement*

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

**118NY Renewal of digital radio multiplex transmitter licence**

*Standard access entitlement*

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

*Excess-capacity access entitlement*

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

*Distributed-capacity access entitlement*

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

## **Subdivision D—Enforcement**

### **118NZ Judicial enforcement of access obligations etc.**

- (1) If the Federal Court is satisfied that a digital radio multiplex transmitter licensee, or a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence, has contravened any of the following obligations:
- (a) the standard access obligations (if any) that are applicable to the licence;

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- (b) the excess-capacity access obligations (if any) that are applicable to the licence;
- (c) the distributed-capacity access obligations (if any) that are applicable to the licence;
- (d) the obligations that are applicable to the licence under section 118NP;

the Court may, on the application of:

- (e) the ACCC; or
- (f) any person whose interests are affected by the contravention;

make all or any of the following orders:

- (g) an order directing the licensee or the person so authorised to comply with the obligation;
  - (h) an order directing the licensee or the person so authorised to compensate any other person who had suffered loss or damage as a result of the contravention;
  - (i) any other order that the Court thinks appropriate.
- (2) The Federal Court may discharge or vary an order granted under this section.

**118P Enforcement of access undertakings**

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

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

## **Subdivision E—External audits**

### **118PA External audits**

#### *Scope*

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

#### *Requirement*

- (2) The ACCC may, by written notice given to the person, require the person to:
  - (a) appoint an external auditor; and
  - (b) arrange for the external auditor to carry out an external audit of whichever of the following is specified in the notice:
    - (i) the person's compliance with the access undertaking; or
    - (ii) one or more specified aspects of the person's compliance with the access undertaking; or

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

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

*Compliance*

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

**118PB Eligibility for appointment**

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

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

*Application of control rules*

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

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

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

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

have regard to the results of the previous audit.

**118PD External auditors**

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

Note 1: For specification by class, see subsection 46(3) of the *Acts Interpretation Act 1901*.

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

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

**Subdivision F—Review of decisions**

**118PE Review by Australian Competition Tribunal**

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



- (2) The application must be made within 21 days after the ACCC made the decision.
- (3) The Australian Competition Tribunal must review the decision.

### **118PF Functions and powers of Australian Competition Tribunal**

#### *Decision on review*

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

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- (h) in the case of a review of a decision of the ACCC to make a determination under subsection 118NH(6) or (11)—setting aside the ACCC’s decision; or
  - (i) in the case of a review of a decision of the ACCC to make a determination under subsection 118NH(6) or (11)—both:
    - (i) setting aside the ACCC’s decision; and
    - (ii) in substitution for the decision so set aside, to make a determination under that subsection;
- and, for the purposes of the review, the Australian Competition Tribunal may perform all the functions and exercise all the powers of the ACCC.
- (2) A decision by the Australian Competition Tribunal:
- (a) affirming a decision of the ACCC; or
  - (b) setting aside a decision of the ACCC; or
  - (c) made in substitution for a decision of the ACCC;
- is taken, for the purposes of this Act (other than section 118PE or this section), to be a decision of the ACCC.

*Conduct of review*

- (3) For the purposes of a review by the Australian Competition Tribunal, the member of the Australian Competition Tribunal presiding at the review may require the ACCC to give such information, make such reports and provide such other assistance to the Australian Competition Tribunal as the member specifies.
- (4) For the purposes of a review, the Australian Competition Tribunal may have regard only to:
- (a) any information given, documents produced or evidence given to the ACCC in connection with the making of the decision to which the review relates; and
  - (b) any other information that was referred to in the ACCC’s reasons for making the decision to which the review relates.

*Australian Competition Tribunal to make decision within 6 months*

- (5) If:
- (a) a person applies to the Australian Competition Tribunal for a review of a decision of the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11); and

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

*Extension of decision-making period*

- (6) The Australian Competition Tribunal may, by written notice given to the applicant for review, extend or further extend the 6-month period referred to in subsection (5), so long as:
- (a) the extension or further extension is for a period of not more than 3 months; and
  - (b) the notice includes a statement explaining why the Australian Competition Tribunal has been unable to make a decision on

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the review within that 6-month period or that 6-month period as previously extended, as the case may be.

- (7) As soon as practicable after the Australian Competition Tribunal gives a notice under subsection (6), the Australian Competition Tribunal must cause a copy of the notice to be made available on the Internet.

*Time of acceptance of undertaking*

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

Note: Division 2 of Part IX of the *Trade Practices Act 1974* applies to proceedings before the Australian Competition Tribunal.

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

Division 1 of Part IX of the *Trade Practices Act 1974* does not apply in relation to a review by the Australian Competition Tribunal of a decision made by the ACCC under subsection 118NF(2) or (5) or 118NH(3), (6) or (11).

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

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

## Subdivision G—Injunctions

### 118PI Injunctions

#### *Restraining injunctions*

- (1) If:
- (a) a person is:
    - (i) a digital radio multiplex transmitter licensee; or
    - (ii) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence; and
  - (b) the person has engaged, is engaging or is proposing to engage, in any conduct in contravention of this Division;
- the Federal Court may, on the application of the ACCC, grant an injunction:
- (c) restraining the person from engaging in the conduct; and
  - (d) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (2) If:
- (a) a person is:
    - (i) a digital radio multiplex transmitter licensee; or
    - (ii) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence; and
  - (b) the person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (c) the refusal or failure was, is or would be a contravention of this Division;
- the Federal Court may, on the application of the ACCC, grant an injunction requiring the person to do that act or thing.

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**118PJ Interim injunctions**

*Grant of interim injunction*

- (1) If an application is made to the Federal Court for an injunction under section 118PI against a person who is:
  - (a) a digital radio multiplex transmitter licensee; or
  - (b) a person authorised by a digital radio multiplex transmitter licensee to operate a multiplex transmitter under the licence;the court may, before considering the application, grant an interim injunction restraining the person from engaging in conduct of a kind referred to in that section.

*No undertakings as to damages*

- (2) The Federal Court is not to require an applicant for an injunction under section 118PI, as a condition of granting an interim injunction, to give any undertakings as to damages.

**118PK Discharge or variation of injunctions**

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

**118PL Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the Federal Court under this Subdivision to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
  - (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the Federal Court to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**118PM Other powers of the Federal Court unaffected**

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

**Subdivision H—Miscellaneous**

**118PN Annual reports**

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

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- (iv) compliance during that financial year with the distributed-capacity access obligations (if any) applicable to the licence; or
- (v) compliance during that financial year with the obligations that are applicable to the licence under section 118NP.

**118PO Procedural Rules**

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



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

### **118PP Constitutional safety net**

- (1) If the operation of this Division or section 109C would result in an acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

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**Division 4C—Access to broadcasting transmission towers  
etc. by digital radio multiplex transmitter  
licensees and authorised persons**

**Subdivision A—Introduction**

**118Q Simplified outline**

The following is a simplified outline of this Division:

- The owner or operator of a broadcasting transmission tower must provide the following persons with access to the tower:
  - (a) digital radio multiplex transmitter licensees;
  - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.
- The owner or operator of a designated associated facility must provide the following persons with access to the facility:
  - (a) digital radio multiplex transmitter licensees;
  - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.
- The owner or operator of a broadcasting transmission tower must provide the following persons with access to the site of the tower:
  - (a) digital radio multiplex transmitter licensees;
  - (b) persons authorised by digital radio multiplex transmitter licensees under section 114.

### 118QA Definitions

In this Division:

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

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

***designated associated facility*** has the meaning given by section 118QB.

***designated content service*** means a service mentioned in paragraph 109B(1)(f), (g) or (h).

***facility*** includes apparatus, equipment, a structure, a line or an electricity cable or wire.

***site*** means:

- (a) land; or
- (b) a building on land; or
- (c) a structure on land.

### 118QB Designated associated facilities

For the purposes of this Division, a ***designated associated facility*** means any of the following facilities:

- (a) an antenna;
- (b) a combiner;
- (c) a feeder system;
- (d) a facility of a kind specified in the regulations;

where:

- (e) the facility is, or is to be, associated with a radiocommunications transmitter; and
- (f) the facility is used, or capable of being used, in connection with the transmission of one or more designated content services.

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**118QC Extended meaning of *access***

- (1) For the purposes of this Division, *giving access* to a broadcasting transmission tower includes replacing the tower with another tower located on the same site and giving access to the replacement tower.
- (2) For the purposes of this Division, *giving access* to a designated associated facility includes:
  - (a) replacing the facility with another facility located on the same site and giving access to the replacement facility; or
  - (b) giving access to a service provided by means of the designated associated facility.
- (3) For the purposes of this Division, *giving access* to a site on which is situated a broadcasting transmission tower includes replacing the tower with another tower located on the site.

**Subdivision B—Access to broadcasting transmission towers etc. by digital radio multiplex transmitter licensees**

**118QD Access to broadcasting transmission towers**

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by a person (the *access seeker*) who is:
  - (a) a digital radio multiplex transmitter licensee; or
  - (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;give the access seeker access to the tower.
- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subsection (1) unless:
  - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain either or both of the following:
    - (i) a multiplex transmitter;
    - (ii) associated facilities;used, or for use, wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and

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- (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Compliance not technically feasible*

- (3) The owner or operator of a broadcasting transmission tower is not required to comply with subsection (1) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.
- (4) In determining whether compliance with subsection (1) in relation to a tower is technically feasible, the ACMA must have regard to:
  - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the tower; and
    - (ii) making alterations to the tower; and
  - (d) such other matters (if any) as the ACMA considers relevant.

*Issue of certificate*

- (5) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (3), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

**118QE Access to designated associated facilities**

*Scope*

- (1) This section applies to a designated associated facility if the facility is situated on, at, in or under:
  - (a) a broadcasting transmission tower; or

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- (b) the site on which a broadcasting transmission tower is situated.

*Access to designated associated facilities*

- (2) The owner or operator of the designated associated facility must, if requested to do so by a person (the *access seeker*) who is:
  - (a) a digital radio multiplex transmitter licensee; or
  - (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;give the access seeker access to the facility.
- (3) The owner or operator of the designated associated facility is not required to comply with subsection (2) unless:
  - (a) the access is provided for the sole purpose of enabling the access seeker to use:
    - (i) the facility; or
    - (ii) a service provided by means of the facility; wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Compliance not technically feasible*

- (4) The owner or operator of a designated associated facility is not required to comply with subsection (2) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subsection (2) in relation to that facility is not technically feasible.
- (5) In determining whether compliance with subsection (2) in relation to a facility is technically feasible, the ACMA must have regard to:
  - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and

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- (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
  - (i) changing the configuration or operating parameters of a facility situated on the site; and
  - (ii) making alterations to a facility situated on the site; and
- (d) such other matters (if any) as the ACMA considers relevant.

*Issue of certificate*

- (6) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (4), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

*Exemptions*

- (7) The regulations may provide for exemptions from subsection (2).
- (8) Regulations made for the purposes of subsection (7) may make provision with respect to a matter by conferring on the ACCC a power to make a decision of an administrative character.

**118QF Access to sites of broadcasting transmission towers**

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by a person (the *access seeker*) who is:
  - (a) a digital radio multiplex transmitter licensee; or
  - (b) a person authorised by a digital radio multiplex transmitter licensee under section 114;give the access seeker access to a site if:
  - (c) the tower is situated on the site; and
  - (d) either:
    - (i) the site is owned, occupied or controlled by the owner or operator of the tower; or
    - (ii) the owner or operator of the tower has a right (either conditional or unconditional) to use the site.

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- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subsection (1) unless:
- (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain either or both of the following:
    - (i) a multiplex transmitter;
    - (ii) associated facilities;used, or for use, wholly or principally in connection with the transmission of one or more designated content services in accordance with the digital radio multiplex transmitter licence concerned; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Compliance not technically feasible*

- (3) The owner or operator of a broadcasting transmission tower is not required to comply with subsection (1) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subsection (1) in relation to that tower is not technically feasible.
- (4) In determining whether compliance with subsection (1) in relation to a site is technically feasible, the ACMA must have regard to:
- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the site; and
    - (ii) making alterations to a facility situated on the site; and
  - (d) such other matters (if any) as the ACMA considers relevant.

*Issue of certificate*

- (5) If the ACMA receives a request to make a decision about the issue of a certificate under subsection (3), the ACMA must use its best
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endeavours to make that decision within 10 business days after the request was made.

### **118QG Terms and conditions of access**

#### *Access to broadcasting transmission towers*

- (1) The owner or operator of a broadcasting transmission tower must comply with subsection 118QD(1) on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the owner or operator;
    - (ii) the access seeker (within the meaning of that subsection); or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

#### *Access to designated associated facilities*

- (2) The owner or operator of a designated associated facility must comply with subsection 118QE(2) on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the owner or operator;
    - (ii) the access seeker (within the meaning of that subsection); or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

#### *Access to sites of broadcasting transmission towers*

- (3) The owner or operator of a broadcasting transmission tower must comply with subsection 118QF(1) on such terms and conditions as are:
  - (a) agreed between the following parties:
    - (i) the owner or operator;

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(ii) the access seeker (within the meaning of that subsection); or

(b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

*Conduct of arbitration*

(4) The regulations may make provision for and in relation to the conduct of an arbitration under this section.

(5) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this section, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chair of the ACCC.

(6) Subsection (5) does not limit subsection (4).

**118QH Code relating to access**

(1) The ACCC may, by legislative instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Division.

(2) Before making an instrument under subsection (1), the ACCC must consult:

- (a) digital radio multiplex transmitter licensees; and
- (b) owners and operators of broadcasting transmission towers; and
- (c) owners and operators of designated associated facilities.

(3) An access seeker (within the meaning of subsection 118QD(1), 118QE(2) or 118QF(1)) must comply with the Code.

(4) The owner or operator of a broadcasting transmission tower must comply with the Code, to the extent to which the Code relates to the provision of access under section 118QD or 118QF.

- (5) The owner or operator of a designated associated facility must comply with the Code, to the extent to which the Code relates to the provision of access under section 118QE.

### **Subdivision C—Miscellaneous**

#### **118QI Arbitration—acquisition of property**

- (1) This section applies to a provision of this Division that authorises the conduct of an arbitration (whether by the ACCC or another person).
- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
- (a) is otherwise than on just terms; and
  - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.
- (3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

#### **118QJ Relationship between this Division and the *National Transmission Network Sale Act 1998***

Part 3 of the *National Transmission Network Sale Act 1998* does not apply in relation to an access seeker seeking access to:

- (a) a broadcasting transmission tower; or
- (b) a site;

to the extent to which this Division applies in relation to the access seeker seeking access to that tower or site.

## **Division 5—Qualified operators**

### **119 ACMA to determine the need for qualified operators**

The ACMA may determine, by written instrument, that persons operating transmitters under transmitter licences included in a class of transmitter licences specified in the instrument must be qualified operators.

### **120 Applications for certificates of proficiency**

- (1) A person who wishes to be a qualified operator in relation to one or more such classes of transmitter licences may apply to the ACMA for a certificate of proficiency.
- (2) The application must be in a form approved by the ACMA.

### **121 Issuing certificates of proficiency**

- (1) Subject to section 122, the ACMA may issue to the applicant a certificate of proficiency in writing certifying that the holder of the certificate is taken to be a qualified operator in relation to a specified class of transmitter licences.
- (2) The classes of transmitter licences so specified are to be any or all of the classes of transmitter licences for which determinations under section 119 are in force.
- (3) If the ACMA refuses to issue a certificate of proficiency, it must give the applicant a written notice of the refusal together with a statement of its reasons.

Note: Refusals to issue certificates of proficiency are reviewable under Part 5.6.

### **122 Restrictions on issuing certificates of proficiency**

- (1) The ACMA must not issue a certificate of proficiency unless:
  - (a) the ACMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate is included; and

- (b) the ACMA:
  - (i) is satisfied that the applicant has achieved satisfactory results in approved examinations or in examinations conducted under the regulations; or
  - (ii) is satisfied, upon reasonable grounds, that the applicant would probably achieve such results.
- (2) In this section:

***approved examination*** means an examination conducted by:

- (a) the ACMA; or
- (b) a body or organisation approved by the ACMA, by written instrument, for the purposes of this section; or
- (c) an examination approved by the ACMA, by written instrument, for the purposes of this section.

***minimum age***, in relation to a class of certificates, means the age that the ACMA, by notice published in the *Gazette*, declares to be the minimum age for the purposes of this section in relation to that class.

### **122A Delegating the power to issue certificates of proficiency**

- (1) The ACMA may, by writing, delegate the power to issue a certificate of proficiency under section 121 to a body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2).
- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to in subsection (1) of this section to a Division of the ACMA, the following provisions have effect:
  - (a) the Division may delegate the power to a body or organisation referred to in subsection (1) of this section;
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.

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- (2) However, the delegate is not entitled to make a final decision refusing to issue a certificate of proficiency. If the delegate decides not to issue the certificate, the delegate must refer the application, for a final decision, to:
  - (a) the ACMA, if the delegation to the delegate was under subsection (1); or
  - (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).
- (3) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by section 238 of this Act and by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

**123 Re-examination of qualified operators**

- (1) If, at any time:
  - (a) the ACMA has reasonable grounds for believing that a qualified operator will probably be unable to achieve satisfactory results in an examination of the kind referred to in paragraph 122(1)(b);the ACMA may:
  - (b) give to the operator a written request that the operator submit himself or herself to an examination, or a further examination, of that kind.
- (2) The request must set out:
  - (a) particulars of the examination in question; and
  - (b) the time and place of the examination; and
  - (c) the effect of subparagraph 124(3)(b)(iii).

**124 Cancelling certificates of proficiency**

- (1) The ACMA may, by written notice given to a qualified operator, cancel the operator's certificate of proficiency.
- (2) The notice must give the reasons for the cancellation.
- (3) In deciding whether to cancel the certificate, the ACMA must have regard to:
  - (a) all matters that it considers relevant; and

- (b) without limiting paragraph (a), the following matters:
- (i) any matters to which the ACMA must have regard in deciding whether to issue a certificate of proficiency;
  - (ii) whether the ACMA is satisfied, that the operator has failed to achieve satisfactory results in an examination or further examination referred to in section 123;
  - (iii) whether the operator has refused or failed, without reasonable excuse, to comply with a request under section 123;
  - (iv) whether the operator has been convicted of an offence against the regulations;
  - (iva) whether the operator has been convicted of an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act;
  - (v) whether the ACMA is satisfied that the operator has contravened rules relating to the conduct or administration of an examination of the kind referred to in paragraph 122(1)(b).

Note: Cancellations of certificates of proficiency are reviewable under Part 5.6.

- (4) If:
- (a) a person has been issued with a certificate of proficiency; and
  - (b) the ACMA subsequently cancels the certificate;
- the person must not fail to return the certificate to the ACMA, either by hand or by certified mail, within 7 days after receiving notification of the cancellation.

Penalty: 20 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) is an offence of strict liability.

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

## **Division 6—Suspending and cancelling apparatus licences: general**

### **Subdivision A—General provisions**

#### **125 Application of this Subdivision**

- (1) Subject to subsection (2), this Subdivision applies to an apparatus licence if the ACMA is satisfied that the licensee, or a person authorised by the licensee to operate a radiocommunications device under the licence, has:
  - (a) contravened a condition of the licence (other than a condition set out in paragraph 109A(1)(g), (ga), (i), (ia), (ib), (ic), (id), (ie), (if), (ij) or (j) or subsection 109A(2) or (3)), or in any other way contravened this Act; or
  - (b) operated a radiocommunications device under the licence, or purportedly under the licence:
    - (i) in contravention of any other law (whether written or unwritten) of the Commonwealth, a State or a Territory; or
    - (ii) in the course of contravening such a law.
- (2) This Subdivision does not apply to transmitter licences issued under section 101A, 101B, 101C, 102 or 102A.

#### **126 Suspending apparatus licences**

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

Note: Suspensions of apparatus licences are reviewable under Part 5.6.
- (2) The notice must give the reasons for suspending the licence.
- (3) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

#### **127 Period of suspension**

- (1) Subject to subsection (2), the suspension of the apparatus licence, unless it is sooner revoked, ceases:
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- (a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she is convicted of the offence—on the expiration of 14 days after the date of the conviction; or
  - (b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or
  - (c) in any other case—on the expiration of 28 days after the suspension.
- (2) If:
- (a) the notice of suspension specifies a day as the day on which the suspension of the apparatus licence ceases; and
  - (b) that day occurs before the day fixed under subsection (1);
- the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.
- (3) In subsection (1):
- proceedings* does not include proceedings by way of appeal or review.

## **128 Cancelling apparatus licences**

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

## **Subdivision B—International broadcasting services**

### **128A Application of this Subdivision**

This Subdivision applies to a transmitter licence if:

- (a) the licence authorises the operation of a radiocommunications transmitter for transmitting one or more international broadcasting services; and

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- (b) each international broadcasting licence that authorised the provision of those international broadcasting services has been surrendered or cancelled.

**128B Cancelling transmitter licences**

- (1) The ACMA must, by written notice given to the holder of the transmitter licence, cancel the transmitter licence.
- (2) The notice must give the reasons for cancelling the licence.

## **Division 6A—Suspending and cancelling datacasting transmitter licences**

### **128C Suspending datacasting transmitter licences**

- (1) If the ACMA is satisfied that:
  - (a) the licensee of a datacasting transmitter licence; or
  - (b) a person authorised by the licensee to operate a radiocommunications transmitter under the licence;has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (i), (ia), (ib), (ic), (id), (ie), (if), (ij) or (j) or subsection 109A(2) or (3), the ACMA may, by written notice given to the licensee, suspend the licence.
- (2) The notice of suspension must specify, as the day on which the suspension ceases, the first day after the end of the period specified in the notice.
- (3) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.
- (4) Section 127 applies to a suspension under this section in a corresponding way to the way in which it applies to a suspension under section 126.

### **128D Cancelling datacasting transmitter licences**

- If the ACMA is satisfied that:
- (a) the licensee of a datacasting transmitter licence; or
  - (b) a person authorised by the licensee to operate a radiocommunications transmitter under the licence;
- has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (i), (ia), (ib), (ic), (id), (ie), (if), (ij) or (j) or subsection 109A(2) or (3), the ACMA may, by written notice given to the licensee, cancel the licence.

## **Division 7—Renewing apparatus licences**

### **129 Applications for renewal of apparatus licences**

- (1) A licensee of an apparatus licence (other than a transmitter licence issued under section 101A, 101B, 101C, 102 or 102A or a non-foundation digital radio multiplex transmitter licence) may, at any time during the period beginning 6 months before the licence is due to expire and ending 60 days after it expires, apply in writing to the ACMA for the licence to be renewed.
- (2) The application must be in a form approved by the ACMA.
- (3) The ACMA may approve different forms for renewal of different types of apparatus licence.

### **130 Renewing apparatus licences**

- (1) When an application is made, the ACMA may renew the licence by issuing to the applicant a new apparatus licence.
- (2) The conditions of the new apparatus licence need not be the same as those of the licence that it replaces.
- (2A) The ACMA must not renew the licence if:
  - (a) under section 153D, the licence is affected by a spectrum re-allocation declaration; and
  - (b) the licence is due to expire after the end of the re-allocation period for the spectrum re-allocation declaration.
- (2B) The ACMA must not renew the licence if:
  - (a) the licence is a datacasting transmitter licence; and
  - (b) the licence has already been renewed on a previous occasion.
- (3) In deciding whether to renew the licence, the ACMA:
  - (a) except in the case of a licence issued under section 100B—must have regard to the same matters to which it must have regard under subsections 100(4) and (6) in deciding whether to issue such a licence; and

- (b) except in the case of a licence issued under section 100B—may have regard to the same matters to which it may have regard under subsection 100(5) in deciding whether to issue such a licence; and
  - (c) in the case of a licence issued under section 100B—must have regard to the scheme in force under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992*.
- (4) The new licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.
- (4A) If:
  - (a) the ACMA renews the licence by issuing a new apparatus licence; and
  - (b) under section 153D, the new licence is affected by a spectrum re-allocation declaration;the period specified in the new licence for the purposes of subsection 103(2) must end before the end of the re-allocation period for the spectrum re-allocation declaration.
- (5) If the ACMA:
  - (a) refuses to renew the licence; or
  - (b) renews the licence but not on the same conditions;the ACMA must give the licensee a written notice stating that fact.

Note: Refusals to renew apparatus licences, and changes to licence conditions on renewal, are reviewable under Part 5.6.
- (6) The notice given under subsection (5) must specify that:
  - (a) the licensee may request a statement of reasons for the decision; and
  - (b) a request must be made within 28 days of receipt of the notice.
- (7) A person receiving a notice under subsection (5) may request a statement of reasons for the decision within 28 days of receiving the notice.
- (8) If the ACMA receives a request in accordance with subsection (7), it must give the person a statement of reasons within 28 days of receipt of the request.

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**131 Application of other provisions**

- (1) Section 101, subsections 103(2), (3) and (6) and sections 104 and 105 apply to renewing an apparatus licence in the same way that they apply to issuing an apparatus licence.
- (2) Subsection 103(5) applies to renewing a datacasting transmitter licence as if a reference in that subsection to 10 years were a reference to 5 years.

## **Division 8—Transfer of apparatus licences**

### **131AA Applications for transfer of apparatus licences**

- (1) Subject to section 131AC, a licensee of an apparatus licence may, at any time before the licence is due to expire, apply in writing to the ACMA for the licence to be transferred to another person.
- (2) The application must be in a form approved by the ACMA and must be signed by both the licensee and the proposed transferee.
- (3) The ACMA may approve different forms for transfer of different types of apparatus licence.
- (4) An NBS transmitter licence cannot be transferred to any person other than:
  - (a) the Australian Broadcasting Corporation; or
  - (b) the Special Broadcasting Service Corporation; or
  - (c) the Commonwealth.
- (5) A category 1 digital radio multiplex transmitter licence must not be transferred to a person unless:
  - (a) the person is a qualified company; and
  - (b) an access undertaking is in force under Division 4B in relation to the licence.
- (6) A category 2 digital radio multiplex transmitter licence must not be transferred to a person unless:
  - (a) the person is a qualified company; and
  - (b) an access undertaking is in force under Division 4B in relation to the licence.
- (7) A category 3 digital radio multiplex transmitter licence must not be transferred to a person unless the person is a qualified company, and:
  - (a) both:
    - (i) each national broadcaster beneficially owns shares in the company; and
    - (ii) there are no other beneficial owners of shares in the company; or

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- (b) both:
  - (i) a single national broadcaster beneficially owns all the shares in the company; and
  - (ii) the other national broadcaster has consented to that beneficial ownership.
- (8) If a foundation digital radio multiplex transmitter licence was issued otherwise than in accordance with a price-based allocation system determined under section 106, the licence must not be transferred to a person unless the digital radio moratorium period for the designated BSA radio area concerned has ended.

**131AB Transfer of apparatus licences**

- (1) Subject to sections 131AC and 131ACA, when an application is made, the ACMA may transfer the licence into the name of the transferee.
- (2) In deciding whether to transfer the licence, the ACMA:
  - (a) except in the case of a licence issued under section 100B—must have regard to the same matters to which it must have regard under subsections 100(4) and (6) in deciding whether to issue such a licence; and
  - (b) except in the case of a licence issued under section 100B—may have regard to the same matters to which it may have regard under subsection 100(5) in deciding whether to issue such a licence; and
  - (c) in the case of a licence issued under section 100B—must have regard to the scheme in force under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992*.
- (3) The transferred licence:
  - (a) subject to Divisions 6 and 6A, continues in force until the end of the period for which the licence is in force when issued to the initial licensee; and
  - (b) subject to section 111, continues on the same conditions as those which applied immediately before the transfer.



**131AC Apparatus licences not transferable in certain circumstances**

- (1) The ACMA may determine, by written instrument:
  - (a) that particular types of apparatus licence are not transferable under this Division; and
  - (b) that in specified circumstances an apparatus licence is not transferable under this Division.
- (2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**131ACA Datacasting transmitter licences**

The ACMA must not transfer a datacasting transmitter licence to a person unless:

- (a) the person is a qualified company; and
- (b) the ACMA is satisfied that the transfer would not result in a breach of any of the BSA control rules.

## **Division 10—Provisional international broadcasting certificates**

### **131AE Applications for certificates**

- (1) If a person proposes to make an application for a transmitter licence authorising operation of a radiocommunications transmitter for transmitting an international broadcasting service, the person may apply in writing to the ACMA for a provisional international broadcasting certificate in relation to the proposed application for the transmitter licence.
- (2) An application under subsection (1) must be in a form approved by the ACMA.

### **131AF Issuing certificates**

- (1) After considering an application under section 131AE, the ACMA may issue to the applicant a provisional international broadcasting certificate in relation to the proposed application for the transmitter licence.
- (2) The certificate must state that, if the following conditions are satisfied:
  - (a) the applicant applies for the transmitter licence when the certificate is in force;
  - (b) at the time when the application for the transmitter licence is made:
    - (i) there is in force an international broadcasting licence that authorises the provision of the international broadcasting service concerned; and
    - (ii) spectrum is available for use for the provision of that service;
  - (c) such other conditions (if any) as are specified in the certificate;the ACMA will be disposed to issue the transmitter licence.

- (3) In deciding whether to issue a provisional international broadcasting certificate, the ACMA:
  - (a) must have regard to all of the matters to which it would be required to have regard when deciding whether to issue the transmitter licence concerned (other than the matter mentioned in subsection 100(3B)); and
  - (b) may have regard to:
    - (i) any other matters to which it would be permitted to have regard when deciding whether to issue the transmitter licence concerned; and
    - (ii) such other matters as the ACMA considers relevant.
- (4) If the ACMA refuses to issue a provisional international broadcasting certificate to a person, the ACMA must give written notice of the refusal to the person, together with a statement of its reasons.

#### **131AG Duration of certificates**

- (1) A provisional international broadcasting certificate comes into force on the day on which it was issued and remains in force for 240 days.
- (2) If a provisional international broadcasting certificate expires, subsection (1) does not prevent the making of a fresh application for a new certificate.

## Part 3.4—Class licences

### Division 1—General

#### 132 ACMA may issue class licences

- (1) The ACMA may, by notice published in the *Gazette*, issue class licences.
- (2) A class licence authorises any person:
  - (a) to operate a radiocommunications device of a specified kind; or
  - (b) to operate a radiocommunications device for a specified purpose; or
  - (c) to operate a radiocommunications device of a specified kind for a specified purpose.
- (3) Operation of a radiocommunications device is not authorised by a class licence if it is not in accordance with the conditions of the licence.
- (4) A class licence comes into force:
  - (a) on the day specified for the purpose in the notice published under subsection (1); or
  - (b) if no such day is specified in the notice—on the day on which the notice is published.

#### 133 Conditions of class licences

- (1) The ACMA may include in a class licence such conditions as it thinks fit.
- (2) The conditions may, for example, include all or any of the following:
  - (a) a condition specifying the frequencies at which operation of radiocommunications devices is authorised under the licence;
  - (b) a condition specifying other technical requirements about operation of radiocommunications devices under the licence;
  - (c) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence;

- (d) a condition specifying the periods during which operation of radiocommunications devices is authorised under the licence;
  - (e) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it.
- (3) The notice published in the *Gazette* must include all the conditions of the licence.

### **134 Varying class licences**

Subject to section 136, the ACMA may, by notice published in the *Gazette*, vary a class licence by:

- (a) including one or more further conditions; or
- (b) revoking or varying any conditions of the licence.

### **135 Revoking class licences**

Subject to section 136, the ACMA may, by notice published in the *Gazette*, revoke a class licence.

### **136 Consultation on variations and revocations**

- (1) Before varying a class licence, the ACMA must cause to be published in the *Gazette* a written notice that:
- (a) states that it proposes to vary the licence; and
  - (b) states the subject matter of the proposed variation; and
  - (c) specifies a place at which copies of the licence and of the proposed variation can be bought; and
  - (d) invites interested persons to make representations about the proposed variation by a specified date that is at least one month after the date of publication of the notice; and
  - (e) specifies an address or addresses to which representations may be sent.
- (2) Before revoking a class licence, the ACMA must cause to be published in the *Gazette* a written notice that:
- (a) states that it proposes to revoke the licence; and
  - (b) specifies a place at which copies of the licence may be bought; and

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- (c) invites interested persons to make representations about the proposed revocation by a specified date that is at least one month after the date of publication of the notice; and
  - (d) specifies an address or addresses to which representations may be sent.
- (3) A person may, not later than the date specified in a notice under subsection (1) or (2), make representations to the ACMA about the proposed variation or revocation.
- (4) The ACMA must, before varying or revoking the licence, give due consideration to any representations so made.
- (5) Failure to comply strictly with subsection (1) or (2) does not affect the validity of the notice, or the validity of the variation or revocation of the class licence, if the requirements of that subsection are substantially complied with.
- (6) This section does not apply to variation or revocation of a class licence if the ACMA is satisfied that the variation or revocation is a matter of urgency.

**137 Compliance with plans**

The ACMA must not issue a class licence that is inconsistent with the spectrum plan or any relevant frequency band plan.

**138 Parts of the spectrum allocated for spectrum licences**

The ACMA must not issue a class licence that authorises the operation of radiocommunications devices at frequencies that are within a part of the spectrum that is designated under section 36 to be allocated by issuing spectrum licences.

**139 Disallowance of class licences**

A class licence is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Division 2—Requests for advice****140 Requests for advice on operation of radiocommunications devices**

- (1) A person who operates, or is proposing to operate, a radiocommunications device may give to the ACMA a written request for advice on whether operation of the device is authorised under the class licence specified in the request.
- (2) The request may be limited to advice on operation of the device in the circumstances specified in the request.
- (3) The circumstances so specified may include the way in which the device is operated.
- (4) The request must be in a form approved by the ACMA.

**141 ACMA to advise on the operation of radiocommunications devices**

- (1) The ACMA is to give, to a person who requests advice under section 140, written advice on whether it thinks the operation of the radiocommunications device, as specified in the request, is authorised under the class licence in question.
- (2) The advice may state that operation of the device is authorised under the class licence only if, or unless, the device is operated in the circumstances specified in the advice.
- (3) The circumstances so specified may include the way in which the device is operated.

**142 The effect of the ACMA's advice**

- (1) If:
  - (a) the advice states that the operation of the device is authorised under the class licence; and
  - (b) the device is operated only in accordance with the advice;

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neither the ACMA nor any other authority of the Commonwealth may take any action against the person to whom the advice was given, during the period of 5 years commencing on the day the advice was given, on the basis that operation of the device is not so authorised.

- (2) This Division does not imply that operation of a radiocommunications device is not authorised under a class licence unless it is in accordance with advice given under this Division.



## **Part 3.5—Registration of licences**

### **143 The Register of Radiocommunications Licences**

- (1) There is to be a register known as the Register of Radiocommunications Licences.
- (2) The Register is to be established and kept by the ACMA.
- (3) The Register may be kept by electronic means.
- (4) The Register may consist of 2 or more registers, each of which contains so much of the information that is required to be entered in the Register as the ACMA determines.

### **144 Contents of the Register—spectrum licences**

- (1) The Register is to contain the following information for each spectrum licence:
  - (a) the licensee's name and postal address;
  - (b) the date of issue and date of expiry of the licence;
  - (c) such details as the ACMA determines, in writing, about the conditions of spectrum licences;
  - (d) such details as the ACMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under spectrum licences;
  - (e) such details as the ACMA determines, in writing, about radiocommunications devices that are operated under spectrum licences.
- (2) The ACMA may include in the Register such other details about spectrum licences as it thinks necessary or convenient for the purposes of this Act.

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**145 Refusal to register radiocommunications transmitters for operation under spectrum licences**

- (1) The ACMA may:
- (a) refuse to include in the Register under paragraph 144(1)(e) details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence;
- if the ACMA is satisfied that:
- (b) operation of the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence.

Note: Operation of a radiocommunications transmitter without registration of its details may breach a licence condition under section 69.

- (2) If the ACMA refuses an application to include in the Register details of such a transmitter, it must give the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to include in the Register such details are reviewable decisions under Part 5.6.

- (3) The ACMA may require that, before such details are included in the Register, there be presented to the ACMA a certificate, issued by a person accredited under section 263 to issue certificates for the purposes of this section, stating that operation of the device under the licence satisfies any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.
- (4) The ACMA may determine, by written instrument, what are unacceptable levels of interference for the purposes of this section.

**146 Updating the Register to take variations etc. of spectrum licences into account**

- (1) Subject to subsection (2), the ACMA must, as soon as practicable, make the changes to the information in the Register about a spectrum licence that the ACMA considers are necessary or convenient for taking into account:
- (a) any variation of the licence under section 72, 73, 87, 90 or 92; or
  - (b) any suspension of the licence under section 75; or

- (c) any cancellation of the licence under section 77 or 87, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence; or
  - (d) any assignment of the licence under section 85; or
  - (e) any resumption of the licence under section 89 or 91.
- (2) The ACMA need not make such changes in order to take into account an assignment of the licence under section 85, or a variation of the licence under section 87 that relates to the assignment, unless:
- (a) the ACMA has been given the information required under section 86; and
  - (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.

#### **147 Contents of the Register—apparatus licences**

- (1) The Register is to contain the following information for each apparatus licence:
- (a) the licensee's name and postal address;
  - (b) the date of issue and date of expiry of the licence;
  - (c) such details as the ACMA determines, in writing, about the conditions of apparatus licences;
  - (d) such details as the ACMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under apparatus licences;
  - (e) such details as the ACMA determines, in writing, about radiocommunications devices that are operated under apparatus licences; and
  - (f) if, under section 153D, the licence is affected by a spectrum re-allocation declaration—a note to that effect.
- (2) The ACMA may include in the Register such other details about apparatus licences as it thinks necessary or convenient for the purposes of this Act.

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**148 Updating the Register to take variations etc. of apparatus licences into account**

The ACMA must, as soon as practicable, make the changes to the information in the Register about an apparatus licence that the ACMA considers are necessary or convenient in order to take into account:

- (a) any variation of the licence under section 111; or
- (b) any suspension of the licence under section 126 or 128C; or
- (c) any cancellation of the licence under section 128 or 128B or 128D, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence; or
- (d) any transfer of the licence under section 131AB.

**149 Contents of the Register—class licences**

- (1) The Register is to contain, for each class licence, such details as the ACMA determines, in writing, about class licences.
- (2) The ACMA may include in the Register such other details about class licences as it thinks necessary or convenient for the purposes of this Act.

**150 Updating the Register to take variations etc. of class licences into account**

The ACMA must, as soon as practicable, make the changes to the information in the Register about a class licence that the ACMA considers are necessary or convenient in order to take into account:

- (a) any variation of the licence under section 134; or
- (b) any revocation of the licence under section 135.

**151 Inspection of the Register**

- (1) Subject to section 152, the ACMA must ensure that the Register is available for inspection by any person during the hours that the ACMA is open for business.
- (2) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, so far as the Register is so kept, by giving members of the public access to a computer

terminal that they can use to inspect the Register, either on a screen or in the form of a computer print-out.

### **152 Parts of the Register may be kept confidential**

Section 151 does not apply in relation to a part of the Register if the ACMA is satisfied that it would not be in the national interest (for example, for defence or security reasons) for information in that part of the Register to be available to the public.

### **153 Correction of the Register**

- (1) The ACMA may, at any time, correct information in the Register.
- (2) The correction may be made:
  - (a) in any case—on the ACMA's own initiative; or
  - (b) if the information is about a spectrum licence or an apparatus licence—on the application of the licensee or a person authorised by the licensee to operate radiocommunications devices under the licence.
- (3) An application under paragraph (2)(b) must be in a form approved by the ACMA.
- (4) On making a correction, the ACMA must give written notice of the correction to:
  - (a) the licensee; and
  - (b) if an application was made under paragraph (2)(b) by a person (other than the licensee) for the information to be corrected—that person; and
  - (c) any other person who has given written notice to the ACMA under subsection (6) in relation to the licence to which the correction relates.
- (5) On refusing an application for a correction, the ACMA must give to the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to correct the Register are reviewable decisions under Part 5.6.

- (6) A person may give a written notice to the ACMA stating that the person wishes to be notified about corrections to the Register in relation to specified licences.

## Part 3.6—Re-allocation of encumbered spectrum

### 153A Outline of this Part

- (1) This Part is about the re-allocation of spectrum.
- (2) Section 153B allows the Minister to make a declaration that one or more specified parts of the spectrum are subject to re-allocation. The declaration is called a *spectrum re-allocation declaration*.
- (3) A spectrum re-allocation declaration may provide that the part or parts of the spectrum should be re-allocated:
  - (a) by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); or
  - (b) by issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).
- (4) Certain apparatus licences that are affected by a spectrum re-allocation declaration will be cancelled at the end of the period specified in the declaration (see section 153H).

### 153B Spectrum re-allocation declaration

- (1) The Minister may make a written declaration that one or more specified parts of the spectrum are subject to re-allocation under this Part in relation to a specified period (the *re-allocation period*).
- (2) The declaration is called a *spectrum re-allocation declaration*.
- (3) For each part of the spectrum specified in the declaration, the declaration must be expressed to apply with respect to one or more specified areas.
- (4) The re-allocation period must:
  - (a) begin within 28 days after the declaration is made; and
  - (b) run for at least 2 years.
- (5) The declaration must specify a time as the *re-allocation deadline* for the declaration. That time must be at least 12 months before the end of the re-allocation period.

- (6) For each part of the spectrum specified in the declaration, the declaration must state whether the part of the spectrum should be re-allocated:
  - (a) by issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); or
  - (b) by issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).
- (7) The declaration must not specify a particular part of the spectrum with respect to a particular area if, at the time of the declaration, a spectrum licence is in force authorising the operation of radiocommunications devices:
  - (a) at frequencies that are wholly or partly within that part of the spectrum; and
  - (b) within that area.
- (8) A particular part of the spectrum may be specified in the declaration whether or not any apparatus licences are in force authorising the operation of radiocommunications devices at frequencies that are wholly or partly within that part of the spectrum.
- (9) A particular part of the spectrum may be specified in the declaration even if it adjoins:
  - (a) another part of the spectrum that is also specified in the declaration; or
  - (b) 2 other parts of the spectrum that are also specified in the declaration.

### **153C Spectrum re-allocation declaration—ancillary provisions**

- (1) The Minister must give a copy of a spectrum re-allocation declaration to the ACMA.
- (2) As soon as practicable after receiving a copy of the declaration, the ACMA must:
  - (a) prepare a written notice stating:
    - (i) that the declaration has been made; and
    - (ii) that affected apparatus licensees can get a free copy of the declaration from any office of the ACMA; and

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(b) both:

- (i) as far as practicable, make reasonable efforts to give each affected apparatus licensee a copy of the notice; and
  - (ii) cause a copy of the notice to be published in one or more newspapers circulating generally in the capital city of each State; and
- (c) make copies of the declaration available in accordance with the notice.

Note: *Affected apparatus licensee* has the meaning given by section 153D.

- (3) A spectrum re-allocation declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:

*State* includes the Northern Territory and the Australian Capital Territory.

**153D Affected apparatus licences and licensees**

- (1) For the purposes of this Part, an apparatus licence is *affected* by a spectrum re-allocation declaration if the licence authorises the operation of radiocommunications devices:
  - (a) at frequencies that are wholly or partly within the part or parts of the spectrum specified in the declaration; and
  - (b) within the area or areas specified in the declaration with respect to that part or those parts.
- (2) In this Part:

*affected apparatus licensee* means the licensee of an affected apparatus licence.

**153E Minister may make a spectrum re-allocation declaration only after receiving the ACMA's recommendation**

- (1) The Minister must not make a spectrum re-allocation declaration in relation to a particular part or parts of the spectrum unless, during the previous 180 days, the ACMA has given the Minister a recommendation under section 153F in relation to that part, or those parts, of the spectrum.



- (2) In deciding whether to make the declaration, the Minister must have regard to the recommendation.
- (3) Subsection (2) does not, by implication, limit the matters to which the Minister may have regard.

**153F ACMA may recommend that the Minister make a spectrum re-allocation declaration**

- (1) The ACMA may give the Minister a written recommendation to make a spectrum re-allocation declaration in relation to one or more specified parts of the spectrum.
- (2) The recommendation must specify the period that, in the ACMA's opinion, the declaration should specify as the re-allocation period.
- (3) Subsection (2) does not, by implication, limit the matters that may be dealt with by the recommendation.

**153G Comments by potentially-affected apparatus licensees on recommendation**

- (1) Before giving the Minister a recommendation under section 153F to make a spectrum re-allocation declaration, the ACMA must:
  - (a) prepare a written notice:
    - (i) stating that the ACMA has prepared a draft version of the recommendation; and
    - (ii) setting out the terms of the draft version; and
  - (b) both:
    - (i) as far as practicable, make reasonable efforts to give each potentially-affected apparatus licensee a copy of the notice; and
    - (ii) cause a copy of the notice to be published in one or more newspapers circulating generally in the capital city of each State.
- (2) The notice must invite each potentially-affected apparatus licensee to give written comments to the ACMA about the draft version of the recommendation within the specified period after either:
  - (a) the licensee receives the notice; or
  - (b) the publication of the notice;

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as the case may be. The specified period must run for at least 28 days.

- (3) If a potentially-affected apparatus licensee has given comments in accordance with a notice under this section, then, in preparing the final version of the recommendation, the ACMA must have regard to the comments.
- (4) Subsection (3) does not, by implication, limit the matters to which the ACMA may have regard.
- (5) If the Minister is satisfied that:
  - (a) at a time during the period:
    - (i) beginning on 1 July 1996; and
    - (ii) ending immediately before the commencement of this section;  
the ACMA began a process of consultation about a particular proposal to re-allocate a part of the spectrum; and
  - (b) the process may reasonably be regarded as equivalent to the process set out in subsections (1), (2), (3) and (4) that would otherwise have applied in relation to a recommendation corresponding to the proposal;

the Minister may, by written notice given to the ACMA, exempt the ACMA from compliance with those subsections in relation to a recommendation under section 153F that corresponds to the proposal.

- (6) In this section:

*potentially-affected apparatus licensee* means the licensee of an apparatus licence, where the licensee would become an affected apparatus licensee if the spectrum re-allocation declaration were to be made in accordance with the recommendation.

*State* includes the Northern Territory and the Australian Capital Territory.

**153H Effect of spectrum re-allocation declaration**

- (1) This section applies to an apparatus licence if:
  - (a) immediately before the end of the re-allocation period for a spectrum re-allocation declaration, the licence is affected by the declaration; and

- (b) the licence came into force after the commencement of this section.
- (2) The licence is cancelled under this section at the end of the re-allocation period.

**153J Revocation and variation of spectrum re-allocation declaration**

- (1) The Minister must not revoke a spectrum re-allocation declaration if:
  - (a) the declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
  - (b) the ACMA has begun allocating any or all of those licences.
- (2) The Minister must not vary a spectrum re-allocation declaration if:
  - (a) the declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
  - (b) the ACMA has begun allocating any or all of those licences with respect to a particular area; and
  - (c) the variation relates to the whole or a part of that area.
- (3) For the purposes of this section, the ACMA is taken to *begin allocating* licences if, and only if:
  - (a) in a case where the licences are to be allocated by auction—the ACMA publishes an advertisement for that auction; or
  - (b) in a case where the licences are to be allocated by tender—the ACMA publishes an advertisement calling for suitable tenders; or
  - (c) in any other case—the ACMA invites applications for the allocation of the licences.
- (4) This section does not prevent the Minister from varying a spectrum re-allocation declaration so as to extend the re-allocation deadline if the Minister is of the opinion that there are special circumstances.

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**153K Automatic revocation of spectrum re-allocation declaration if no licences allocated by re-allocation deadline**

- (1) This section applies if:
  - (a) a spectrum re-allocation declaration states that a particular part of the spectrum should be re-allocated by issuing licences; and
  - (b) no such licences are allocated before the re-allocation deadline for the declaration.
- (2) The declaration is taken to have been revoked immediately after the re-allocation deadline.
- (3) As soon as practicable after the re-allocation deadline, the ACMA must give each affected apparatus licensee a written notice stating that the declaration is taken to have been revoked.
- (4) Subsection (2) applies despite subsection 153J(1).
- (5) This section does not, by implication, limit the Minister's power to revoke a spectrum re-allocation declaration in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

**153L Re-allocation by means of issuing spectrum licences**

- (1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated by issuing spectrum licences.
- (2) The licences must be issued under Subdivision B of Division 1 of Part 3.2 in accordance with a marketing plan prepared under section 39A.

**153M Re-allocation by means of issuing apparatus licences**

- (1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated by issuing apparatus licences.
- (2) The licences must be issued under Division 2 of Part 3.3 in accordance with a price-based allocation system determined under section 106.

**153N Restriction on issuing spectrum licences for parts of the spectrum subject to re-allocation**

- (1) This section applies if the Minister makes a spectrum re-allocation declaration under section 153B in relation to a particular part or parts of the spectrum.
- (2) During the re-allocation period, the ACMA must not issue a spectrum licence that authorises the operation of radiocommunications devices:
  - (a) at frequencies that are within that part, or those parts, of the spectrum; and
  - (b) within the area or areas specified in the declaration;unless:
  - (c) the licence is issued as mentioned in section 153L (which deals with re-allocation of spectrum by issuing spectrum licences); or
  - (d) at the start of the re-allocation period, the licence had already been allocated under subsection 62(1).

**153P Restriction on issuing apparatus licences for parts of the spectrum subject to re-allocation**

- (1) This section applies if a spectrum re-allocation declaration is in force in relation to a particular part or parts of the spectrum.
- (2) During the re-allocation period, the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
  - (a) at frequencies that are within that part, or those parts, of the spectrum; and
  - (b) within the area or areas specified in the declaration;unless:
  - (c) the licence is issued as mentioned in section 153M (which deals with re-allocation of spectrum by issuing apparatus licences); or
  - (d) the licence is issued by way of renewal of an apparatus licence (see Division 7 of Part 3.3); or
  - (da) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or

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- (e) the ACMA is satisfied that the special circumstances of the particular case justify the issuing of the licence.
- (3) After the end of the re-allocation period, the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
- (a) at frequencies that are within that part, or those parts, of the spectrum; and
  - (b) within the area or areas specified in the declaration;
- unless:
- (c) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
  - (d) the ACMA is satisfied that the special circumstances of the case justify the issuing of the licence.

## **Chapter 4—General regulatory provisions**

### **154 Outline of this Chapter**

- (1) This Chapter imposes requirements that relate both to radiocommunications and to radio emissions in general.
- (2) Part 4.1 is about standards applicable to, and other technical regulation of, equipment that uses, or is affected by, radio emissions.
- (3) Part 4.2 contains offence provisions relating to radio emissions, in particular offences aimed at containing various kinds of interference with radiocommunications.
- (4) Part 4.3 establishes a conciliation process for the settlement of interference disputes.
- (5) Part 4.4 enables certain restrictions to be imposed by restrictive orders made during declared periods of emergency.

## **Part 4.1—Standards and other technical regulation**

### **Division 1—Preliminary**

#### **155 The object of this Part**

- (1) The object of this Part is to establish an efficient, flexible and responsive system for technical regulation of equipment that uses, or is affected by, radio emissions.
- (2) The system is intended to:
  - (a) benefit users of the equipment by promoting the electromagnetic compatibility of equipment; and
  - (b) contain interference within acceptable limits; and
  - (c) establish standards for the equipment and for services provided using the equipment; and
  - (d) control sale or supply of non-standard devices; and
  - (e) enable efficient management of compliance and enforcement, including, in particular, industry self-certification for compliance with standards; and
  - (f) protect the health and safety of persons who:
    - (i) operate radiocommunications transmitters or radiocommunications receivers; or
    - (ii) work on radiocommunications transmitters or radiocommunications receivers; or
    - (iii) use services supplied by means of radiocommunications transmitters or radiocommunications receivers; or
    - (iv) are reasonably likely to be affected by the operation of radiocommunications transmitters or radiocommunications receivers.

#### **156 Outline of this Part**

In order to achieve this object:

- (a) Division 2 imposes prohibitions relating to non-standard devices, subject to exceptions in Divisions 4 and 5;
- (b) Division 3 enables the ACMA to make standards for devices (including the radio emissions made by devices);



- (c) Division 4 enables the ACMA to issue permits that exempt non-standard transmitters from Division 2;
- (d) Division 5 sets out the other ways in which non-standard devices can be exempt from Division 2;
- (f) Division 7 enables the ACMA to require that devices be labelled to indicate whether they comply with standards or class licences;
- (g) Division 8 enables devices to be prohibited because of their effect on radiocommunications.

## **Division 2—Non-standard devices**

### **157 Emissions from non-standard transmitters**

- (1) Subject to Divisions 4 and 5, a person must not cause a radio emission to be made by a transmitter that the person knows is a non-standard transmitter.

Penalty:

- (a) if the offender is an individual—120 penalty units; or  
(b) otherwise—1,500 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

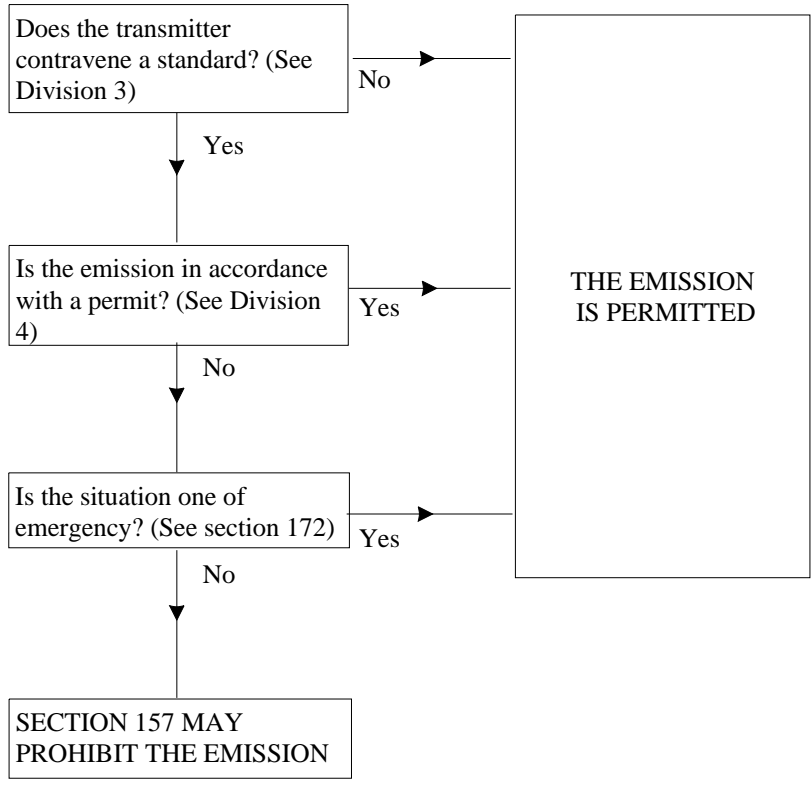
- (2) If the transmitter referred to in subsection (1) is a non-standard transmitter solely because of non-compliance with an EMC standard, subsection (1) does not apply to the transmitter unless:
- (a) the person referred to in that subsection is a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) the radio emission referred to in that subsection was made as a result of the device being operated in the course of, or in relation to:
- (i) trade or commerce between Australia and places outside Australia; or
- (ii) trade or commerce among the States; or
- (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (iv) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
- (v) the defence of Australia; or
- (vi) the operation of lighthouses, lightships, beacons or buoys; or

- (vii) astronomical or meteorological observations; or
  - (viii) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (ix) banking, other than State banking; or
  - (x) insurance, other than State insurance; or
  - (xi) weighing or measuring; or
- (c) the radio emission referred to in that subsection was likely to interfere with the operation of another device, where that operation was in the course of, or in relation to:
- (i) trade or commerce between Australia and places outside Australia; or
  - (ii) trade or commerce among the States; or
  - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (iv) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
  - (v) the defence of Australia; or
  - (vi) the operation of lighthouses, lightships, beacons or buoys; or
  - (vii) astronomical or meteorological observations; or
  - (viii) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (ix) banking, other than State banking; or
  - (x) insurance, other than State insurance; or
  - (xi) weighing or measuring; or
- (d) the radio emission referred to in that subsection was likely to interfere with:
- (i) radiocommunications; or
  - (ii) broadcasting services (within the meaning of the *Broadcasting Services Act 1992*); or
  - (iii) carriage services (within the meaning of the *Telecommunications Act 1997*); or
  - (iv) any other postal, telegraphic, telephonic or other like service.

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(3) The following diagram shows how this Part (other than Division 8) applies to radio emissions.



Note: Chapter 3 imposes additional requirements on operation of radiocommunications devices.

**158 Possession of non-standard devices**

(1) Subject to Divisions 4 and 5, a person must not have in his or her possession for the purpose of operation a device that the person knows is a non-standard device.

Penalty:  
(a) if the offender is an individual—120 penalty units; or  
(b) otherwise—1,500 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) If the device referred to in subsection (1) is a non-standard device solely because of non-compliance with an EMC standard, subsection (1) does not apply to the possession of the device unless:

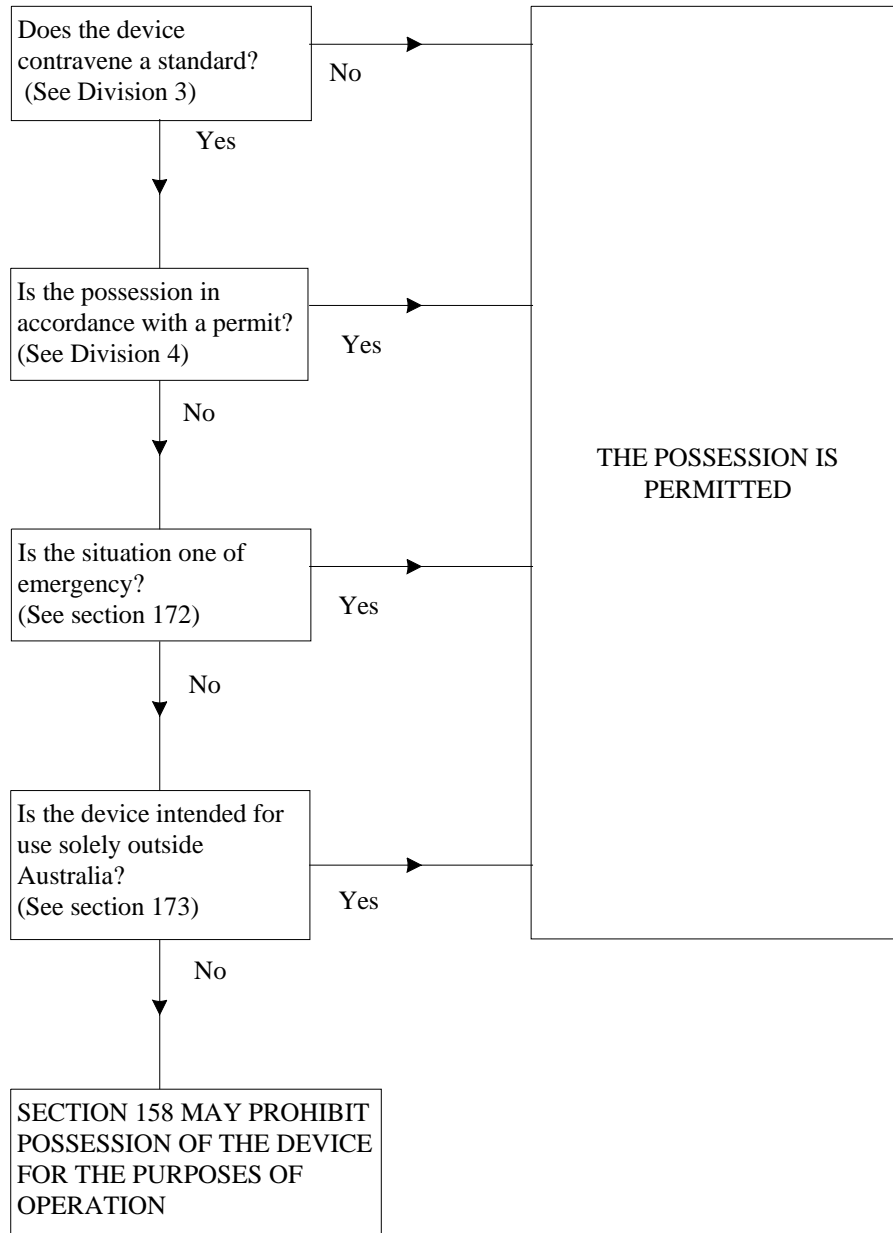
- (a) the person referred to in that subsection is a corporation to which paragraph 51(xx) of the Constitution applies; or
- (b) the operation referred to in that subsection is in the course of, or in relation to:
  - (i) trade or commerce between Australia and places outside Australia; or
  - (ii) trade or commerce among the States; or
  - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (iv) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
  - (v) the defence of Australia; or
  - (vi) the operation of lighthouses, lightships, beacons or buoys; or
  - (vii) astronomical or meteorological observations; or
  - (viii) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (ix) banking, other than State banking; or
  - (x) insurance, other than State insurance; or
  - (xi) weighing or measuring; or
- (c) the operation referred to in that subsection was likely to interfere with the operation of another device, where the operation of that other device was in the course of, or in relation to:
  - (i) trade or commerce between Australia and places outside Australia; or

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- (ii) trade or commerce among the States; or
- (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (iv) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
- (v) the defence of Australia; or
- (vi) the operation of lighthouses, lightships, beacons or buoys; or
- (vii) astronomical or meteorological observations; or
- (viii) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
- (ix) banking, other than State banking; or
- (x) insurance, other than State insurance; or
- (xi) weighing or measuring; or
- (d) the operation referred to in that subsection was likely to interfere with:
  - (i) radiocommunications; or
  - (ii) broadcasting services (within the meaning of the *Broadcasting Services Act 1992*); or
  - (iii) carriage services (within the meaning of the *Telecommunications Act 1997*); or
  - (iv) any other postal, telegraphic, telephonic or other like service.

(3) The following diagram shows how this Part (other than Division 8) applies to possession of devices.



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Note: Chapter 3 imposes additional requirements on possession of radiocommunications devices.

**159 Additional provisions about possession of devices**

- (1) Without limiting section 158, a person is taken, for the purposes of that section, to have a device in his or her possession for the purpose of operation if it is in his or her possession, otherwise than for the purpose of supply to another person, and can be operated by merely doing one or more of the following:
  - (a) connecting the device to an electric power supply by means of an electric plug or other electric connection;
  - (b) connecting a microphone to the device by inserting a microphone plug into the device;
  - (c) switching on the device;
  - (d) switching on any other equipment relevant to the device's operation;
  - (e) adjusting settings by manipulating the device's external switches, dials or other controls;
  - (f) connecting the device to an antenna.
- (2) Subsection (1) only applies in the absence of any evidence to the contrary.
- (3) A reference in this section to a person having a device in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

**160 Supply of non-standard devices**

- (1) Subject to Division 5, a person must not supply a device that the person knows is a non-standard device.

Penalty:

  - (a) if the offender is an individual—120 penalty units; or
  - (b) otherwise—1,500 penalty units.
- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

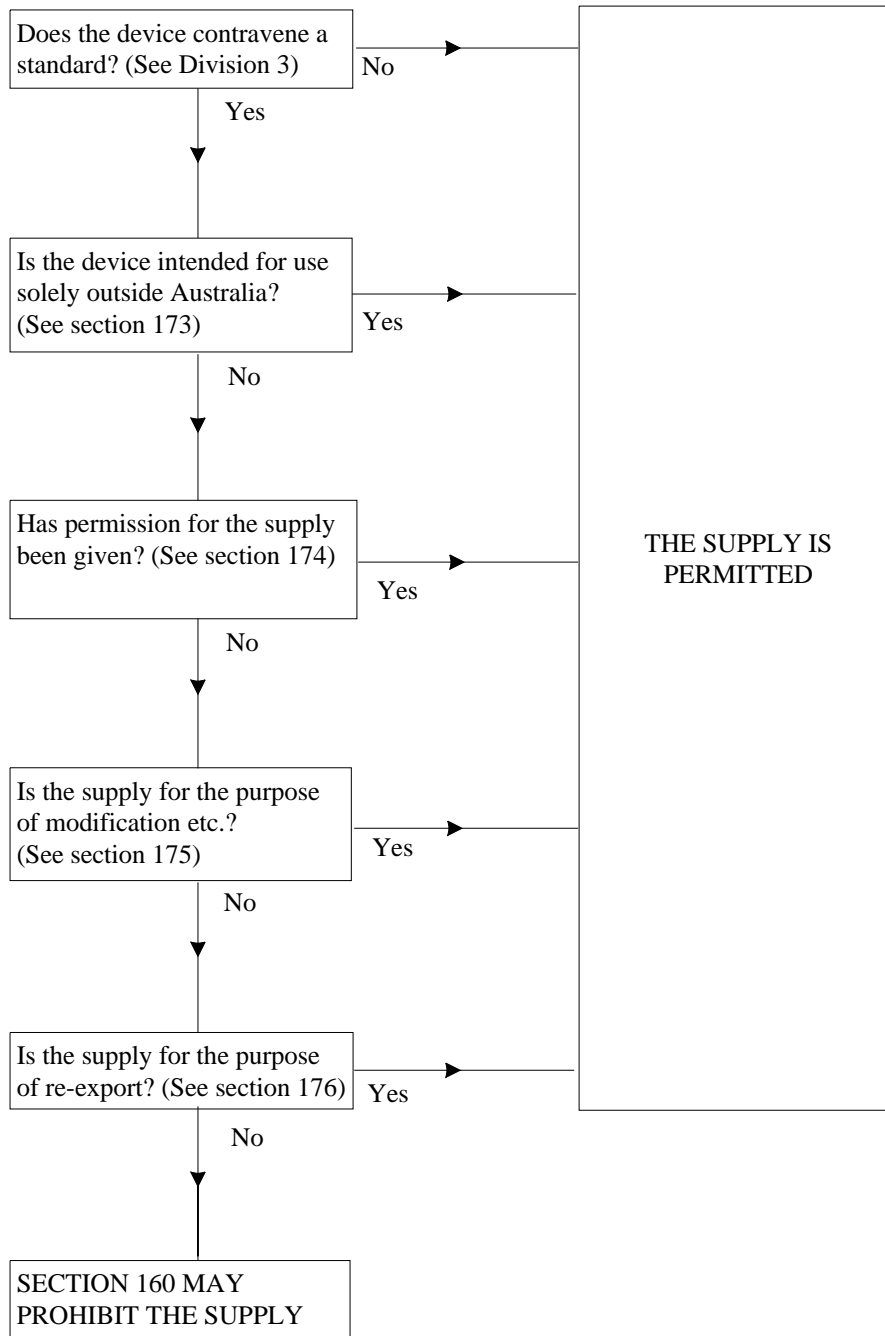


Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) If the device referred to in subsection (1) is a non-standard device solely because of non-compliance with an EMC standard, subsection (1) does not apply to the supply of the device unless:
- (a) the person referred to in that subsection is a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (b) the supply referred to in that subsection was:
    - (i) supply in the course of, or in relation to, trade or commerce between Australia and places outside Australia; or
    - (ii) supply in the course of, or in relation to, trade or commerce among the States; or
    - (iii) supply in the course of, or in relation to, trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
    - (iv) supply to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory.
- (3) The following diagram shows how this Part (other than Division 8) applies to supply of devices.

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### **161 Imputed knowledge**

For the purposes of establishing a contravention of section 157, 158 or 160, if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that the transmitter or device in question was a non-standard transmitter or non-standard device, the person is taken to have known that it was a non-standard transmitter or non-standard device.

## **Division 3—Standards**

### **162 The ACMA’s power to make standards**

- (1) The ACMA may, by written instrument, make standards for:
  - (a) the performance of specified devices; or
  - (b) the maximum permitted level of radio emissions from devices (other than radiocommunications from radiocommunications devices in accordance with Chapter 3) within specified parts of the spectrum.
- (2) A standard:
  - (a) may be of general application or may be limited as provided in the standard; and
  - (b) without limiting paragraph (a), may apply:
    - (i) with respect to one or more specified areas; or
    - (ii) with respect to one or more specified parts of the spectrum.
- (3) Standards are to consist only of such requirements as are necessary or convenient for:
  - (a) containing interference to radiocommunications; or
  - (b) containing interference to any uses or functions of devices; or
  - (c) establishing for the operation of radiocommunications transmitters or radiocommunications receivers an adequate level of immunity from electromagnetic disturbance caused by the use of devices (including other radiocommunications transmitters or radiocommunications receivers); or
  - (d) establishing for the uses or functions of devices an adequate level of immunity from electromagnetic disturbances caused by the operation of radiocommunications transmitters; or
  - (e) establishing for the uses or functions of devices an adequate level of immunity from electromagnetic disturbances caused by the use of other devices; or
  - (f) protecting the health or safety of persons who:
    - (i) operate radiocommunications transmitters or radiocommunications receivers; or
    - (ii) work on radiocommunications transmitters or radiocommunications receivers; or

- (iii) use services supplied by means of radiocommunications transmitters or radiocommunications receivers; or
- (iv) are reasonably likely to be affected by the operation of radiocommunications transmitters or radiocommunications receivers.

### **163 Procedures for making standards**

- (1) Before making a standard, the ACMA must, so far as is practicable, try to ensure that:
  - (a) interested persons have had adequate opportunity to make representations about the proposed standard (either directly, or indirectly by means of a report under paragraph (2)(g)); and
  - (b) due consideration has been given to any representations so made.

Note: This subsection has effect subject to section 163A (which deals with the ACMA's power to make standards in cases of urgency).

- (2) The ACMA may make an arrangement with any of the following bodies or associations:
  - (a) Standards Australia International Limited;
  - (b) a body or association approved in writing by Standards Australia International Limited for the purposes of this subsection;
  - (c) a body or association specified in a written determination made by the ACMA for the purposes of this subsection;under which the body or association:
  - (d) prepares a draft of a standard; and
  - (e) publishes the draft standard; and
  - (f) undertakes a process of public consultation on the draft standard; and
  - (g) reports to the ACMA on the results of that process of public consultation.
- (3) A copy of an approval under paragraph (2)(b) is to be published in the *Gazette*.
- (4) A copy of a determination under paragraph (2)(c) is to be published in the *Gazette*.

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**163A Making standards in cases of urgency**

- (1) The ACMA is not required to comply with subsection 163(1) in relation to the making of a particular standard if the ACMA is satisfied that it is necessary to make the standard as a matter of urgency in order to protect the health or safety of persons who:
  - (a) operate radiocommunications transmitters or radiocommunications receivers; or
  - (b) work on radiocommunications transmitters or radiocommunications receivers; or
  - (c) use services supplied by means of radiocommunications transmitters or radiocommunications receivers; or
  - (d) are reasonably likely to be affected by the operation of radiocommunications transmitters or radiocommunications receivers.
- (2) If subsection (1) applies to a standard (the *urgent standard*), the urgent standard ceases to have effect 12 months after it came into operation. However, this rule does not prevent the ACMA from revoking the urgent standard and making another standard under section 162 that:
  - (a) is not a standard to which subsection (1) applies; and
  - (b) deals with the same subject matter as the urgent standard.

**164 Date of effect of standards**

A standard takes effect:

- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
- (b) otherwise—on the day on which a copy of the instrument was notified in the *Gazette*.

**165 Disallowance etc. of standards**

- (1) A standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 4—Permits for non-standard devices**

### **166 The effect of permits**

A person does not:

- (a) contravene section 157 by causing a non-standard transmitter to make a radio emission; or
- (b) contravene section 158 by having in his or her possession a non-standard device;

if causing the emission or possessing the device is in accordance with a permit.

### **167 The ACMA may issue permits**

- (1) A person may apply to the ACMA, in a form approved by the ACMA, for a permit.
- (2) The ACMA may, in writing, issue to the person a permit authorising the person and, if the permit so specifies, his or her agents:
  - (a) to have in his, her or their possession specified non-standard devices; and
  - (b) if, and only if, the permit so specifies—to cause such devices to make radio emissions.
- (3) In deciding whether to issue a permit, the ACMA may have regard to whether the purpose for which the permit is sought is a purpose related to:
  - (a) education or research; or
  - (b) testing of devices; or
  - (c) demonstration of devices.
- (3A) In deciding whether to issue a permit, the ACMA must have regard to the protection of the health or safety of persons who:
  - (a) operate devices; or
  - (b) work on devices; or
  - (c) use services supplied by means of devices; or
  - (d) are otherwise reasonably likely to be affected by the operation of devices.

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- (3B) Subsections (3) and (3A) do not, by implication, limit the matters to which the ACMA may have regard.
- (4) If the ACMA refuses to issue the permit, it must give the person a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to issue permits are reviewable under Part 5.6.

**168 Conditions of permits**

- (1) A permit is subject to the following conditions:
  - (a) a condition that a person to whom the permit relates must comply with this Act; and
  - (b) any other conditions specified in the permit.
- (2) The ACMA may, by written notice given to the person to whom the permit was issued:
  - (a) impose one or more further conditions to which the permit was issued; or
  - (b) vary or revoke any conditions:
    - (i) imposed under paragraph (a); or
    - (ii) specified under paragraph (1)(b).

Note: Decisions about permit conditions are reviewable under Part 5.6.

**169 Duration of permits**

- (1) A permit comes into force on the day on which it is issued.
- (2) A permit that authorises radio emission:
  - (a) must specify a day of expiration; and
  - (b) subject to section 171, remains in force until the end of that day.
- (3) Subject to section 171, a permit that does not authorise radio emission remains in force:
  - (a) if it specifies a day of expiration—until the end of that day; or
  - (b) otherwise—indefinitely.



- (4) A day of expiration specified under paragraph (2)(a) or (3)(a) must be:
- (a) if:
    - (i) there is in force a written determination made by the ACMA that is expressed to apply in relation to all permits or in relation to a class of permits in which the permit is included; and
    - (ii) the determination specifies a period longer than 12 months in relation to all permits or in relation to a class of permits in which the permit is included;a day within that longer period; or
  - (b) otherwise:
    - (i) if the permit was issued in a month other than December—a day within 12 months after the permit was granted; or
    - (ii) if the permit was issued in December of a particular year—a day not later than 31 December in the next year.
- (5) A determination under paragraph (4)(a) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) The ACMA may, by written notice given to the holder of a permit, declare that the permit has effect as if the permit had specified a day specified in the notice as the day of expiration of the permit. The declaration has effect accordingly.
- (7) The day specified in a notice under subsection (5) must:
- (a) be later than the day on which the notice was given to the holder; and
  - (b) comply with the rules set out in subsection (4).

### **169A Compensation—constitutional safety-net**

- (1) If:
- (a) apart from this section, the operation of subsection 169(6) would result in the acquisition of property from a person otherwise than on just terms; and

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- (b) the acquisition would be invalid because of paragraph 51(xxxi) of the Constitution;  
the Commonwealth is liable to pay compensation of a reasonable amount to the person in respect of the acquisition.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in the Federal Court for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.
- (3) In this section:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.
- just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**170 Contraventions of permit conditions**

- (1) A person is guilty of an offence if:
- (a) a permit relates to the person; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a condition of the permit.
- Penalty: 100 penalty units.
- (2) Subsection (1) does not apply if the person has a reasonable excuse.
- Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).
- (3) In this section:
- engage in conduct* means:
- (a) do an act; or
  - (b) omit to perform an act.

**171 Cancelling permits**

- (1) The ACMA may, by written notice given to the holder of a permit, cancel the permit.

- (2) The notice must give the reasons for cancelling the permit.
- (3) In deciding whether to cancel a permit, the ACMA:
  - (a) must have regard to all matters that it considers relevant; and
  - (b) without limiting paragraph (a), may have regard to:
    - (i) any matter to which the ACMA may, under subsection 167(3), have regard in deciding whether to issue a permit; and
    - (ia) any matter to which the ACMA must, under subsection 167(3A), have regard in deciding whether to issue a permit; and
    - (ii) whether or not the holder of the permit or an agent of the holder has been convicted of an offence under section 170; and
    - (iii) whether or not the holder of the permit or an agent of the holder has been convicted of an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

Note: Cancellations of permits are reviewable under Part 5.6.

## **Division 5—Other exemptions from Division 2**

### **172 Emergency transmissions etc.**

A person does not contravene section 157 or 158 by causing a radio transmission to be made by a non-standard transmitter, or having a non-standard device in his or her possession, in the reasonable belief that the emission or possession was necessary for the purpose of:

- (a) securing the safety of a vessel, aircraft or space object that was in danger; or
- (b) dealing with an emergency involving a serious threat to the environment; or
- (c) dealing with an emergency involving risk of death of, or injury to, persons; or
- (d) dealing with an emergency involving risk of substantial loss of, or damage to, property.

### **173 Possession or supply for use solely outside Australia**

- (1) A person does not:
  - (a) contravene section 158 by having a non-standard device in his or her possession; or
  - (b) contravene section 160 by supplying a non-standard device; if the device is intended to be used solely outside Australia.
- (2) If there is applied to a device:
  - (a) a statement that the device is for export only; or
  - (b) a statement indicating, by use of words authorised for the purposes of this subsection by the regulations, that the device is intended to be used solely outside Australia;it is presumed for the purposes of this section, unless the contrary is established, that the device is intended to be so used.
- (3) For the purposes of subsection (2), a statement is taken to be applied to a device if:
  - (a) the statement is impressed on, worked into, or annexed or affixed to, the device; or

- (b) the statement is applied to a covering (including a box, case, frame or wrapper), label or thing in or with which the device is supplied.

#### **174 Supply with permission**

- (1) A person does not contravene section 160 by supplying a non-standard device in accordance with the ACMA's written permission.
- (2) If the ACMA decides to refuse to give such permission to a person who has applied to the ACMA for it in a form approved by the ACMA, the ACMA must give to the person a written notice setting out its decision.

Note: Refusals to give permission are reviewable under Part 5.6.

#### **175 Supply for modification etc.**

A person does not contravene section 160 by supplying a non-standard device for the purposes of modifying or altering it so that it would comply with all standards applicable to it at the time of the alteration or modification.

#### **176 Supply for re-export**

A person does not contravene section 160 by supplying a non-standard device if:

- (a) the device was imported; and
- (b) the person supplied it for the purposes of re-export.

#### **177 Burden of proof**

- (1) In proceedings for an offence against section 157 or 158, the burden of proving any of the matters referred to in section 172 lies on the defendant.
- (2) In proceedings for an offence against section 158 or 160, the burden of proving the absence of any of the matters referred to in section 173, 174, 175 or 176 lies on the prosecution.

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**178 Reasonable excuse**

Nothing in this Division limits the scope of the expression  
“reasonable excuse” in subsection 157(1A), 158(1A) or 160(1A).

## Division 7—Labelling of devices

### 182 Requirements to apply labels etc.

- (1) The ACMA may, by notice published in the *Gazette*, require any person who manufactures or imports a device included in a specified class of devices to apply to each such device a label that indicates either or both of the following:
  - (a) whether the device meets the requirements of the standards specified in the notice;
  - (c) if the device is a radiocommunications device—whether the device complies with the class licence specified in the notice.
- (1A) The notice may require a manufacturer or importer of a device included in a class of devices specified in the notice:
  - (a) to conduct quality assurance programs; or
  - (b) to satisfy himself or herself that quality assurance programs have been conducted;in respect of the device.
- (1B) The notice may require a manufacturer or importer of a device, after having regard to the results of the quality assurance program, to apply a label to each such device that indicates either or both of the following:
  - (a) whether the device meets the requirements of the standards specified in the notice;
  - (c) if the device is a radiocommunications device—whether the device complies with the class licence specified in the notice.
- (2) The label must be in the form specified by the ACMA in the notice.
- (2A) The method of applying the label to the device must be as specified by the ACMA in the instrument.
- (3) The notice may state that the requirement does not apply to an imported device if there is affixed a label of a specified kind that indicates that the device complies with requirements of:
  - (a) a specified law of a foreign country; or

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- (b) a specified instrument in force under a law of a foreign country; or
  - (c) a specified convention, treaty or international agreement; or
  - (d) a specified instrument in force under a specified convention, treaty or international agreement.
- (4) The notice may specify requirements that must be met before a label can be applied, including (but not limited to):
- (a) a requirement that, before a manufacturer or importer applies the label, the manufacturer or importer must have obtained a written statement from a certification body certifying that the device complies with the standard or class licence specified in the notice; and
  - (b) a requirement that, before a manufacturer or importer applies the label, the device must have been tested by a recognised testing authority for compliance with the standard or class licence specified in the notice; and
  - (c) a requirement that, before a manufacturer or importer applies the label, the manufacturer or importer must have obtained a written statement from a competent body certifying that reasonable efforts have been made to avoid contravention of the standard or class licence specified in the notice; and
  - (d) a requirement that, before a manufacturer or importer applies the label, the manufacturer or importer must make a written declaration in relation to the device, being a declaration in a form specified in the notice.

Note 1: **Certification body** is defined by section 183A.

Note 2: **Competent body** is defined by section 183.

Note 3: **Recognised testing authority** is defined by section 183.

- (4A) The notice may also specify requirements that must be met after a label has been applied to a device, including a requirement that a manufacturer or importer retain for inspection, for the period specified in the notice:
- (a) records of the quality assurance programs conducted in accordance with a notice under subsection (1) in respect of that device; and
  - (b) records of any results of any tests conducted in relation to compliance with relevant standards or the class licence; and



- (c) a declaration, or a copy of the declaration, made as mentioned in paragraph (4)(d).
- (5) A notice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **183 Recognised testing authorities**

- (1) The ACMA may, by notice in the *Gazette*, determine that a specified person or association is an **accreditation body** for the purposes of this section. The determination has effect accordingly.
- (2) An accreditation body may, by written instrument, determine that a specified person is a **recognised testing authority** for the purposes of this Division. The determination has effect accordingly.
- (3) An accreditation body may, by written instrument, determine that a specified person or association is a **competent body** for the purposes of this Division. The determination has effect accordingly.

### **183A Certification bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that a specified person or association is an **approving body** for the purposes of this section. The determination has effect accordingly.
- (2) An approving body may, by written instrument, determine that a specified person or association is a **certification body** for the purposes of this Division. The determination has effect accordingly.

### **186 Sale etc. of devices without labels**

- (1) If a person:
  - (a) has manufactured or imported a device; and
  - (b) knows that he or she is required under section 182 to apply to it a label in a particular form;the person must not supply the device unless a label in that form has been applied to the device.

Penalty: 100 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

(2) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a device were, by express provision, confined to:

- (a) a radiocommunications transmitter; or
- (b) a radiocommunications receiver; or
- (c) a device, where the operation of the device is likely to interfere with radiocommunications; or
- (d) a device, where the uses or functions of the device are likely to be interfered with by the operation of radiocommunications transmitters.

(3) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.

(4) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to supply were, by express provision, confined to supply:

- (a) in the course of, or in relation to:
  - (i) trade or commerce between Australia and places outside Australia; or
  - (ii) trade or commerce among the States; or
  - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (b) to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory.

**187 Applying labels before satisfying requirements under subsection 182(4)**

(1) If a person knows that he or she must satisfy requirements that have been specified under subsection 182(4) before applying a particular label to a device under subsection 182(1), the person must not apply:

- (a) the label; or
  - (b) a label that purports to be such a label;
- before he or she satisfies those requirements.

Penalty: 100 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if the reference in that subsection to a device were, by express provision, confined to:
- (a) a radiocommunications transmitter; or
  - (b) a radiocommunications receiver; or
  - (c) a device, where the operation of the device is likely to interfere with radiocommunications; or
  - (d) a device, where the uses or functions of the device are likely to be interfered with by the operation of radiocommunications transmitters.
- (3) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.
- (4) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a person were, by express provision, confined to a person who manufactured or imported the device for the purposes of supply:
- (a) in the course of, or in relation to:
    - (i) trade or commerce between Australia and places outside Australia; or
    - (ii) trade or commerce among the States; or
    - (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (b) to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory.

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**187A Failure to retain records**

- (1) If the ACMA publishes a notice under subsection 182(1) that specifies requirements to be met after a label has been applied, a manufacturer or importer must not fail to comply with requirements specified in the notice.

Penalty: 20 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (1B) Subsection (1) is an offence of strict liability.

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

- (2) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a device were, by express provision, confined to:

- (a) a radiocommunications transmitter; or
- (b) a radiocommunications receiver; or
- (c) a device, where the operation of the device is likely to interfere with radiocommunications; or
- (d) a device, where the uses or functions of the device are likely to be interfered with by the operation of radiocommunications transmitters.

- (3) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if the reference in that subsection to a manufacturer or importer were, by express provision, confined to a manufacturer, or an importer, that is a corporation to which paragraph 51(xx) of the Constitution applies.

- (4) In addition to its effect apart from this subsection, subsection (1) also has the effect it would have if each reference in that subsection to a manufacturer or importer were, by express provision, confined to a manufacturer, or an importer, who manufactured or imported the device for the purposes of supply:

- (a) in the course of, or in relation to:
  - (i) trade or commerce between Australia and places outside Australia; or

- (ii) trade or commerce among the States; or
- (iii) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (b) to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory.

### **188 Imputed knowledge**

For the purposes of establishing a contravention of section 186 or 187, if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
- (b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that he or she was subject to the requirement in question, the person is taken to have known that he or she was subject to the requirement.

### **188A Protected symbols**

- (1) A person must not:
  - (a) use in relation to a business, trade, profession or occupation; or
  - (b) apply, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire; or
  - (c) use in relation to:
    - (i) goods or services; or
    - (ii) the promotion, by any means, of supply or use of goods or services;a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.
- (2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units.  
Note: See also sections 4AA and 4B of the *Crimes Act 1914*.
- (3) Nothing in subsection (1) limits anything else in that subsection.

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- (4) Nothing in subsection (1), so far as it applies in relation to a protected symbol, affects rights conferred by law on a person in relation to:
- (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
  - (b) a design that is registered under the *Designs Act 2003*; and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 16 August 1996 in relation to the symbol.
- (5) Nothing in this section, so far as it applies to a protected symbol, affects the use, or rights conferred by law relating to the use, of the symbol by a person in a particular manner if, immediately before 16 August 1996, the person:
- (a) was using the symbol in good faith in that manner; or
  - (b) would have been entitled to prevent another person from passing off, by means of the use of the symbol or a similar symbol, goods or services as the goods or services of the first-mentioned person.
- (6) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling a device in accordance with section 182 of this Act or labelling customer equipment or customer cabling in accordance with section 407 of the *Telecommunications Act 1997*.
- (7) This section does not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a written determination made by the ACMA.
- (8) A reference in this section to a ***protected symbol*** is a reference to:
- (a) the symbol known in the radiocommunications community as the C-Tick mark:
    - (i) the design of which is set out in a written determination made by the ACMA; and
    - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by a device with:
      - (A) any applicable standards; and
      - (B) any applicable class licences; or

- (b) a symbol:
  - (i) the design of which is set out in a written determination made by the ACMA; and
  - (ii) a purpose of which, after the commencement of this section, is to indicate compliance by a device with:
    - (A) any applicable standards; and
    - (B) any applicable class licences; or
- (c) a symbol:
  - (i) the design of which is set out in a written determination made by the ACMA; and
  - (ii) a purpose of which, after the commencement of this section, is to indicate non-compliance by a device with:
    - (A) applicable standards; and
    - (B) any applicable class licences.
- (9) For the purposes of this Division, if:
  - (a) a label is applied to a device; and
  - (b) the label embodies a symbol referred to in paragraph (8)(a), or (b);the label is taken to indicate that the device meets the requirements of:
  - (c) each applicable standard; and
  - (d) each applicable class licence.
- (10) For the purposes of this Division, if:
  - (a) a label is applied to a device; and
  - (b) the label embodies a symbol referred to in paragraph (8)(c);the label is taken to indicate that the device does not meet the requirements of:
  - (c) each applicable standard; and
  - (d) each applicable class licence.
- (11) For the purposes of this section, a standard or class licence is taken to be applicable in relation to a device if, and only if, the standard or licence was specified in the subsection 182(1) notice that dealt with the manufacture or importation of the device.
- (12) A determination made by the ACMA under subsection (7) or (8) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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- (13) In addition to its effect apart from this subsection, this section also has the effect it would have if a reference in subsection (1) to a person were, by express provision, confined to a corporation to which paragraph 51(xx) of the Constitution applies.
- (14) In addition to its effect apart from this subsection, this section also has the effect it would have if each reference in subsection (1) to use, or to application, were a reference to use or application, as the case may be, in the course of, or in relation to:
- (a) trade or commerce between Australia and places outside Australia; or
  - (b) trade or commerce among the States; or
  - (c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or
  - (d) the supply of goods or services to the Commonwealth, to a Territory or to an authority or instrumentality of the Commonwealth or of a Territory; or
  - (e) the defence of Australia; or
  - (f) the operation of lighthouses, lightships, beacons or buoys; or
  - (g) astronomical or meteorological observations; or
  - (h) an activity of a corporation to which paragraph 51(xx) of the Constitution applies; or
  - (i) banking, other than State banking; or
  - (j) insurance, other than State insurance; or
  - (k) weighing or measuring.

- (15) In this section:

***customer cabling*** has the same meaning as in the *Telecommunications Act 1997*.

***customer equipment*** has the same meaning as in the *Telecommunications Act 1997*.

***radiocommunications community*** has the same meaning as in the *Australian Communications and Media Authority Act 2005*.



## **Division 8—Prohibited devices**

### **189 Operation etc. of prohibited devices**

- (1) A person must not:
  - (a) operate or supply a device that the person knows is a device in respect of which a declaration is in force under section 190; or
  - (b) have a device that the person knows, or ought reasonably to know, is such a device in his or her possession for the purpose of operating or supplying the device.

Penalty:

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) For the purposes of establishing a contravention of subsection (1), if, having regard to:
  - (a) a person's abilities, experience, qualifications and other attributes; and
  - (b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that the device in question was a device in respect of which a declaration under section 190 was in force, the person is taken to have known that it was such a device.

### **190 Declaration of prohibited devices**

- (1) Subject to section 191, the ACMA may, by notice published in one or more newspapers circulating generally in the capital city of each State and Territory, declare that operation or supply, or possession for the purpose of operation or supply, of a specified device is prohibited for the reasons set out in the notice.

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- (2) The device must be a device that:
  - (a) is designed to have an adverse effect on radiocommunications; or
  - (b) would be likely substantially to:
    - (i) interfere with radiocommunications; or
    - (ii) disrupt or disturb radiocommunications in any other way; or
  - (c) is a radiocommunications transmitter, or a radiocommunications receiver, that would be reasonably likely to have an adverse effect on the health or safety of persons who:
    - (i) operate the device; or
    - (ii) work on the device; or
    - (iii) use services supplied by means of the device; or
    - (iv) are reasonably likely to be affected by the operation of the device.
- (3) Subject to subsection (4), a declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) Despite paragraph 46A(1)(c) of that Act, a declaration is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

**191 Consultation on proposed declarations**

- (1) Before making the declaration, the ACMA must, by notice published in the *Gazette*:
  - (a) describe the device; and
  - (b) specify the reasons why the ACMA proposes to make the declaration; and
  - (c) invite interested persons to make representations about the proposed declaration within such period, being not less than one month after the date of publication of the notice, as is specified in the notice; and
  - (d) specify one or more addresses to which such representations may be sent.
- (2) A person may, before the end of the period specified in the notice, make such representations to the ACMA.

- (3) The ACMA must give due consideration to any representations so made.
- (4) This section does not apply if the ACMA is satisfied that making the declaration is a matter of urgency.

## Part 4.2—Offences relating to radio emission

### 192 Interference likely to prejudice safe operation of vessels, aircraft or space objects

Subject to section 196, a person must not use a transmitter in a way likely to interfere with radiocommunications if the person knows that such interference is likely to prejudice the safe operation of an vessel, aircraft or space object.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

### 193 Interference in relation to certain radiocommunications

- (1) Subject to section 196, a person must not, without the ACMA's written permission, use a transmitter in a way that the person knows is likely to interfere substantially with radiocommunications carried on by or on behalf of:
  - (a) an organisation specified in the regulations that is:
    - (i) a fire-fighting, civil defence or rescue organisation; or
    - (ii) an organisation providing ambulance services; or
    - (iii) any other organisation the sole or principal purpose of which is to secure the safety of persons during an emergency; or
  - (b) the Royal Flying Doctor Service; or
  - (c) the Australian Federal Police or the police force of a State or Territory.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
  - (b) otherwise—5,000 penalty units.
- (2) If the ACMA refuses to give permission to a person who applied for it, the ACMA must give the person a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

### **194 Interference likely to endanger safety or cause loss or damage**

Subject to section 196, a person must not do any act or thing that the person knows is likely to:

- (a) interfere substantially with radiocommunications; or
- (b) otherwise substantially disrupt or disturb radiocommunications;

if the interference, disruption or disturbance is likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

### **195 Transmission from foreign vessel, aircraft or space object**

- (1) Subject to section 196 and subsection (2), a person must not, outside Australia and without the ACMA's written permission, use a transmitter that is on board a foreign vessel, foreign aircraft or foreign space object:

- (a) for the purposes of transmitting to the general public in Australia radio programs or television programs; or
- (b) in a manner that the person knows is likely to interfere substantially with radiocommunications:
  - (i) within Australia; or
  - (ii) between a place in Australia and a place outside Australia.

Penalty:

- (a) if the offender is an individual—imprisonment for 2 years; or
- (b) otherwise—1,500 penalty units.

- (2) This section does not apply to use of a transmitter:

- (a) in accordance with an agreement, treaty or convention that:
  - (i) is entered into between Australia and any other country or countries; and
  - (ii) is specified in the regulations; or
- (b) under the direction of a person exercising powers under the law of the Commonwealth or of a State or Territory.

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- (3) If the ACMA refuses to give permission to a person who applied for it, the ACMA must give the person a written notice of the refusal.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

**196 Emergency transmissions etc.**

- (1) A person does not contravene section 192, 193, 194 or 195 by doing anything that the person reasonably believes was necessary for the purpose of:
- (a) securing the safety of a vessel, aircraft or space object that was in danger; or
  - (b) dealing with an emergency involving a serious threat to the environment; or
  - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
  - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (2) In proceedings for an offence against section 192, 193, 194 or 195, the burden of proving any of the matters referred to in subsection (1) lies on the defendant.

**197 Causing interference etc.**

- (1) A person is guilty of an offence if:
- (a) the person engages in conduct; and
  - (b) the person is reckless as to whether the conduct will result in:
    - (i) substantial interference with radiocommunications; or
    - (ii) substantial disruption or disturbance of radiocommunications.

Penalty: Imprisonment for 1 year.

- (2) In this section:

*engage in conduct* means:

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

### **198 Transmission of false information**

A person must not, in a transmission made by a transmitter operated by the person, make a statement, or convey information, with intention of inducing a false belief that:

- (a) the person or any other person is dying, has died, is being injured or has been injured; or
- (b) property is being, or has been, destroyed or damaged; or
- (c) there is a risk of the occurrence of an event referred to in paragraph (a) or (b); or
- (d) there has been, is or is to be a plan, proposal, attempt, conspiracy, threat to do, or omit to do, an act, being an act or omission that is likely to result in the occurrence of an event referred to in paragraph (a) or (b).

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

### **199 Transmission likely to cause explosion**

- (1) A person must not use a transmitter in a manner that the person knows is likely to cause an explosion.

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—5,000 penalty units.

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

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

### **200 Imputed knowledge**

For the purposes of establishing a contravention of section 192, 193 or 194, paragraph 195(1)(b) or section 199, if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and

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(b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that using the transmitter in question, or doing the act or thing in question, was a contravention of that provision, the person is taken to have known that using the transmitter, or doing the act or thing, was such a contravention.

**201 Operation of laws of States or Territories**

This Part is not intended to exclude or limit the concurrent operation of:

- (a) the law of a State or Territory; or
- (b) regulations, Ordinances or other instruments of a legislative character made under an Act other than this Act.



## **Part 4.3—Settlement of interference disputes**

### **Division 1—Conciliators**

#### **202 Appointment of a conciliator**

- (1) The ACMA may appoint a person to be a conciliator.
- (2) A conciliator may be appointed on either a full-time or a part-time basis.
- (3) A conciliator holds office for such period as is specified in his or her instrument of appointment.
- (4) A conciliator's appointment may be expressed to have effect either generally or as otherwise provided by his or her instrument of appointment.

#### **203 Terms and conditions etc.**

- (1) The ACMA may:
  - (a) subject to section 204, determine the terms and conditions of appointment of a person holding office as a conciliator; and
  - (b) terminate such an appointment at any time.
- (2) A conciliator may resign by writing signed by the conciliator and delivered to the ACMA.

#### **204 Remuneration and allowances**

- (1) A conciliator who is not engaged under the *Public Service Act 1999* is to be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) If a determination of the Remuneration Tribunal in relation to conciliators is not in operation, a conciliator is to be paid such remuneration as is prescribed.
- (3) A conciliator is to be paid such allowances as are prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

## **Division 2—Referral of matters to conciliators**

### **205 Referral of complaints to conciliators**

- (1) If a complaint in writing is made to the ACMA to the effect that:
  - (a) a person has engaged, is engaging or proposes to engage in conduct (including any act and any refusal or omission to act) that has caused, is causing or is likely to cause:
    - (i) interference or risk of interference to radiocommunications; or
    - (ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications; and
  - (b) the interests of the complainant have been, are or are likely to be affected by the conduct;the ACMA may refer the matter to a conciliator.
- (2) If the ACMA decides not to refer a complaint to a conciliator, the ACMA must give to the complainant a written notice informing the complainant of the decision and the reasons for the decision.
- (3) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.

### **206 Referral of other matters to conciliators**

- (1) If it appears to the ACMA that, even though a complaint has not been made under subsection 205(1):
  - (a) a person has engaged, is engaging or is proposing to engage in disputed conduct; and
  - (b) the interests of another person have been, are or are likely to be affected by the conduct;the ACMA may refer the matter to a conciliator.
- (2) A reference in this section to being engaged in disputed conduct includes a reference to being involved in, or contributing to, that conduct.

**207 Consideration of whether to refer a matter**

- (1) In considering whether to refer a matter to a conciliator, the ACMA must have regard to all matters it thinks relevant.
- (2) Without limiting subsection (1), the ACMA must have regard to:
  - (a) whether, in the ACMA's opinion:
    - (i) the matter is trivial; or
    - (ii) the person whose interests allegedly have been, are being or are likely to be affected does not wish the matter to be referred to a conciliator; and
  - (b) if the matter arises from a complaint to the ACMA—whether, in the ACMA's opinion:
    - (i) the complaint is frivolous or vexatious or was not made in good faith; or
    - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct in question; or
    - (iii) there is some other remedy that is reasonably available to the complainant; or
    - (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.

### **Division 3—The conciliation process**

#### **208 Conciliator may effect settlement in relation to disputed conduct**

Subject to section 209, a conciliator to whom a matter is referred under Division 2 must:

- (a) inquire into the disputed conduct to which the matter relates; and
- (b) try to effect a settlement of the matter; and
- (c) if the conciliator cannot effect a settlement—as soon as practicable, give to the ACMA a written report setting out:
  - (i) the conciliator’s recommendations for resolving the matter; and
  - (ii) the reasons for those recommendations.

#### **209 Conciliator may decide not to make inquiry**

- (1) A conciliator may decide not to inquire into disputed conduct to which the matter relates, or, if the conciliator has commenced to inquire into the conduct, decide not to continue the inquiry, if:
  - (a) the conciliator believes that:
    - (i) the matter is trivial; or
    - (ii) the person whose interests allegedly have been, are being, or are likely to be affected does not wish the inquiry to be made or continued (as the case may be); or
  - (b) if the inquiry arises from a complaint to the ACMA—the conciliator believes that:
    - (i) the complaint is frivolous or vexatious or was not made in good faith; or
    - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct; or
    - (iii) there is some other remedy that is reasonably available to the complainant; or
    - (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.

- (2) If a conciliator decides not to inquire into, or not to continue to inquire into, conduct in respect of which a complaint was made, the conciliator must:
  - (a) give the complainant written notice of the decision and the reasons for the decision; and
  - (b) give to the ACMA a written report on the matter that includes the information referred to in paragraph (a).
- (3) A report under paragraph (2)(b) must be given as soon as practicable after it is prepared.

### **210 Compulsory conference**

- (1) For the purposes of conducting an inquiry into, or trying to effect a settlement of, a matter under section 208, a conciliator may direct a person referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the conciliator.
- (2) A direction may be given to:
  - (a) if the matter arose as a result of a complaint under subsection 205(1)—the complainant; or
  - (b) the person whose disputed conduct led to the inquiry; or
  - (c) any other person whose presence at the conference the conciliator thinks is reasonably likely to be conducive to settling the matter.
- (3) A direction is to be given by written notice given to the person concerned.
- (4) The person is entitled to be paid by the Commonwealth any allowances for the expenses of a person's attendance that are determined by the ACMA and published in the *Gazette*.
- (5) The person must not:
  - (a) fail to attend as required by the direction; or
  - (b) fail to attend and report himself or herself from day to day unless excused, or released from further attendance, by the conciliator.

Penalty: \$5,000.

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(5A) Subsection (5) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5A) (see subsection 13.3(3) of the *Criminal Code*).

(6) Evidence of anything said or of the production of any document at a conference under this section is not admissible:

(a) in any court (whether or not exercising federal jurisdiction);  
or

(b) in proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear evidence;

except in a prosecution for an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

**211 Protection from civil actions**

(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to a conciliator in connection with an inquiry into disputed conduct.

(2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

## **Division 4—Directions**

### **212 ACMA may issue directions**

- (1) If the ACMA:
  - (a) receives a conciliator's report in relation to a matter under paragraph 208(c); and
  - (b) is satisfied that, in order to prevent the disputed conduct to which the matter relates from causing:
    - (i) interference, or risk of interference, to radiocommunications; or
    - (ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications;a person to whom this section applies must take specified action, or refrain from taking specified action;the ACMA may issue a written direction to the person to take that action within a specified period, or to refrain from taking that action, as the case may be.
- (2) In issuing a direction the ACMA must have regard to the conciliator's report.
- (3) This section applies to any of the following persons:
  - (a) a person who has engaged, is engaging or proposes to engage in the disputed conduct in question;
  - (b) if the matter in question arose as a result of a complaint under subsection 205(1)—the complainant.
- (4) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.
- (5) If the ACMA issues a direction to a person, it must give the person notice of the reasons for that direction.

Note: A decision to issue a direction is reviewable under Part 5.6.

### **213 Complainants to be kept informed**

If:

- (a) the ACMA receives a conciliator's report in relation to a matter under paragraph 208(c); and

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- (b) the matter arose as a result of a complaint under subsection 205(1);
- the ACMA must, by written notice, inform the complainant of:
- (c) any direction issued under section 212 in relation to the matter (other than a direction issued to the complainant); or
  - (d) any decision not to issue a direction under section 212 in relation to the matter, together with the reasons for the decision.

**214 Contravention of a direction**

- (1) A person is guilty of an offence if:
  - (a) the person has been issued with a direction under section 212; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 100 penalty units.

- (2) In this section:

*engage in conduct* means:

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

**215 Commonwealth not liable for costs**

The Commonwealth is not liable for any loss, damage or injury suffered by a person as a result of complying with a direction under section 212.



## **Division 5—Miscellaneous**

### **216 Offences relating to settlement of interference disputes**

It is an offence for a person to:

- (a) refuse to employ another person; or
- (b) dismiss or threaten to dismiss another person from his or her employment; or
- (c) prejudice, or threaten to prejudice another person in his or her employment; or
- (d) intimidate or coerce or impose any pecuniary or other penalty on, another person;

because that other person:

- (e) has made, or proposes to make, a complaint of the kind referred to a conciliator under section 205; or
- (f) has given, or proposes to give, information or documents to a third person exercising any power or performing any function under this Part; or
- (g) has attended, or proposes to attend, a conference held under section 210.

Penalty: Imprisonment for 6 months.

### **217 Operation of State and Territory laws**

This Part is not intended to affect the operation of a law of a State or Territory if the law is capable of operating concurrently with this Part.

### **218 Report by ACMA**

The ACMA must include in each annual report prepared under section 242 for a financial year a report on the operation of this Part during that year.

## **Part 4.4—Restricted use zones**

### **Division 1—Declarations of emergency**

#### **219 Declaration of period of emergency**

- (1) Subject to section 220, the Governor-General may, by Proclamation, declare that a period specified in the Proclamation will be a period of emergency.
- (2) The period must not be expressed to commence on a day earlier than the day on which the Proclamation is published in the *Gazette*.
- (3) The period may not exceed 3 months.

#### **220 Circumstances in which Proclamation may be made**

The Governor-General may not make a Proclamation under section 219 unless satisfied that it is necessary in the public interest to do so due to an emergency involving:

- (a) prejudice to the security or defence of Australia; or
- (b) a serious threat to the environment; or
- (c) risk of death of, or injury to, persons; or
- (d) risk of substantial loss of, or substantial damage to, property.

#### **221 Termination of period of emergency**

- (1) If, at any time during a period of emergency, the Governor-General becomes satisfied that it is no longer necessary in the public interest that the period of emergency should continue, the Governor-General must, by a new Proclamation, revoke the Proclamation that declared the period of emergency.
- (2) The revocation terminates the period of emergency.

## **Division 2—Restrictive orders**

### **222 Restrictive orders**

- (1) During a period of emergency, the Minister may, in writing, make a restrictive order that prohibits or regulates:
  - (a) the use, within a specified area, of radiocommunications transmitters; or
  - (b) the operation of transmitters within a specified area if such use is, in the Minister's view, likely to interfere with radiocommunications.
- (2) The Minister:
  - (a) must not make the order unless guidelines are in force under section 230; and
  - (b) in making the order, must comply with the guidelines in force under section 230.
- (3) The order comes into force:
  - (a) on the day it is published under subsection 223(1); or
  - (b) if a later day (being a day during a period of emergency) is specified in the order—on that later day.

### **223 Publication of restrictive orders**

- (1) A copy of the order must be published in the *Gazette*.
- (2) As soon as practicable after making the order, the Minister:
  - (a) must cause a copy of the order to be published in one or more newspapers circulating generally in the capital city of the State or Territory in which the order has effect; and
  - (b) may, if the Minister thinks fit, cause particulars of the order to be published by radio or television broadcast.
- (3) A failure to comply with paragraph (2)(a) does not affect the order's validity.

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**224 Application of orders to broadcasting**

A restrictive order does not apply to:

- (a) a broadcasting station; or
  - (b) a fixed transmitter the use or operation of which is essential to the operation of a broadcasting station;
- unless the order is expressed so to apply.

**225 Revocation of orders**

A restrictive order is taken to be revoked:

- (a) at the end of the period of emergency during which it came into force; or
- (b) if the order has an extended operation under section 226—at the end of the last period of emergency during which the order continues to be in force.

**226 Orders may have extended operation**

If, during a period of emergency, a Proclamation under subsection 219(1) declares that an emergency will exist during a later period commencing immediately after the end of the first-mentioned period, any restrictive order in force immediately before the end of the first-mentioned period (including an order in force by virtue of previous applications of this subsection) continues in force unless it is:

- (a) revoked as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
- (b) disallowed under section 48 of that Act as applied by section 229 of this Act; or
- (c) set aside by a court.

**227 Contravention of orders**

- (1) A person must not contravene a restrictive order.

Penalty: 300 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A person does not contravene subsection (1) if the person contravenes a restrictive order in the reasonable belief that the act or omission constituting the contravention is necessary for the purposes of:
- (a) securing the safety of a vessel, aircraft or space object that was in danger; or
  - (b) dealing with an emergency involving a serious threat to the environment; or
  - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
  - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (3) In proceedings for an offence against subsection (1), the burden of proving any of the matters referred to in subsection (2) lies on the defendant.
- (4) Nothing in subsection (2) limits the scope of the expression “reasonable excuse” in subsection (1A).

### **228 Orders to prevail over inconsistent laws**

- (1) Subject to subsection (2), a restrictive order has effect despite any law of the Commonwealth (excluding this Act but including regulations made under this Act), or any law of a State or Territory, that is inconsistent with the order.
- (2) This Part does not affect the operation of a law of a State or Territory so far as the law is capable of operating concurrently with this Part.

### **229 Disallowance of restrictive orders**

A restrictive order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 3—Guidelines for making restrictive orders**

### **230 Minister may make guidelines**

- (1) At any time (whether or not during a period of emergency) the Minister may, by instrument in writing:
  - (a) make guidelines with respect to the exercise of the Minister's powers under section 222 to make restrictive orders; or
  - (b) vary or revoke guidelines made by the Minister under this subsection (including guidelines varied by virtue of one or more previous applications of this subsection).
- (2) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Chapter 5—Administration and enforcement**

### **231 Outline of this Chapter**

- (1) This Chapter provides for various matters dealing with the administration and enforcement of this Act.
- (2) Part 5.1 provides for the ACMA to delegate certain powers to authorities of the Commonwealth.
- (3) Part 5.2 provides for the ACMA to hold public inquiries into management of the radiofrequency spectrum and other aspects of radiocommunication.
- (4) Part 5.3 allows the ACMA to make advisory guidelines about any aspect of radiocommunication or radio emission.
- (5) Part 5.4 provides for persons to be accredited to issue certificates under this Act.
- (6) Part 5.5 provides for inspectors to be appointed and confers investigative powers on them.
- (7) Part 5.6 enables specified decisions under this Act to be reconsidered by the ACMA and reviewed by the AAT.
- (8) Part 5.7 provides for the ACMA to determine charges for things done by the ACMA, including spectrum access charges for spectrum licences.
- (9) Part 5.8 provides that a person may give the ACMA an enforceable undertaking about compliance with this Act.

## Part 5.1—Delegation

### 238 Delegation

- (1) The powers conferred on the ACMA by subsection (2), and on a Division of the ACMA by subsection (3), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.
- (2) The ACMA may, by writing, delegate to an authority of the Commonwealth the ACMA's power to issue or cancel certificates of proficiency under Division 5 of Part 3.3 or to make standards under Part 4.1.
- (3) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to in subsection (2) to a Division of the ACMA, the following provisions have effect:
  - (a) the Division may delegate the power to an authority of the Commonwealth;
  - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.
- (4) If:
  - (a) a power of the ACMA is delegated to an authority of the Commonwealth under subsection (2) or (3); and
  - (b) the authority is established under an Act that permits the authority's powers under that Act to be delegated to another person or body;the power of the ACMA in question may be further delegated under that Act as if it were one of the authority's powers under that Act.



## **Part 5.2—Public inquiries**

### **255 ACMA may hold inquiry**

- (1) The ACMA may hold a public inquiry about any matter relating to:
  - (a) management of the radiofrequency spectrum; or
  - (b) any other aspect of radio emissions.
- (2) The ACMA must not hold a public inquiry about a matter relating to the operation, or proposed operation, of a broadcasting station unless the matter is about:
  - (a) interference, or risk of interference, to radiocommunications (other than transmission or reception of radio or television programs delivered by a broadcasting service), if the interference is attributable to operation of a broadcasting station; or
  - (b) interference, or risk of interference, to transmission or reception of radio or television programs delivered by a broadcasting service, if the interference is not attributable to operation of a broadcasting station.
- (3) Nothing in this Part applies to an inquiry held by the ACMA under another Act.

### **256 ACMA to hold inquiry when directed**

- (1) The ACMA must hold a public inquiry about a particular matter relating to:
  - (a) management of the radiofrequency spectrum; or
  - (b) any other aspect of radio emissions;if the Minister directs the ACMA in writing to hold a public inquiry about that matter.
- (2) The Minister must not direct the ACMA to hold a public inquiry that it could not hold under section 255.

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**257 Informing the public about an inquiry**

- (1) If the ACMA holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:
  - (a) the fact that it is holding the inquiry; and
  - (b) the period during which the inquiry is to be held; and
  - (c) the nature of the matter to which the inquiry relates; and
  - (d) the period within which and the form in which members of the public may make submissions to the ACMA about that matter; and
  - (e) the address or addresses to which submissions may be sent.
- (2) The ACMA may also include in the notice a statement of the matters that the ACMA would like submissions to deal with.
- (3) The ACMA need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

**258 Discussion paper**

- (1) The ACMA may cause to be prepared a discussion paper that:
  - (a) identifies the issues that the ACMA thinks are relevant to the matter to which a public inquiry relates; and
  - (b) sets out such background material about, and discussion of, those issues as the ACMA thinks is appropriate.
- (2) The ACMA must make copies of the discussion paper available at each of the ACMA's offices. The ACMA may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.
- (3) The ACMA may otherwise publish the discussion paper, including in electronic form. The ACMA may charge for supplying a publication under this subsection in accordance with a determination under section 60 of the *Australian Communications and Media Authority Act 2005*.

**259 Written submissions**

- (1) The ACMA must provide a reasonable opportunity for any member of the public to make a written submission to the ACMA about the matter to which a public inquiry relates.

- (2) For the purposes of subsection (1), the ACMA is taken not to have provided a reasonable opportunity to make submissions unless there is a period of at least 28 days during which the submissions could be made.

## **260 Protection from civil actions**

- (1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith, in connection with a written submission or a public hearing, to the ACMA in connection with a public inquiry under this Division.
- (2) A reference in subsection (1) to making of a statement includes a reference to the giving of a document or information.

## **261 Hearings**

- (1) The ACMA may hold hearings for the purposes of a public inquiry.
- (2) Hearings may be held, for example:
  - (a) in order to receive submissions about the matter to which the inquiry relates; or
  - (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a hearing, the ACMA may be constituted by:
  - (a) a member or members determined in writing by the Chair for the purposes of that hearing; or
  - (b) if the functions or powers of the ACMA in relation to the hearing have been delegated to a person, or to a Division of the ACMA, under section 50, 51 or 52 of the *Australian Communications and Media Authority Act 2005*—that person or Division.
- (4) The Chair is to preside at all hearings at which he or she is present.
- (5) If the Chair is not present at a hearing, the hearing is to be presided over by:
  - (a) if paragraph (3)(a) applies—the member, specified in an instrument under that paragraph, as the member who is to preside at the hearing; or

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- (b) if paragraph (3)(b) applies and the delegation is to a person—  
that person; or
  - (c) if paragraph (3)(b) applies and the delegation is to a Division  
of the ACMA—a member of the Division chosen by the  
Division.
- (6) The ACMA may regulate the conduct of proceedings at a hearing  
as it thinks appropriate.

**261A Hearing to be in public except in exceptional cases**

- (1) This section applies to a hearing conducted under this Part.
- (2) The basic rule is that the hearing must take place in public.
- (3) However, the hearing, or a part of the hearing, may be conducted  
in private if the ACMA is satisfied that:
  - (a) evidence that may be given, or a matter that may arise,  
during the hearing or a part of the hearing is of a confidential  
nature; or
  - (b) hearing a matter, or part of a matter, in public would not be  
conducive to the due administration of this Act.
- (4) If the hearing is to be conducted in public, the ACMA must give  
reasonable public notice of the conduct of the hearing.

**261B Confidential material not to be published**

- (1) This section applies to a hearing conducted under this Part.
- (2) If:
  - (a) the hearing, or a part of the hearing, takes place in public;  
and
  - (b) the ACMA is of the opinion that:
    - (i) evidence or other material presented to the hearing; or
    - (ii) material in a written submission lodged with the  
ACMA;  
is of a confidential nature;the ACMA may order that:
  - (c) the evidence or material not be published; or
  - (d) its disclosure be restricted.

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- (3) A person must not fail to comply with an order under subsection (2).
- (4) A person is guilty of an offence if:
  - (a) the ACMA has made an order under subsection (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the order.

Penalty: 50 penalty units.

- (5) Subsections (3) and (4) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) In this section:

*engage in conduct* means:

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

### **261C Direction about private hearings**

- (1) This section applies to a hearing conducted under this Part.
- (2) If the hearing, or a part of the hearing, takes place in private, the ACMA:
  - (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and
  - (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.
- (3) A person must not fail to comply with a direction under subsection (2).
- (4) A person is guilty of an offence if:
  - (a) the ACMA has given a direction under paragraph (2)(a); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 10 penalty units.

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- (5) A person is guilty of an offence if:
- (a) the ACMA has given a direction under paragraph (2)(b); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

- (6) Subsections (3), (4) and (5) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (6) (see subsection 13.3(3) of the *Criminal Code*).

- (7) In this section:

*engage in conduct* means:

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

**261D Reports on inquiries**

- (1) If the ACMA holds a public inquiry, the ACMA must prepare a report setting out its findings as a result of the inquiry.
- (2) If the inquiry was held because of a direction given by the Minister under section 256, the ACMA must give a copy of the report to the Minister.
- (3) If the inquiry was held otherwise than because of a direction given by the Minister under section 256, the ACMA must publish the report.
- (4) The ACMA is not required to include in a report any material:
  - (a) that is of a confidential nature; or
  - (b) the disclosure of which is likely to prejudice the fair trial of a person; or
  - (c) that is the subject of an order or direction under section 261B or 261C.

## **Part 5.3—Advisory guidelines**

### **262 ACMA may make advisory guidelines**

- (1) The ACMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions.
- (2) Advisory guidelines, for example, may be made about:
  - (a) any matter in respect of which standards may be made under Part 4.1; or
  - (b) the use, construction, design or performance of any thing; or
  - (c) interference with radiocommunications; or
  - (d) frequency allocation and coordination.
- (3) The ACMA must:
  - (a) give a copy of each advisory guideline it makes to the Minister; and
  - (b) publish each such advisory guideline in the way it thinks fit.

## Part 5.4—Accreditation

### 263 ACMA may accredit persons

- (1) The ACMA may, by written instrument, give to a person an accreditation of a particular kind if:
  - (a) the person applies, in the form approved by the ACMA, to the ACMA for an accreditation of that kind; and
  - (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.
- (2) The instrument must state the kind of certificates that a person who is given an accreditation of that kind is permitted to issue under this Act.
- (2A) The instrument is given subject to such conditions relating to the issuing of certificates as the ACMA determines under section 266A or specifies in the instrument.
- (2B) A condition may relate to matters existing or arising at, before or after the time when a certificate is issued.
- (3) In deciding whether to give to a person an accreditation, the ACMA must apply the principles determined under section 266.
- (4) An accreditation takes effect on the day specified in the instrument.

Note: A decision not to give an accreditation is reviewable under Part 5.6.

### 264 Withdrawal of accreditation

The ACMA may, by notice in writing to a person, withdraw an accreditation given to the person if the ACMA is satisfied that:

- (a) the accreditation is no longer in accordance with the principles determined under section 266, as in force at the time the notice is given (whether or not the principles have been varied since the accreditation was given); or
- (b) the person has been incorrectly issuing certificates under this Act; or



- (ba) the person has issued a certificate in breach of any condition mentioned in subsection 263(2A) (whether relating to matters existing or arising at, before or after the time when the certificate was issued); or
- (c) the person's application for accreditation included false or misleading information.

Note: A decision to withdraw an accreditation is reviewable under Part 5.6.

### **265 Procedure for withdrawing accreditation**

- (1) Before withdrawing a person's accreditation, the ACMA must give the person written notice:
  - (a) stating that the ACMA is considering withdrawing the accreditation; and
  - (b) inviting the person to make representations to the ACMA about the matter on or before the day specified in the notice.
- (2) The day specified under paragraph (1)(b) must be at least 14 days after the day on which the notice is given.
- (3) The ACMA must give due consideration to any representations made by or on behalf of the person on or before that day.

### **266 Accreditation principles**

- (1) The ACMA may, by written instrument, determine principles that:
  - (a) govern the accreditation process; and
  - (b) specify the matters for which the ACMA may accredit persons.
- (2) Without limiting the matters with which the principles may deal, the principles must provide for:
  - (a) the form of applications under section 263; and
  - (b) procedures that must be followed in relation to deciding whether to accredit, or withdraw the accreditation of, persons; and
  - (c) the kinds of accreditation; and
  - (d) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.

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- (2A) Qualifications and other requirements provided for in principles determined as mentioned in paragraph (2)(d) may relate to matters existing or arising at, before or after the time of accreditation.
- (3) The principles take effect on the day specified in the instrument.
- (4) Principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**266A ACMA determination in relation to certificates**

- (1) The ACMA may determine, by instrument in writing, the conditions that are to apply in relation to the issuing of a certificate under this Act.
- (2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Part 5.5—Enforcement

### Division 1—Inspectors

#### 267 Inspectors

- (1) Subject to subsection (2), a person is an inspector for the purposes of this Act if the person is:
  - (a) a Commonwealth officer or a State officer appointed by the ACMA, by written instrument, to be an inspector; or
  - (b) an officer included in a class of officers appointed by the ACMA, by written instrument published in the *Gazette*, to be inspectors for the purposes of this Act; or
  - (c) a member (other than a special member) of the Australian Federal Police or of the police force of a Territory.
- (2) An instrument under paragraph (1)(a) or (b) may specify provisions of this Act in relation to which appointments made by the instrument are to apply, and any such limitation has effect accordingly.

#### 268 Identity cards

- (1) The ACMA may cause an identity card to be issued to an inspector, other than a member of a police force, in a form approved by the ACMA by written instrument.
- (2) A person who ceases to be an inspector must, as soon as is practicable, return his or her identity card to the ACMA.
- (3) A person must not contravene subsection (2).

Penalty: 5 penalty units.

- (4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (4) (see subsection 13.3(3) of the *Criminal Code*).

- (5) Subsection (3) is an offence of strict liability.

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

## Division 2—Search warrants

### 269 Magistrate may issue warrant

- (1) If:
  - (a) an information on oath is laid before a magistrate alleging that an inspector suspects on reasonable grounds that there may be on any land, or on or in any premises, vessel, aircraft, space object or vehicle:
    - (i) anything in respect of which an offence against this Act has been committed; or
    - (ii) anything that may afford evidence about the commission of an offence against this Act; or
    - (iii) anything that was used, or is intended to be used, for the purpose of committing an offence against this Act; and
  - (b) the information sets out those grounds;the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land, premises, vessel, aircraft, space object or vehicle and exercise the powers referred to in paragraphs 272(2)(b), (c) and (d) in respect of the thing.
- (2) The magistrate is not to issue the warrant unless:
  - (a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and
  - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) There must be stated in the warrant:
  - (a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
  - (b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and
  - (c) a description of the kind of things to be seized; and

- (d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

### **270 Warrants may be issued by telephone or other electronic means**

- (1) If, because of circumstances of urgency, an inspector thinks it necessary to do so, the inspector may apply to a magistrate for a warrant under subsection 269(1) by telephone, telex, fax or other electronic means under this section.
- (2) Before applying, the inspector must prepare an information of a kind referred to in subsection 269(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is necessary to do so, make the application before the information has been sworn.
- (3) If the magistrate to whom an application under subsection (1) is made is satisfied:
- (a) after having considered the terms of the information prepared under subsection (2); and
  - (b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;
- that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 269 if the application had been made under that section.
- (4) If the magistrate signs a warrant under subsection (3):
- (a) the magistrate must:
    - (i) inform the inspector of the terms of the warrant; and
    - (ii) inform the inspector of the day on which and the time at which the warrant was signed; and
    - (iii) inform the inspector of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
    - (iv) record on the warrant the reasons for issuing the warrant; and
  - (b) the inspector must:
    - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and

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- (ii) write on it the magistrate's name and the day on which and the time at which the warrant was signed.
- (5) The inspector must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
  - (a) the form of warrant completed by the inspector; and
  - (b) the information duly sworn in connection with the warrant.
- (6) On receiving the documents referred to in subsection (5), the magistrate must:
  - (a) attach to them the warrant signed by the magistrate; and
  - (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 269.
- (7) A form of warrant duly completed by an inspector under subsection (4), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises.
- (8) If:
  - (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and
  - (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence;the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant.

## **Division 3—Searches and seizures**

### **271 References to connection with an offence**

For the purposes of this Division, a thing is connected with a particular offence if it is:

- (a) a thing with respect to which the offence has been committed; or
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

### **272 General offence related searches and seizures**

- (1) This section applies if an inspector suspects on reasonable grounds that there is on any land, or on or in any premises, vessel, aircraft, space object or vehicle anything connected with a particular offence against this Act.
- (2) The inspector may, with the consent of the owner or occupier of the land, premises, vessel, aircraft, space object or vehicle, or in accordance with a warrant issued under Division 2:
  - (a) enter the land, premises, vessel, aircraft, space object or vehicle; and
  - (b) search the land, premises, vessel, aircraft, space object or vehicle; and
  - (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the inspector suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and
  - (d) examine and seize anything that the inspector suspects on reasonable grounds to be connected with the offence.
- (3) If an inspector may enter a vessel, aircraft, space object or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(b), (c) or (d), stop and detain the vessel, aircraft, space object or vehicle.

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**273 Evidence about the commission of other offences**

If:

- (a) in the course of searching, in accordance with a warrant, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes on reasonable grounds to be:
    - (i) a thing that is connected with the offence, although not the thing specified in the warrant; or
    - (ii) a thing that is connected with another offence against this Act; and
  - (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or the other offence;
- the warrant is taken to authorise the inspector to seize that thing.

**274 Production of identity card etc.**

- (1) An inspector (other than a member of a police force who is in uniform) who proposes to enter land or premises under subsection 272(2) must:
  - (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises, written evidence of the fact that the inspector is a member of a police force; or
  - (b) in any other case—produce the inspector’s identity card for inspection by the owner or occupier;and, if the inspector fails to do so, he or she is not authorised to enter the land or premises.
- (2) If the entry is in accordance with a warrant issued under Division 2, the inspector is taken not to have complied with subsection (1) unless he or she also produces the warrant for inspection by the owner or occupier.



**275 Emergency searches and seizures**

- (1) Subject to subsection (4), if an inspector has reasonable grounds to believe:
  - (a) that a person is carrying anything that is connected with an offence against this Act; and
  - (b) that the exercise of powers under this section is necessary to prevent the concealment, loss or destruction of the thing;  
the inspector may:
    - (c) search the person, the person's clothing and any property in the person's immediate control; and
    - (d) seize any such thing found in the course of the search.
- (2) Subject to subsection (4), if an inspector has reasonable grounds to believe:
  - (a) that there is on any land or on or in any premises, vessel, aircraft, space object or vehicle anything that is connected with an offence against this Act; and
  - (b) that the exercise of powers under this section is necessary to prevent the concealment, loss or destruction of the article or thing;  
the inspector may, with such assistance as the inspector thinks fit, and if necessary by force:
    - (c) enter the land, premises, vessel, aircraft, space object or vehicle; and
    - (d) search for the thing; and
    - (e) seize any such thing found in the course of the search.
- (3) If an inspector may enter a vessel, aircraft, space object or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.
- (4) An inspector must not exercise powers under subsection (1) or (2) unless the power is exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 2.

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**276 Retention of thing seized**

- (1) If an inspector seizes a thing under this Division, the inspector or the ACMA may retain it until:
  - (a) the end of the period of 60 days after the seizure; or
  - (b) if proceedings for an offence against this Act in respect of which the thing may afford evidence are instituted within that period—the proceedings (including any appeal to a court in relation to those proceedings) are completed.
- (2) The ACMA may, by written instrument, authorise a thing seized under this Division to be released to the owner, or to the person from whom it was seized, either:
  - (a) unconditionally; or
  - (b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 280.

## **Division 4—Powers of inspectors**

### **277 Power of inspectors to enter premises and adjust transmitters in emergencies**

- (1) If an inspector has reasonable grounds to believe that:
  - (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and
  - (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
  - (c) the operation of the transmitter is:
    - (i) interfering with radiocommunications that are essential to the safety of human life; or
    - (ii) interfering substantially with the operation of an organisation specified in regulations made for the purposes of paragraph 193(1)(a); or
    - (iii) interfering substantially with the operation of an organisation referred to in paragraph 193(1)(b) or (c); or
    - (iv) causing substantial loss or damage;the inspector may:
  - (d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry without the authority of an order of a court or of a warrant issued under this Act; and
  - (e) subject to subsection (2), take such action as the inspector considers necessary to cause the transmitter to:
    - (i) cease operating; or
    - (ii) operate in such a way that no longer gives rise to one or more of the consequences set out in paragraph (c).
- (2) In exercising a power conferred by paragraph (1)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the interference with radiocommunications as mentioned in paragraph (1)(c).

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- (3) If an inspector has, under a power conferred by this section, entered any land, premises, vessel, aircraft, space object or vehicle, and taken any action in respect of a transmitter, the inspector must, as soon as practicable, take all reasonable steps to notify the owner of the transmitter that the action has been taken.

**278 Powers of inspectors to require operation of transmitters**

- (1) Subject to subsection (2), if an inspector has reasonable grounds to believe that a transmitter has been, is being or may be operated so as to cause interference to radiocommunications, the inspector may, for the purpose of investigating the interference or risk of interference, direct a person to operate the transmitter.
- (2) An inspector must not direct that a transmitter be operated if that operation is likely to endanger the safety of a person or cause damage to property.
- (3) The operation of a transmitter in accordance with a direction does not give rise to an offence under this Act.
- (4) A person must not refuse to comply with a direction.

Penalty: 20 penalty units.

- (5) Subsection (4) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in subsection (5) (see subsection 13.3(3) of the *Criminal Code*).

- (6) Subsection (4) is an offence of strict liability.

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

**279 General powers of inspectors**

- (1) An inspector may:
  - (a) require a person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold a licence, authority under section 114, certificate or permit to produce the licence, authority, certificate or permit or evidence of its existence and contents; and

- (b) require the holder of a licence whom he or she suspects on reasonable grounds of having given an authority under section 114 to produce a copy of that authority; and
  - (c) require a person whom he or she suspects on reasonable grounds of having recorded particulars relating to the supply of a receiver or transmitter in a document under section 301 to produce that document; and
  - (d) require a person to produce evidence of having applied a label to a transmitter in accordance with an obligation imposed on the person under section 300; and
  - (e) require a person who has been required to retain records by a notice under subsection 182(1) for a specified period to produce such records at any time during that period.
- (2) A person must not fail to comply with a requirement under this section.

Penalty: 20 penalty units.

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

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

- (4) Subsection (2) is an offence of strict liability.

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

## **Division 5—Forfeiture**

### **280 Court may order forfeiture**

If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used or otherwise involved in the commission of the offence.

### **281 Forfeited goods may be sold**

A thing forfeited under section 280:

- (a) may be sold or otherwise disposed of in accordance with the directions of the ACMA; and
- (b) pending such directions, must be kept in such custody as the ACMA directs.

**Division 6—Miscellaneous****282 Act not to affect performance of duties by inspectors**

Nothing in Chapter 3 or Part 4.1 or 4.2 prohibits the doing of any act or thing by an inspector in the performance of his or her duties under this Act.

**283 Inspectors not authorised to enter or search certain land or premises used for defence purposes**

Nothing in Division 2 or 3 authorises an inspector to enter or to search:

- (a) land or premises that are:
  - (i) occupied or used for the purposes of defence; and
  - (ii) specified in the regulations or included in a class of land or premises specified in the regulations; or
- (b) a vessel, aircraft, space object or vehicle that is in the possession or control of the Defence Force or a part of the Defence Force;

unless:

- (c) permission to do so has been given by the person for the time being in charge of those premises or that land, vessel, aircraft, space object or vehicle; or
- (d) if it is not reasonably practicable to obtain permission of the kind mentioned in paragraph (c), the entry and search is supervised by a member of the Defence Force, or an officer of the Department of Defence, authorised to have access to those premises or that land, vessel, aircraft, space object or vehicle.

**284 Offences that are going to be committed**

If:

- (a) there are reasonable grounds for suspecting that an offence against this Act is going to be committed; and

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(b) the commission of that offence would pose a threat to the safety of human life or cause substantial loss or damage; this Part applies in relation to the offence as if there were reasonable grounds for suspecting that it had been committed.



## **Part 5.6—Review of decisions**

### **Division 1—Decisions subject to internal reconsideration before AAT review**

#### **285 Decisions that may be subject to reconsideration by the ACMA**

An application may be made to the ACMA for reconsideration of any of the following decisions:

- (a) variation of a spectrum licence under section 73 or 87 or paragraph 92(2)(b);
- (b) suspension of a spectrum licence under section 75;
- (c) cancellation of a spectrum licence under section 77 or 87;
- (d) change in the core conditions of a spectrum licence on its re-issue under section 82;
- (e) refusal to issue an apparatus licence under section 100;
- (ea) refusal to issue a transmitter licence under section 101A;
- (eb) refusal to issue a datacasting transmitter licence under section 102B otherwise than because of a decision under paragraph 102B(b);
- (f) inclusion of conditions in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f), 109A(1)(k) or 109B(1)(t);
- (g) a decision under section 111 concerning the conditions of an apparatus licence;
- (h) directions under subsection 116(1) to revoke an authorisation under section 114;
- (i) refusal to issue a certificate of proficiency under section 121;
- (j) cancellation of a certificate of proficiency under section 124;
- (k) suspension of an apparatus licence under section 126;
- (l) cancellation of an apparatus licence under section 128;
- (m) refusal to renew an apparatus licence, or renewal of an apparatus licence with different conditions, under section 130;
- (ma) refusal to transfer an apparatus licence under section 131AB otherwise than because of a decision under paragraph 131ACA(b);

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- (mb) refusal to issue a provisional international broadcasting certificate under section 131AF;
- (n) refusal to include in the Register under section 145 details of a radiocommunications transmitter;
- (o) refusal to correct the Register under section 153;
- (p) refusal to issue a permit under section 167;
- (q) a decision under section 168 about the conditions of a permit;
- (qa) giving a notice under subsection 169(6);
- (r) cancellation of a permit under section 171;
- (s) refusal to give permission under section 174 to supply a non-standard device;
- (t) refusal to give permission under subsection 193(1) or 195(1) to use a transmitter;
- (u) directions under section 212 in relation to the settlement of an interference dispute;
- (v) refusal to give to a person an accreditation under section 263;
- (w) withdrawal of a person's accreditation under section 264;
- (x) making of a pre-acquisition declaration under Part 1 of the Schedule.

**286 Deadlines for reaching certain decisions**

- (1) If this Act provides for a person to make an application to the ACMA for such a decision, the ACMA must make the decision:
  - (a) within 90 days after receiving the application; or
  - (b) if the ACMA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application if it has not informed the applicant of its decision before the end of the relevant period of 90 days.

**287 Statements to accompany notification of decisions**

- (1) If the ACMA makes a decision of a kind referred to in section 285 and gives written notice of the decision to a person whose interests it affects, the notice must include:

- (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the ACMA under subsection 288(1); and
  - (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the ACMA's decision on the reconsideration, application may, subject to the *Administrative Appeals Tribunal Act 1975* be made to the AAT for review of the decision on that reconsideration.
- (2) Failure to comply with this section does not affect the validity of a decision.

### **288 Applications for reconsideration of decisions**

- (1) A person affected by a decision of a kind referred to in section 285 who is dissatisfied with the decision may apply to the ACMA for the ACMA to reconsider the decision.
- (2) The application must:
  - (a) be in a form approved by the ACMA; and
  - (b) set out the reasons for the application.
- (3) The application must be made within:
  - (a) 28 days after the applicant is informed of the decision; or
  - (b) if, either before or after the expiration of that period of 28 days, the ACMA extends the period within which the application may be made—the extended period for making the application.
- (4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

### **289 Reconsideration by the ACMA**

- (1) Upon receiving such an application the ACMA must:
  - (a) reconsider the decision; and
  - (b) affirm, vary or revoke the decision.
- (2) The ACMA's decision on reconsideration of a decision has effect as if it had been made under the application under which the original decision was made.

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- (3) The ACMA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

**290 Deadlines for reconsiderations**

- (1) The ACMA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.
- (2) The ACMA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

**291 Statements to accompany notification of decisions on reconsideration**

- (1) A notice under subsection 289(3) notifying the applicant that a decision has been affirmed or varied must include:
  - (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the AAT for review of the decision; and
  - (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.
- (2) Failure to comply with this section does not affect the validity of a decision.

**292 Review by the AAT**

Applications may be made to the AAT to review a decision of a kind referred to in section 285 if the ACMA has affirmed or varied the decision under section 289.

## **Division 2—Decisions not subject to internal reconsideration before AAT review**

### **292A Review by the AAT**

An application may be made to the AAT for a review of any of the following decisions made by the ACMA:

- (a) a decision under paragraph 102B(b);
- (b) a decision under subsection 106(6A);
- (c) a decision to give a direction under subsection 114(3C);
- (d) a decision under subsection 128C(1);
- (e) a decision under section 128D;
- (f) a decision under paragraph 131ACA(b).

### **292B Notification of decisions to include notification of reasons and appeal rights**

If the ACMA makes a decision that is reviewable under section 292A, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and
- (b) a statement to the effect that an application may be made to the AAT for a review of the decision.

## Part 5.7—Charges

### 294 Spectrum access charges

- (1) The ACMA may, by written instrument, make determinations:
  - (a) fixing spectrum access charges payable by licensees for issuing spectrum licenses; and
  - (b) specifying the times when spectrum access charges are payable.
- (2) The Minister may give written directions to the ACMA about the matters dealt with in determinations.
- (3) Directions may, for example, require that:
  - (a) the level of spectrum access charges payable in respect of one or more specified classes of public or community services is to be a specified portion only of the level of spectrum access charges otherwise payable; or
  - (b) spectrum access charges are not to be payable in respect of a specified class of public or community services; or
  - (c) persons are to be permitted to pay in instalments, as specified in the direction, the spectrum access charges payable in respect of a specified class of public or community services.
- (4) The ACMA must ensure that its determinations comply with any directions in force under this section.
- (5) A direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 295 Publication of determinations

Determinations are to be made public in the way the ACMA thinks appropriate.

### 296 Collection of charges on behalf of the ACMA

The ACMA may enter into arrangements with persons or other bodies under which those persons or other bodies may, on the ACMA's behalf, receive from persons payments of charges under this Part.

**297 Limits on charges**

The amount or rate of a charge fixed by a determination must not be such as to amount to taxation.

**298 Recovery of charges**

A charge fixed by a determination may be recovered as a debt due to the Commonwealth.

**298A Fees imposed by certain bodies**

- (1) The ACMA may, by notice published in the *Gazette*, determine that:
  - (a) a specified body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2); or
  - (b) a specified accreditation body determined under subsection 183(1); or
  - (c) a specified approving body determined under subsection 183A(1);may charge fees for performing its functions under this Act.
- (2) Such a fee must not be such as to amount to taxation.

## **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



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

## Chapter 6—Miscellaneous

### 299 International agreements etc.

- (1) A person or body exercising a power conferred under this Act (other than Part 4.4 or 5.5) must have regard to:
  - (a) any agreement, treaty or convention, between Australia and another country or countries, that makes provision in relation to radio emission; and
  - (b) any instrument or writing specified in the regulations.
- (2) Nothing in subsection (1) limits the kinds of matters to which the person or body may have regard in exercising those powers.
- (3) Regulations made for the purposes of paragraph (1)(b) may prescribe a specified instrument or writing:
  - (a) as in force or existence at the time when the regulations come into effect; or
  - (b) as amended or altered from time to time.

### 300 Labelling of radiocommunications transmitters for purposes of identification

- (1) The ACMA may, by determination in writing, require any person who operates a radiocommunications transmitter under a licence to apply to that transmitter a label setting out the information specified in the determination.
- (2) Without limiting the generality of subsection (1), the determination may specify the following information:
  - (a) details about the licence under which the radiocommunications transmitter is being operated;
  - (b) the name and address of the licensee.
- (3) The label must be in the form specified by the determination.
- (4) A person required by a determination to apply a label to a radiocommunications transmitter must comply with the determination.

Penalty: 100 penalty units.

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

### **301 Supply of radiocommunications devices to unlicensed persons**

- (1) Subject to subsection (2), a person (the *supplier*) who carries on the business of supplying radiocommunications devices to persons intending to operate them must not supply another person with an eligible radiocommunications device in the course of carrying on that business unless:
- (a) the other person presents to the supplier a licence, or a duplicate of the licence, that authorises the other person to operate the device; and
  - (b) the supplier causes such particulars relating to supply of the device as are specified in the regulations to be recorded in a document kept for the purposes of this Act.

Penalty: 20 penalty units.

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

Note: A defendant bears an evidential burden in relation to the matter in subsection (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (1B) Subsection (1) is an offence of strict liability.

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

- (2) It is a defence if the supplier believed on reasonable grounds that a document that the other person presented to the supplier was a licence that authorised the other person to operate the radiocommunications device.
- (3) The supplier must retain the document in which particulars of the supply were recorded under subsection (1) for at least 2 years after the supply.

Penalty: 20 penalty units.

- (3A) Subsection (3) is an offence of strict liability.

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

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(4) In subsection (1):

*eligible radiocommunications device* means a radiocommunications device included in a class of radiocommunications devices specified in the regulations.

**303 Compilation etc. of information**

The ACMA may:

- (a) conduct research into; and
- (b) compile, and publish in any way it thinks fit, information about;

any of the following:

- (c) allocation and use of the spectrum;
- (d) market demand for, and prices paid for allocation of, parts of the spectrum;
- (e) charges fixed by the ACMA, including any discounts or exemptions in respect of public or community services;
- (f) social, economic and environmental effects of radio transmission;
- (g) supply, manufacture and operation of devices;
- (h) standards;
- (i) any other matter relating to radiocommunications or radio emissions.

**304 Applications etc. in electronic form**

(1) The ACMA may:

- (a) receive an application under this Act from a person in an electronic form; and
- (b) give a person an instrument under this Act in an electronic form;

if it is practicable and convenient, for both the ACMA and the person, for the ACMA to do so.

(2) This section does not enable the ACMA to require applications to be made in an electronic form.

**305 Evidentiary certificates**

- (1) A Commonwealth officer who holds such qualifications as are specified in the regulations may issue a certificate, signed by the officer, setting out such facts as he or she considers relevant with respect to:
  - (a) his or her qualifications; and
  - (b) an examination he or she has made of a device.
- (2) A certificate purporting to be issued under subsection (1) and to be duly signed is, in proceedings under or arising out of this Act or the *Customs Act 1901*, *prima facie* evidence of the facts stated in it.
- (3) The ACMA may issue a certificate, signed by a person authorised by the ACMA for the purposes of this subsection, stating that at a specified time, or during a specified period, a specified person was, or was not, the holder of a specified kind of radiocommunications instrument.
- (4) A certificate purporting to be issued under subsection (3) and to be duly signed is, in proceedings under or arising out of this Act, *prima facie* evidence of the facts stated in it.
- (5) In this section:

*radiocommunications instrument* means a licence, certificate or permit issued under this Act, and includes a permission issued under section 174.

**306 Conduct by directors, servants and agents**

- (1) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, servant or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged

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in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

- (3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the servant or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.

- (9) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

### **307 Surrender of licences, certificates and permits**

If the holder of a licence, certificate or permit surrenders it, it is taken, for the purposes of this Act (except where otherwise provided), to have been cancelled upon acceptance of the surrender by the ACMA.

### **308 No compensation for suspensions and cancellations**

A person is not entitled to compensation from the Commonwealth solely because of:

- (a) suspension or cancellation of, or variation of the conditions of, a licence, certificate or permit; or
- (b) withdrawal of an accreditation under section 264.

### **309 Officers and employees of governments and authorities**

The Governor-General may make arrangements with the Governor of a State or the Administrator of a Territory for performance of functions and exercise of powers under this Act by officers or employees of that State or Territory or of an authority of that State or Territory.

### **310 Operation of this Act in relation to the Broadcasting Services Act**

- (1) Regulations under this Act have effect despite any regulation made under the *Broadcasting Services Act 1992*.
- (2) This Act is not intended to limit or exclude the operation of any regulation made under the *Broadcasting Services Act 1992* so far as the regulation can operate concurrently with this Act.

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**311 Act not to affect performance of functions by States or certain Territories**

- (1) The ACMA must not exercise its powers under Chapter 3 in a way that prevents exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island.
- (2) A restrictive order has no effect so far as it would, but for this subsection, prevent exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island.

**312 Application of the Trade Practices Act**

Nothing in Part 3.2 or 3.3 is to be taken as specifically authorising or approving any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

**313 Legislation of the Australian Antarctic Territory**

This Act does not affect the Governor-General's power under section 11 of the *Australian Antarctic Territory Act 1954* to make Ordinances prohibiting or regulating use of radiocommunications devices the operation of which is authorised under class licences.

**313A Application of the *Criminal Code***

Chapter 2 of the *Criminal Code* (except Part 2.5) applies to all offences against this Act.

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

**313B Review**

- (1) Before 1 January 2014, the Minister must cause to be conducted a review of the following matters:
  - (a) the use of spectrum for the transmission of:
    - (i) digital radio broadcasting services; and
    - (ii) restricted datacasting services;in Australia;



- (b) the availability of additional frequency channels for the transmission of:
    - (i) digital radio broadcasting services; and
    - (ii) restricted datacasting services;in Australia;
  - (c) the operation of this Act in so far as it deals with licensing and regulation in relation to the transmission of:
    - (i) digital radio broadcasting services; and
    - (ii) restricted datacasting services;
  - (d) the operation of the following provisions:
    - (i) section 109C;
    - (ii) Division 4A of Part 3.3;
    - (iii) Division 4B of Part 3.3;
  - (e) whether any of the provisions mentioned in paragraph (d) should be amended or repealed.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.
- (4) In this section:
- digital radio broadcasting service*** means:
- (a) a digital commercial radio broadcasting service; or
  - (b) a digital community radio broadcasting service; or
  - (c) a digital national radio broadcasting service.

### **314 Regulations**

- (1) The Governor-General may make regulations prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

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- (2) Without limiting subsection (1), the regulations may make provision in relation to:
  - (a) prohibiting or regulating any act or thing likely to cause interference, or risk of interference, to radiocommunications; or
  - (b) prohibiting or regulating making of radio emissions from a place within a specified area; or
  - (c) prohibiting or regulating making of radio emissions in a way likely to cause an explosion; or
  - (d) enabling a person who is alleged to have committed an offence of a kind referred to in the table in subsection 315(1) to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with section 315; or
  - (e) prescribing the forms of warrants for the purposes of section 269; or
  - (f) functions and powers to be conferred, and duties to be imposed, upon inspectors; or
  - (g) refund of charges on surrender of certificates or licences; or
  - (h) issue and return of duplicates of licences, certificates and permits, and of licences granted under the regulations; or
  - (i) any matter incidental to or connected with any of the foregoing.
- (3) The power to make regulations in relation to a matter is not limited merely by the fact that:
  - (a) this Act makes provision in relation to the matter; or
  - (b) this Act expressly allows such provision to be made:
    - (i) by standards, advisory guidelines or orders; or
    - (ii) by specifying conditions to which licences or permits are subject.
- (4) Paragraph (2)(c) is not intended to limit or exclude concurrent operation of a law of a State or Territory.
- (5) The regulations may provide, in respect of an offence against the regulations, for imposition of a fine not exceeding 10 penalty units.
- (6) The limitation imposed by subsection (5) on the penalties that the regulations may prescribe does not prevent the regulations from requiring a person to make a statutory declaration.

**314A Instruments under this Act may provide for matters by reference to other instruments**

- (1) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) provisions of any Act:
  - (a) as in force at a particular time; or
  - (b) as in force from time to time.
- (2) An instrument under this Act may make provision in relation to a matter by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
  - (a) as in force or existing at a particular time; or
  - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the instrument under this Act is made.
- (3) A reference in subsection (2) to any other instrument or writing includes a reference to an instrument or writing:
  - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
  - (b) whether of a legislative, administrative or other official nature or of any other nature; and
  - (c) whether or not having any legal force or effect;for example:
  - (d) regulations or rules under an Act; or
  - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
  - (f) an international technical standard or performance indicator; or
  - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (4) Nothing in this section limits the generality of anything else in it.
- (5) Subsections (1) and (2) have effect despite anything in:
  - (a) the *Acts Interpretation Act 1901*; or
  - (b) the *Legislative Instruments Act 1997*.

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(6) In this section:

*instrument under this Act* means:

- (a) the regulations; or
- (b) any other instrument made under this Act.

**315 Penalties payable instead of prosecution**

(1) The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence is determined using the following table:

<b>Penalties payable</b>			
<b>Item</b>	<b>Provision alleged to have been contravened</b>	<b>Penalty for individual</b>	<b>Penalty for body corporate</b>
1	section 46	see subsection (2) of this section	see subsection (3) of this section
2	section 47	see subsection (2) of this section	see subsection (3) of this section
3	section 113	2 penalty units	10 penalty units
4	section 117	2 penalty units	10 penalty units
5	section 118	2 penalty units	10 penalty units
6	section 170	2 penalty units	10 penalty units
7	section 186	3 penalty units	15 penalty units
8	section 187	3 penalty units	15 penalty units
9	section 187A	2 penalty units	10 penalty units
10	section 197	3 penalty units	15 penalty units
11	section 278	2 penalty units	10 penalty units
12	section 279	2 penalty units	10 penalty units
13	subsection 300(4)	2 penalty units	10 penalty units
14	subsection 301(3)	2 penalty units	10 penalty units
15	the regulations	2 penalty units	10 penalty units

(2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence an individual is alleged to have committed against section 46 or 47, in relation to a particular radiocommunications device, is:

- (a) if the radiocommunications device was of a kind covered by a class licence at the time the offence was allegedly committed—2 penalty units; or
  - (b) in any other case—3 penalty units.
- (3) The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence a body corporate is alleged to have committed against section 46 or 47, in relation to a particular radiocommunications device, is:
  - (a) if the radiocommunications device was of a kind covered by a class licence at the time the offence was allegedly committed—10 penalty units; or
  - (b) in any other case—15 penalty units.

## **Schedule—Resuming spectrum licences by compulsory process**

Sections 91 and 93

### **Part 1—Resumption Procedures**

#### **1 Pre-acquisition declarations**

- (1) The ACMA must cause to be published in the *Gazette* a pre-acquisition declaration for the spectrum licence, or the part of the spectrum licence, that it wishes to resume.
- (2) The pre-acquisition declaration must contain:
  - (a) a description of the licence, or the part of the licence, to be resumed; and
  - (b) a statement of the ACMA's reasons for the resumption.

#### **2 Service on licensees and third party users**

- (1) Within 14 days after publication in the *Gazette*, the ACMA must serve the declaration on the licensee by registered post sent to the address of the place of residence or business of the licensee last known to the ACMA.
- (2) The licensee must, within 7 days after being so served, give a written notice of the proposed resumption to:
  - (a) if the whole of the licence is to be resumed—each person (if any) authorised by the licensee to operate a radiocommunications device under the licence; or
  - (b) if a part of the licence is to be resumed—each person (if any) so authorised whose interests would be affected by resumption of that part of the licence.
- (3) Failure to comply with the requirements of this clause does not affect the validity of the pre-acquisition declaration.

Note: A pre-acquisition declaration is reviewable under Part 5.6.

### **3 Resumption notices**

- (1) If the pre-acquisition declaration is in force at the end of the review period, the ACMA must cause to be published in the *Gazette* a notice that the licence, or the part of the licence, is resumed.
- (2) The review period commences when the pre-acquisition declaration is made and ends:
  - (a) if the period for applying under Part 5.6 for reconsideration of the pre-acquisition declaration has expired without such an application being made—at the end of the period for applying for reconsideration; or
  - (b) if the pre-acquisition declaration was reconsidered under Part 5.6 and the period for applying under that Part for review by the AAT of the reconsideration has expired without such an application being made—at the end of the period for applying for review by the AAT; or
  - (c) if review by the AAT was applied for within that period—when the review, and any appeals or other proceedings arising from the review, have been finally disposed of.

### **4 Date of effect of resumptions**

The resumption takes effect:

- (a) if the resumption notice specifies a day for the purpose—on that day; or
- (b) otherwise—14 days after the day on which the resumption notice was published.

### **5 Notification of licensees**

Within 14 days after the resumption notice was published, the ACMA must give to the licensee a written notice that:

- (a) sets out a copy of the resumption notice; and
- (b) sets out particulars of:
  - (i) the licensee's right to claim compensation for the resumption; and
  - (ii) how a claim is to be made; and
- (c) includes the form, approved by the ACMA, on which such a claim is to be made.

## Part 2—Compensation

### 1 The basis on which compensation is payable

- (1) If a spectrum licence or a part of a spectrum licence is resumed under section 91, the compensation payable to the licensee under section 93 and this Part is compensation for:
  - (a) the market value of the licence, or the part of the licence, on the day before the day on which the pre-acquisition declaration was published; and
  - (b) any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the resumption.
- (2) The market value of the licence, or the part of the licence, at a particular time is the amount that would have been paid for it if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.
- (3) If the market value is assessed upon the basis that the licence, or the part of the licence, had potential to be used for a purpose other than the purpose for which it was used at the relevant time, compensation is not payable in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.
- (4) If:
  - (a) a pre-acquisition declaration is published for resumption of a spectrum licence or a part of a spectrum licence; and
  - (b) the pre-acquisition declaration is revoked before the resumption takes place;the compensation payable to the licensee under section 93 and this Part is compensation for any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the publication of the pre-acquisition declaration.



## **2 Amounts of compensation payable**

- (1) The amount of compensation payable to the licensee is:
  - (a) the amount of compensation agreed by the ACMA under paragraph 4(a); or
  - (b) the amount of compensation specified in an offer of the ACMA that is accepted by the licensee under subclause 6(1); or
  - (c) the amount of compensation determined by the AAT under clause 7; or
  - (d) the amount of compensation determined by the Federal Court under clause 8; or
  - (e) the amount of compensation determined by an independent valuer under clause 9;whichever is applicable.
- (2) Once the amount of compensation is fixed under one of the paragraphs in subclause (1), the other paragraphs are no longer capable of application in fixing the amount of compensation.

## **3 Claims for compensation**

The licensee may claim compensation by giving to the ACMA a written claim in a form approved by the ACMA.

## **4 Consideration of claims by the ACMA**

The ACMA must consider the claim and, by written notice given to the licensee:

- (a) agree to pay the amount of compensation specified in the claim; or
- (b) offer to pay an amount of compensation different to the amount specified in the claim; or
- (c) reject the claim.

## **5 Deadline for consideration of claims**

- (1) The ACMA must give the notice to the licensee within 42 days, or such longer period as is agreed between the ACMA and the licensee, after receiving the claim.

Clause 6

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- (2) The ACMA is taken to have rejected the claim if it has not informed the licensee of its decision on the claim before the end of the period within which the notice must be given.

**6 Consideration of offers by licensees**

- (1) If the ACMA offers under paragraph 4(b) to pay an amount of compensation to the licensee, the licensee may, in writing, accept the offer at any time during the period of 42 days, or such longer period as is agreed between the ACMA and the licensee, after the offer was made.
- (2) The licensee is taken to have rejected the offer if:
- (a) during the period during which the licensee may accept the offer, the licensee informs the ACMA, in writing, that the offer is rejected; or
  - (b) the period ends and the licensee has not accepted the offer.

**7 Determination of compensation by the AAT**

- (1) Subject to subclause (5), if:
- (a) under paragraph 4(c), the ACMA has rejected the claim; or
  - (b) under subclause 5(2), the ACMA is taken to have rejected the claim; or
  - (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACMA;
- the licensee may apply to the AAT to review the ACMA's decision to reject the claim, or make the offer, as the case requires.
- (2) Subject to subclauses (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.
- (3) Section 29 of that Act applies to the application as if the prescribed time for lodging the application with the AAT were the period of 90 days beginning on the day on which the ACMA rejected the claim, or the ACMA's offer was taken to be rejected, as the case requires.
- (4) The AAT must make a decision on the application determining the amount of compensation.

- (5) An application cannot be made to the AAT if an application has already been made under clause 8 to the Federal Court to determine the amount of compensation.

### **8 Determination of compensation by the Federal Court**

- (1) Subject to subsection (3), if:
- (a) under paragraph 4(c), the ACMA has rejected the claim; or
  - (b) under subclause 5(2), the ACMA is taken to have rejected the claim; or
  - (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACMA;
- the licensee may apply to the Federal Court to determine the amount of compensation to which the licensee is entitled.
- (2) On the application, the Federal Court must determine the amount of compensation.
- (3) An application cannot be made to the Federal Court if an application has already been made under clause 7 to the AAT to review the ACMA's decision to reject the claim or to make the offer, as the case requires.

### **9 Determination of compensation by independent valuers**

- (1) Subject to subclause (4), the ACMA and the licensee may agree on appointment of an independent valuer to determine the amount of compensation.
- (2) Clauses 3 to 8 no longer apply once an independent valuer is appointed under the agreement.
- (3) The independent valuer must determine the amount of compensation.
- (4) Agreement on appointment of an independent valuer has no effect if an application related to the amount of compensation has already been made to the AAT under clause 7 or to the Federal Court under clause 8.



**Table of Acts****Notes to the *Radiocommunications Act 1992*****Note 1**

The *Radiocommunications Act 1992* as shown in this compilation comprises Act No. 174, 1992 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Radiocommunications Act 1992</i>	174, 1992	11 Dec 1992	1 July 1993	
<i>Transport and Communications Legislation Amendment Act 1993</i>	4, 1994	18 Jan 1994	(a)	—
<i>Communications and the Arts Legislation Amendment Act (No. 1) 1995</i>	32, 1995	12 Apr 1995	S. 3 (items 67, 68): 8 Sept 1995 (see <i>Gazette</i> 1995, No. S341) Remainder: Royal Assent	—
<i>Radiocommunications Amendment Act 1997</i>	41, 1997	22 Apr 1997	22 Apr 1997	Sch. 1 (items 92–94)
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	Schedule 2: 1 July 1997 (b)	Sch. 2 (items 21, 71, 72)
<i>Communications Legislation Amendment Act (No. 1) 1997</i>	119, 1997	7 July 1997	4 Aug 1997	—
<i>Radiocommunications Legislation Amendment Act 1997</i>	145, 1997	9 Oct 1997	Schedule 1 (items 6–8): Royal Assent (c)	—
<i>Television Broadcasting Services (Digital Conversion) Act 1998</i>	99, 1998	27 July 1998	27 July 1998	S. 4

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>National Transmission Network Sale (Consequential Amendments) Act 1998</i>	131, 1998	21 Dec 1998	21 Dec 1998	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 761–763): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (d)	—
<i>Australian Federal Police Legislation Amendment Act 2000</i>	9, 2000	7 Mar 2000	2 July 2000 (see <i>Gazette</i> 2000, No. S328)	Sch. 3 (items 20, 30, 34, 35)
<i>Radiocommunications Legislation Amendment Act 2000</i>	34, 2000	3 May 2000	31 May 2000	Sch. 3
<i>Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000</i>	108, 2000	3 Aug 2000	Schedule 2: 1 Jan 2001 (see <i>Gazette</i> 2000, No. GN50) (e)	Sch. 2 (item 51)
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3, Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Broadcasting Services Amendment Act 2000</i>	172, 2000	21 Dec 2000	Schedule 2: (f) Remainder: Royal Assent	Sch. 1 (item 36(1))
<i>Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001</i>	5, 2001	20 Mar 2001	S. 4 and Schedule 1 (items 50–100): (g)	S. 4
<i>Broadcasting Legislation Amendment Act (No. 2) 2001</i>	92, 2001	20 July 2001	20 July 2001	—
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 28): 1 July 1999	—
<i>Broadcasting Legislation Amendment Act (No. 2) 2002</i>	120, 2002	2 Dec 2002	Schedules 1 and 2: 30 Dec 2002 Remainder: Royal Assent	—
<i>Australian Crime Commission Establishment Act 2002</i>	125, 2002	10 Dec 2002	Schedule 2 (item 118): (h) Schedule 2 (item 226): 1 Jan 2003	Sch. 2 (item 226) S. 2(1) (item 5) (am. by 41, 2003, Sch. 2 [item 1AA])

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<b>as amended by</b>				
<i>Crimes Legislation Enhancement Act 2003</i>	41, 2003	3 June 2003	Schedule 2 (item 1AA): (i)	—
<i>Communications Legislation Amendment Act (No. 3) 2003</i>	108, 2003	24 Oct 2003	Schedule 1 (items 1–7): 12 Dec 2003 (see <i>Gazette</i> 2003, No. GN49) Schedule 1 (items 25–48): 21 Nov 2003 Remainder: Royal Assent	—
<i>Communications Legislation Amendment Act (No. 1) 2003</i>	114, 2003	27 Nov 2003	Schedule 2: 27 Mar 2003 Remainder: 28 Nov 2003	—
<i>Designs (Consequential Amendments) Act 2003</i>	148, 2003	17 Dec 2003	Schedules 1 and 2: (j) Remainder: Royal Assent	—
<i>Greater Sunrise Unitisation Agreement Implementation Act 2004</i>	47, 2004	21 Apr 2004	Schedule 2 (items 19, 20): 7 Feb 2007	—
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 71–118) and Schedule 4: 1 July 2005 (k) Schedule 2: (k)	Sch. 4
<i>Offshore Petroleum (Repeals and Consequential Amendments) Act 2006</i>	17, 2006	29 Mar 2006	Schedule 2 (items 99–102): 1 July 2008 (see s. 2(1) and F2008L02273)	—
<i>Law Enforcement Integrity Commissioner (Consequential Amendments) Act 2006</i>	86, 2006	30 June 2006	Schedule 1 (item 56): 30 Dec 2006	—
<i>Communications Legislation Amendment (Enforcement Powers) Act 2006</i>	120, 2006	4 Nov 2006	Schedule 1: 4 Feb 2007 Remainder: Royal Assent	—
<i>Broadcasting Legislation Amendment Act (No. 1) 2006</i>	127, 2006	4 Nov 2006	5 Nov 2006	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Broadcasting Legislation Amendment (Digital Television) Act 2006</i>	128, 2006	4 Nov 2006	Schedule 1 (items 21–27, 28A, 29): 5 Nov 2006 Schedule 2 (items 88B–92Y, 93C–95): 1 Jan 2007 Schedule 2A (items 28, 29): 4 May 2007 Schedule 3 (items 16A–16H, 16J–16M, 17–29): 1 Jan 2009	Sch. 1 (items 28A, 29) and Sch. 2 (items 93C–95)
<i>Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Act 2006</i>	153, 2006	8 Dec 2006	1 Jan 2007	—
<i>Offshore Petroleum Amendment (Greater Sunrise) Act 2007</i>	49, 2007	10 Apr 2007	Schedule 1 (items 95–97): (l)	Sch. 1 (item 97) (am. by 117, 2008, Sch. 3 [item 31AA])
<b>as amended by</b>				
<i>Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008</i>	117, 2008	21 Nov 2008	Schedule 3 (item 31AA): 22 Nov 2008	—
<i>Broadcasting Legislation Amendment (Digital Radio) Act 2007</i>	68, 2007	28 May 2007	Schedule 1: 29 May 2007 Schedule 2: (m) Remainder: Royal Assent	Sch. 1 (items 183, 184, 186)
<b>as amended by</b>				
<i>Statute Law Revision Act 2008</i>	73, 2008	3 July 2008	Schedule 2 (item 1): (n)	—
<i>Corporations (NZ Closer Economic Relations) and Other Legislation Amendment Act 2007</i>	85, 2007	21 June 2007	Schedule 3 (items 1, 2): 19 July 2007	—
<i>Communications Legislation Amendment (Information Sharing and Datacasting) Act 2007</i>	178, 2007	28 Sept 2007	Schedule 1 (items 6, 7): 29 Sept 2007	—
<i>Broadcasting Legislation Amendment (Digital Radio) Act 2008</i>	114, 2008	31 Oct 2008	1 Nov 2008	—



**Table of Acts**

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Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Offshore Petroleum Amendment (Greenhouse Gas Storage) Act 2008</i>	117, 2008	21 Nov 2008	Schedule 3 (items 57, 57A, 57B): 22 Nov 2008	—

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## Act Notes

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(a) Section 2 of the *Transport and Communications Legislation Amendment Act 1993* provides as follows:

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) The amendments of the *Radiocommunications Act 1992* (other than the amendments of sections 187, 314 and 315) set out in the Schedule are taken to have commenced immediately after the commencement of that Act.

The *Radiocommunications Act 1992* came into operation on 1 July 1993.

(b) The *Radiocommunications Act 1992* was amended by Schedule 2 only of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, subsection 2(2)(e) of which provides as follows:

- (2) The following provisions commence on 1 July 1997:
  - (e) Schedule 2;

(c) The *Radiocommunications Act 1992* was amended by Schedule 2 (items 6–8) only of the *Radiocommunications Legislation Amendment Act 1997*, subsection 2(1) of which provides as follows:

- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(d) The *Radiocommunications Act 1992* was amended by Schedule 1 (items 761–763) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:

- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
- (2) Subject to this section, this Act commences at the commencing time.

(e) The *Radiocommunications Act 1992* was amended by Schedule 2 only of the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*, subsection 2(2) of which provides as follows:

- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.

(f) Subsection 2(2) of the *Broadcasting Services Amendment Act 2000* provides as follows:

- (2) Schedule 2 commences immediately after the commencement of item 140 of Schedule 1 to the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.

Item 140 commenced on 1 January 2001 (see *Gazette* 2000, No. GN50).

(g) The *Radiocommunications Act 1992* was amended by Schedule 1 (items 50–100) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsection 2(1)(a) of which provides as follows:

- (1) Subject to this section, this Act commences at the latest of the following times:
  - (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;

Item 15 commenced on 24 May 2001.

(h) Subsection 2(1) (item 5) of the *Australian Crime Commission Establishment Act 2002* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Act Notes****Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
5. Schedule 2, item 118	The later of: (a) the start of the day on which Schedule 1 to this Act commences; and (b) immediately after the commencement of Schedule 3 to the <i>Communications Legislation Amendment Act (No. 1) 2003</i>	28 November 2003 (paragraph (b) applies)

(i) Subsection 2(1) (item 4A) of the *Crimes Legislation Enhancement Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
4A. Schedule 2, item 1AA	Immediately after the commencement of section 2 of the <i>Australian Crime Commission Establishment Act 2002</i>	10 December 2002

(j) Subsection 2(1) (item 2) of the *Designs (Consequential Amendments) Act 2003* provides as follows:

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedules 1 and 2	Immediately after the commencement of section 4 of the <i>Designs Act 2003</i> .	17 June 2004

(k) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provides as follows:

- (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.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

**Act Notes**

(l) Subsection 2(1) (item 2) of the *Offshore Petroleum Amendment (Greater Sunrise) Act 2007* provides as follows:

- (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.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	Immediately after the commencement of section 3 of the <i>Offshore Petroleum Act 2006</i> .	1 July 2008 (see F2008L02273)

(m) Subsection 2(1) (item 3) of the *Broadcasting Legislation Amendment (Digital Radio) Act 2007* provides as follows:

- (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.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2	The later of: (a) immediately after the commencement of Schedule 1 to this Act; and (b) immediately after the commencement of section 155AAA of the <i>Trade Practices Act 1974</i> .  However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.	19 July 2007  (paragraph (b) applies)

(n) Subsection 2(1) (item 44) of the *Statute Law Revision) Act 2008* provides as follows:

- (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.

<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
3. Schedule 2, item 1	Immediately after the time specified in the <i>Broadcasting Legislation Amendment (Digital Radio) Act 2007</i> for the commencement of item 148 of Schedule 1 to that Act.	29 May 2007

**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Chapter 1</b>	
<b>Part 1.2</b>	
S. 3.....	am. No. 114, 2003
S. 4.....	am. Nos. 41 and 59, 1997
<b>Part 1.3</b>	
S. 5.....	am. No. 4, 1994; No. 32, 1995; Nos. 41, 59, 119 and 145, 1997; Nos. 99 and 131, 1998; No. 146, 1999; Nos. 9, 34, 108 and 172, 2000; No. 45, 2005; Nos. 128 and 153, 2006; No. 68, 2007
S. 7.....	am. No. 59, 1997; No. 34, 2000; No. 45, 2005
S. 9A .....	ad. No. 59, 1997
S. 9B .....	ad. No. 99, 1998
Ss. 9C, 9D.....	ad. No. 68, 2007
Heading to s. 10A.....	am. No. 45, 2005
S. 10A .....	ad. No. 34, 2000 am. No. 45, 2005
S. 11.....	am. No. 32, 1995; No. 137, 2000; No. 5, 2001
<b>Part 1.4</b>	
<b>Division 2</b>	
S. 16.....	am. No. 34, 2000; No. 47, 2004; No. 45, 2005
Heading to s. 17 .....	rs. No. 17, 2006
S. 17.....	am. No. 17, 2006; No. 117, 2008
S. 17A .....	ad. No. 47, 2004 am. No. 49, 2007; No. 117, 2008
<b>Division 4</b>	
Heading to s. 23.....	am. No. 34, 2000
S. 23.....	am. No. 34, 2000; No. 45, 2005
Heading to s. 27 .....	rs. No. 114, 2003
S. 27.....	am. No. 125, 2002; No. 114, 2003; No. 45, 2005; No. 86, 2006
Heading to s. 28.....	am. No. 59, 1997; No. 45, 2005
S. 28.....	am. No. 59, 1997; No. 45, 2005
<b>Chapter 2</b>	
S. 29.....	am. No. 41, 1997; No. 68, 2007
<b>Part 2.1</b>	
S. 30.....	am. No. 59, 1997; No. 45, 2005
S. 31.....	am. No. 59, 1997; No. 34, 2000 rs. No. 45, 2005 am. No. 68, 2007 (as am. by 73, 2008)
S. 32.....	am. No. 59, 1997; No. 34, 2000; No. 45, 2005; No. 68, 2007
Ss. 33, 34 .....	am. No. 59, 1997; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 2.2</b>	
S. 36.....	am. Nos. 41 and 59, 1997; No. 34, 2000; No. 45, 2005; No. 68, 2007
S. 37.....	am. No. 59, 1997; No. 45, 2005
S. 38.....	am. Nos. 41 and 59, 1997; No. 45, 2005
Heading to s. 39.....	am. No. 41, 1997
S. 39.....	am. No. 4, 1994; Nos. 41 and 59, 1997; No. 45, 2005
S. 39A.....	ad. No. 41, 1997 am. No. 45, 2005
S. 40.....	am. No. 59, 1997; No. 45, 2005
S. 41.....	am. Nos. 41 and 59, 1997; No. 45, 2005
Ss. 42–44.....	am. No. 59, 1997; No. 45, 2005
<b>Part 2.3</b>	
Part 2.3.....	ad. No. 68, 2007
S. 44A.....	ad. No. 68, 2007
<b>Chapter 3</b>	
S. 45.....	am. No. 41, 1997
<b>Part 3.1</b>	
<b>Division 1</b>	
Ss. 46, 47.....	am. No. 32, 1995; No. 5, 2001
S. 49.....	am. No. 34, 2000
<b>Part 3.2</b>	
S. 51.....	am. Nos. 41 and 59, 1997; No. 45, 2005
<b>Division 1</b>	
<b>Subdivision A</b>	
S. 52.....	am. No. 41, 1997
Ss. 53–59.....	am. No. 59, 1997; No. 45, 2005
<b>Subdivision B</b>	
Heading to Subdiv. B of Div. 1 of Part 3.2.....	rs. No. 41, 1997
S. 60.....	am. Nos. 41 and 59, 1997; No. 34, 2000; No. 45, 2005
S. 61.....	am. No. 59, 1997; No. 45, 2005
S. 62.....	am. Nos. 41 and 59, 1997; No. 45, 2005
S. 63.....	am. No. 59, 1997; No. 45, 2005
<b>Subdivision C</b>	
Ss. 65, 66.....	am. No. 41, 1997
S. 67.....	am. Nos. 59 and 145, 1997; No. 45, 2005
S. 68.....	am. No. 59, 1997; No. 45, 2005
S. 68A.....	ad. No. 41, 1997
S. 69.....	am. No. 59, 1997; No. 45, 2005
S. 69A.....	ad. No. 34, 2000
S. 70.....	rep. No. 41, 1997
S. 71.....	am. Nos. 41 and 59, 1997; No. 34, 2000; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision D</b>	
Subdiv. D of Div. 1 of ..... Part 3.2	ad. No. 41, 1997
S. 71A .....	ad. No. 41, 1997
<b>Division 2</b>	
Ss. 72, 73 .....	am. No. 59, 1997; No. 45, 2005
<b>Division 3</b>	
Ss. 74, 75 .....	am. No. 59, 1997; No. 45, 2005
S. 77 .....	am. No. 59, 1997; No. 45, 2005
<b>Division 4</b>	
Ss. 78, 79 .....	am. No. 59, 1997; No. 45, 2005
S. 81 .....	am. No. 59, 1997; No. 45, 2005
S. 82 .....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
Heading to s. 83 .....	am. No. 41, 1997
S. 83 .....	am. No. 41, 1997
<b>Division 5</b>	
S. 86 .....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
S. 87 .....	am. Nos. 41 and 59, 1997; No. 45, 2005
S. 88 .....	am. No. 59, 1997; No. 45, 2005
<b>Division 6</b>	
<b>Subdivision A</b>	
Heading to s. 89 .....	am. No. 59, 1997; No. 45, 2005
S. 89 .....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
S. 90 .....	am. No. 59, 1997; No. 45, 2005
<b>Subdivision B</b>	
Heading to s. 91 .....	am. No. 59, 1997; No. 45, 2005
Ss. 91, 92 .....	am. No. 59, 1997; No. 45, 2005
S. 95 .....	am. No. 59, 1997; No. 45, 2005
<b>Part 3.3</b>	
S. 96 .....	am. No. 108, 2000
<b>Division 1</b>	
S. 97 .....	am. No. 59, 1997; No. 45, 2005
S. 98 .....	am. Nos. 41 and 59, 1997; No. 45, 2005
Ss. 98A, 98B .....	ad. No. 128, 2006
Ss. 98C–98E .....	ad. No. 68, 2007
<b>Division 2</b>	
S. 99 .....	am. No. 59, 1997; No. 45, 2005
S. 100 .....	am. No. 4, 1994; No. 32, 1995; Nos. 41, 59 and 119, 1997; Nos. 99 and 131, 1998; Nos. 34, 108 and 172, 2000; No. 92, 2001; No. 45, 2005; No. 128, 2006; No. 68, 2007
S. 100A .....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 128, 2006

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 100B .....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 45, 2005; No. 128, 2006
S. 100C .....	ad. No. 108, 2000
Heading to s. 100D .....	am. No. 128, 2006
S. 100D .....	ad. No. 108, 2000 am. No. 128, 2006
S. 100E .....	ad. No. 128, 2006
S. 101 .....	am. No. 59, 1997; No. 45, 2005
S. 101A .....	ad. No. 119, 1997 am. No. 45, 2005
Ss. 101B, 101C .....	ad. No. 128, 2006
S. 102 .....	am. No. 59, 1997; No. 99, 1998; Nos. 108 and 172, 2000; No. 108, 2003; No. 45, 2005; Nos. 127 and 128, 2006; No. 68, 2007
S. 102A .....	ad. No. 99, 1998 am. Nos. 108 and 172, 2000; No. 108, 2003; No. 45, 2005; Nos. 127 and 128, 2006
Ss. 102AA–102AC .....	ad. No. 128, 2006
S. 102B .....	ad. No. 108, 2000 rs. No. 45, 2005
Ss. 102C–102F .....	ad. No. 68, 2007
S. 103 .....	am. No. 119, 1997; No. 99, 1998; No. 108, 2000; No. 120, 2002; No. 128, 2006; No. 68, 2007
S. 104 .....	rs. No. 32, 1995 am. No. 59, 1997; No. 114, 2003; No. 45, 2005
S. 105 .....	am. No. 59, 1997; No. 114, 2003; No. 45, 2005
S. 106 .....	am. No. 32, 1995; Nos. 41, 59 and 119, 1997; No. 131, 1998; No. 108, 2000; No. 45, 2005; No. 128, 2006
S. 106A .....	ad. No. 41, 1997 am. Nos. 99 and 131, 1998; No. 128, 2006
<b>Division 3</b>	
S. 107 .....	am. No. 32, 1995; Nos. 41, 59 and 119, 1997; No. 99, 1998; No. 108, 2000; No. 45, 2005; No. 128, 2006; No. 68, 2007
S. 108 .....	am. No. 32, 1995; No. 119, 1997; No. 99, 1998; Nos. 34, 108 and 172, 2000; No. 128, 2006; No. 68, 2007
S. 108A .....	ad. No. 119, 1997 am. No. 45, 2005
S. 109 .....	am. No. 59, 1997; No. 99, 1998; No. 45, 2005; No. 128, 2006
S. 109A .....	ad. No. 108, 2000 am. No. 45, 2005; Nos. 128 and 153, 2006
Ss. 109B, 109C .....	ad. No. 68, 2007
Heading to s. 109D .....	rs. No. 114, 2008
Subhead. to s. 109D(1) .....	ad. No. 114, 2008
Subhead. to s. 109D(2) .....	ad. No. 114, 2008



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 109D .....	ad. No. 68, 2007 am. No. 114, 2008
S. 110.....	am. No. 4, 1994; No. 119, 1997; No. 108, 2000; No. 68, 2007
S. 111.....	am. No. 32, 1995; Nos. 59 and 119, 1997; No. 99, 1998; No. 108, 2000; No. 45, 2005; No. 128, 2006; Nos. 68 and 178, 2007
S. 112.....	am. No. 59, 1997; No. 45, 2005
S. 113.....	am. No. 32, 1995 rs. No. 5, 2001
S. 113A .....	ad. No. 114, 2008
<b>Division 4</b>	
S. 114.....	am. No. 59, 1997; No. 108, 2000; No. 45, 2005; No. 68, 2007
S. 114A .....	ad. No. 41, 1997
Ss. 115, 116.....	am. No. 59, 1997; No. 45, 2005
S. 117.....	am. No. 32, 1995; No. 5, 2001
S. 118.....	am. No. 32, 1995; Nos. 108 and 172, 2000; No. 5, 2001; No. 45, 2005
<b>Division 4A</b>	
Div. 4A of Part 3.3.....	ad. No. 128, 2006
Ss. 118A, 118B .....	ad. No. 128, 2006
S. 118C .....	ad. No. 128, 2006 am. No. 85, 2007
Ss. 118D–118F .....	ad. No. 128, 2006
S. 118G .....	ad. No. 128, 2006 am. No. 85, 2007
S. 118H .....	ad. No. 128, 2006
Ss. 118J–118M .....	ad. No. 128, 2006
<b>Division 4B</b>	
Div. 4B of Part 3.3.....	ad. No. 68, 2007
<b>Subdivision A</b>	
S. 118N .....	ad. No. 68, 2007
Ss. 118NA–118NC.....	ad. No. 68, 2007
<b>Subdivision B</b>	
S. 118ND.....	ad. No. 68, 2007
S. 118NE.....	ad. No. 68, 2007 am. No. 68, 2007
Ss. 118NF–118NH.....	ad. No. 68, 2007
S. 118NI .....	ad. No. 68, 2007 am. No. 68, 2007
Ss. 118NJ, 118NK.....	ad. No. 68, 2007
<b>Subdivision C</b>	
Ss. 118NL–118NY .....	ad. No. 68, 2007
<b>Subdivision D</b>	
S. 118NZ.....	ad. No. 68, 2007

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 118P .....	ad. No. 68, 2007
<b>Subdivision E</b>	
Ss. 118PA–118PD .....	ad. No. 68, 2007
<b>Subdivision F</b>	
Ss. 118PE–118PH .....	ad. No. 68, 2007
<b>Subdivision G</b>	
Ss. 118PI–118PM .....	ad. No. 68, 2007
<b>Subdivision H</b>	
Ss. 118PN–118PP .....	ad. No. 68, 2007
<b>Division 4C</b>	
Div. 4C of Part 3.3 .....	ad. No. 68, 2007
<b>Subdivision A</b>	
S. 118Q .....	ad. No. 68, 2007
Ss. 118QA–118QC .....	ad. No. 68, 2007
<b>Subdivision B</b>	
Ss. 118QD–118QH .....	ad. No. 68, 2007
<b>Subdivision C</b>	
Ss. 118QI, 118QJ .....	ad. No. 68, 2007
<b>Division 5</b>	
Heading to s. 119 .....	am. No. 59, 1997; No. 45, 2005
Ss. 119–122 .....	am. No. 59, 1997; No. 45, 2005
S. 122A .....	ad. No. 34, 2000 am. No. 45, 2005
S. 123 .....	am. No. 59, 1997; No. 45, 2005
S. 124 .....	am. No. 32, 1995; No. 59, 1997; No. 137, 2000; No. 5, 2001; No. 45, 2005
<b>Division 6</b>	
Heading to Div. 6 of Part 3.3 .....	rs. No. 108, 2000
<b>Subdivision A</b>	
Heading to Subdiv. A .....	ad. No. 172, 2000 of Div. 6 of Part 3.3
Heading to s. 125 .....	am. No. 172, 2000
S. 125 .....	am. Nos. 59 and 119, 1997; No. 99, 1998; Nos. 108 and 172, 2000; No. 45, 2005; No. 128, 2006
S. 126 .....	am. No. 59, 1997; No. 45, 2005
S. 128 .....	am. No. 59, 1997; No. 45, 2005
<b>Subdivision B</b>	
Subdiv. B of Div. 6 of .....	ad. No. 172, 2000 Part 3.3
S. 128A .....	ad. No. 172, 2000
S. 128B .....	ad. No. 172, 2000 am. No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 6A</b>	
Heading to Div. 6A of Part 3.3	rs. No. 45, 2005
Div. 6A of Part 3.3	ad. No. 108, 2000
Ss. 128C, 128D	ad. No. 108, 2000 rs. No. 45, 2005 am. No. 128, 2006
S. 128E	ad. No. 108, 2000 am. No. 45, 2005 rep. No. 128, 2006
<b>Division 7</b>	
S. 129	am. Nos. 59 and 119, 1997; No. 99, 1998; No. 34, 2000; No. 45, 2005; No. 128, 2006; No. 68, 2007
S. 130	am. No. 32, 1995; Nos. 41 and 59, 1997; No. 99, 1998; Nos. 34 and 108, 2000; No. 45, 2005
S. 131	am. No. 108, 2000; No. 68, 2007
<b>Division 8</b>	
Div. 8 of Part 3.3	ad. No. 32, 1995
S. 131AA	ad. No. 32, 1995 am. No. 59, 1997; No. 131, 1998; No. 45, 2005; No. 68, 2007
S. 131AB	ad. No. 32, 1995 am. No. 59, 1997; No. 99, 1998; No. 108, 2000; No. 45, 2005
S. 131AC	ad. No. 32, 1995 am. No. 59, 1997; No. 45, 2005
S. 131ACA	ad. No. 108, 2000 rs. No. 45, 2005
Div. 9 of Part 3.3	ad. No. 99, 1998 rep. No. 108, 2000
S. 131AD	ad. No. 99, 1998 rep. No. 108, 2000
<b>Division 10</b>	
Div. 10 of Part 3.3	ad. No. 172, 2000
Ss. 131AE, 131AF	ad. No. 172, 2000 am. No. 45, 2005
S. 131AG	ad. No. 172, 2000
<b>Part 3.4</b>	
<b>Division 1</b>	
Heading to s. 132	am. No. 59, 1997; No. 45, 2005
Ss. 132–138	am. No. 59, 1997; No. 45, 2005
<b>Division 2</b>	
S. 140	am. No. 59, 1997; No. 45, 2005
Heading to s. 141	am. No. 59, 1997; No. 45, 2005
S. 141	am. No. 59, 1997; No. 45, 2005
Heading to s. 142	am. No. 59, 1997; No. 45, 2005
S. 142	am. No. 59, 1997; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 3.5</b>	
Ss. 143, 144 .....	am. No. 59, 1997; No. 45, 2005
S. 145 .....	am. No. 59, 1997; No. 34, 2000; No. 45, 2005
S. 146 .....	am. No. 59, 1997; No. 45, 2005
S. 147 .....	am. No. 4, 1994; Nos. 41 and 59, 1997; No. 45, 2005
S. 148 .....	am. No. 32, 1995; No. 59, 1997; Nos. 108 and 172, 2000; No. 45, 2005
Ss. 149–152 .....	am. No. 59, 1997; No. 45, 2005
S. 153 .....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
<b>Part 3.6</b>	
Part 3.6 .....	ad. No. 41, 1997
Ss. 153A, 153B .....	ad. No. 41, 1997
S. 153C .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
S. 153D .....	ad. No. 41, 1997
Heading to s. 153E .....	am. No. 59, 1997; No. 45, 2005
S. 153E .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
Heading to s. 153F .....	am. No. 59, 1997; No. 45, 2005
Ss. 153F, 153G .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
S. 153H .....	ad. No. 41, 1997
Ss. 153J, 153K .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
Ss. 153L, 153M .....	ad. No. 41, 1997
S. 153N .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
S. 153P .....	ad. No. 41, 1997 am. No. 59, 1997; No. 114, 2003; No. 45, 2005
<b>Chapter 4</b>	
<b>Part 4.1</b>	
<b>Division 1</b>	
S. 155 .....	am. No. 41, 1997
S. 156 .....	am. No. 4, 1994; Nos. 41 and 59, 1997; No. 45, 2005
<b>Division 2</b>	
S. 157 .....	am. No. 4, 1994; No. 32, 1995; Nos. 41, and 59, 1997; No. 5, 2001
Heading to s. 158 .....	am. No. 41, 1997
S. 158 .....	am. No. 4, 1994; No. 32, 1995; Nos. 41 and 59, 1997; No. 5, 2001
Heading to s. 159 .....	am. No. 41, 1997
S. 159 .....	am. No. 41, 1997
S. 160 .....	am. No. 32, 1995; No. 41, 1997; No. 5, 2001

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 3</b>	
Heading to s. 162 .....	am. No. 59, 1997; No. 45, 2005
S. 162 .....	am. Nos. 41 and 59, 1997; No. 45, 2005
S. 163 .....	am. Nos. 41 and 59, 1997; No. 63, 2002; No. 45, 2005
Note to s. 163(1) .....	am. No. 45, 2005
S. 163A .....	ad. No. 41, 1997 am. No. 59, 1997; No. 45, 2005
Ss. 164, 165 .....	am. No. 59, 1997
<b>Division 4</b>	
Heading to Div. 4 of Part 4.1 .....	rs. No. 41, 1997
S. 166 .....	am. No. 41, 1997
Heading to s. 167 .....	am. No. 59, 1997; No. 45, 2005
S. 167 .....	am. Nos. 41 and 59, 1997; No. 45, 2005
Ss. 168, 169 .....	am. No. 59, 1997; No. 45, 2005
S. 169A .....	ad. No. 59, 1997
S. 170 .....	am. No. 32, 1995 rs. No. 5, 2001
S. 171 .....	am. No. 59, 1997; No. 137, 2000; No. 45, 2005
<b>Division 5</b>	
S. 172 .....	am. No. 41, 1997; No. 34, 2000
S. 173 .....	am. No. 41, 1997
S. 174 .....	am. No. 59, 1997; No. 45, 2005
S. 178 .....	am. No. 5, 2001
Div. 6 of Part 4.1 .....	rep. No. 41, 1997
Ss. 179–181 .....	rep. No. 41, 1997
<b>Division 7</b>	
Heading to s. 182 .....	am. No. 59, 1997
S. 182 .....	am. No. 32, 1995; Nos. 41 and 59, 1997; No. 45, 2005
S. 183 .....	rs. No. 59, 1997 am. No. 45, 2005
S. 183A .....	ad. No. 59, 1997 am. No. 45, 2005
S. 184 .....	am. No. 4, 1994; No. 41, 1997 rep. No. 59, 1997
S. 185 .....	rep. No. 59, 1997
S. 186 .....	am. No. 32, 1995; Nos. 41 and 59, 1997; No. 5, 2001
Heading to s. 187 .....	am. No. 59, 1997
S. 187 .....	rs. No. 4, 1994 am. Nos. 41 and 59, 1997; No. 5, 2001
S. 187A .....	ad. No. 32, 1995 am. Nos. 41 and 59, 1997; No. 5, 2001; No. 45, 2005
S. 188A .....	ad. No. 59, 1997 am. No. 5, 2001; No. 148, 2003; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 8</b>	
S. 189.....	am. No. 32, 1995; No. 5, 2001
S. 190.....	am. Nos. 41 and 59, 1997; No. 45, 2005
S. 191.....	am. No. 59, 1997; No. 45, 2005
<b>Part 4.2</b>	
Heading to s. 192.....	am. No. 34, 2000
S. 192.....	am. No. 32, 1995; No. 34, 2000
S. 193.....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
S. 194.....	am. No. 32, 1995
Heading to s. 195.....	am. No. 34, 2000
S. 195.....	am. No. 32, 1995; No. 59, 1997; No. 34, 2000; No. 45, 2005
S. 196.....	am. No. 34, 2000
S. 197.....	rs. No. 5, 2001
S. 198.....	am. No. 32, 1995
S. 199.....	am. No. 32, 1995; No. 5, 2001
<b>Part 4.3</b>	
<b>Division 1</b>	
Ss. 202, 203.....	am. No. 59, 1997; No. 45, 2005
S. 204.....	am. No. 146, 1999
<b>Division 2</b>	
Ss. 205–207.....	am. No. 59, 1997; No. 45, 2005
<b>Division 3</b>	
Ss. 208, 209.....	am. No. 59, 1997; No. 45, 2005
S. 210.....	am. No. 59, 1997; No. 137, 2000; No. 5, 2001; No. 45, 2005
<b>Division 4</b>	
Heading to s. 212.....	am. No. 59, 1997; No. 45, 2005
Ss. 212, 213.....	am. No. 59, 1997; No. 45, 2005
S. 214.....	am. No. 32, 1995 rs. No. 5, 2001
<b>Division 5</b>	
Heading to s. 218.....	am. No. 59, 1997; No. 45, 2005
S. 218.....	am. No. 59, 1997; No. 45, 2005
<b>Part 4.4</b>	
<b>Division 2</b>	
S. 227.....	am. No. 32, 1995; No. 34, 2000; No. 5, 2001
<b>Chapter 5</b>	
S. 231.....	am. No. 59, 1997; No. 45, 2005; No. 120, 2006
<b>Part 5.1</b>	
Heading to Part 5.1.....	rs. No. 59, 1997
Heading to Div. 1..... of Part. 5.1	rep. No. 59, 1997
S. 232.....	rep. No. 59, 1997

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 233.....	am. No. 41, 1997 rep. No. 59, 1997
Ss. 234–236.....	rep. No. 59, 1997
S. 237.....	am. No. 32, 1995 rep. No. 59, 1997
S. 238.....	am. No. 32, 1995; Nos. 41, 59 and 119, 1997; No. 108, 2000; No. 45, 2005
Div. 2 of Part 5.1.....	rep. No. 59, 1997
Ss. 239–254.....	rep. No. 59, 1997
<b>Part 5.2</b>	
Heading to s. 255.....	am. No. 59, 1997; No. 45, 2005
S. 255.....	am. No. 4, 1994; No. 59, 1997; No. 45, 2005
Heading to s. 256.....	am. No. 59, 1997; No. 45, 2005
Ss. 256–260.....	am. No. 59, 1997; No. 45, 2005
S. 261.....	rs. No. 59, 1997 am. No. 45, 2005
S. 261A.....	ad. No. 59, 1997 am. No. 45, 2005
Ss. 261B, 261C.....	ad. No. 59, 1997 am. No. 5, 2001; No. 45, 2005
S. 261D.....	ad. No. 59, 1997 am. No. 45, 2005
<b>Part 5.3</b>	
Heading to s. 262.....	am. No. 59, 1997; No. 45, 2005
S. 262.....	am. Nos. 41 and 59, 1997; No. 45, 2005
<b>Part 5.4</b>	
Heading to s. 263.....	am. No. 59, 1997; No. 45, 2005
S. 263.....	am. No. 32, 1995; No. 59, 1997; No. 34, 2000; No. 45, 2005
S. 264.....	am. No. 59, 1997; No. 34, 2000; No. 45, 2005
S. 265.....	am. No. 59, 1997; No. 45, 2005
S. 266.....	am. No. 59, 1997; No. 34, 2000; No. 45, 2005
Heading to s. 266A.....	am. No. 59, 1997; No. 45, 2005
S. 266A.....	ad. No. 32, 1995 am. No. 59, 1997; No. 45, 2005
<b>Part 5.5</b>	
<b>Division 1</b>	
S. 267.....	am. No. 59, 1997; No. 45, 2005
S. 268.....	am. No. 32, 1995; No. 59, 1997; No. 5, 2001; No. 45, 2005
<b>Division 2</b>	
S. 269.....	am. No. 34, 2000
<b>Division 3</b>	
S. 272.....	am. No. 34, 2000
S. 275.....	am. No. 34, 2000
S. 276.....	am. No. 59, 1997; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 4</b>	
S. 277.....	am. No. 59, 1997; No. 34, 2000
S. 278.....	am. No. 32, 1995; No. 5, 2001
S. 279.....	am. No. 32, 1995; No. 59, 1997; No. 34, 2000; No. 5, 2001
<b>Division 5</b>	
S. 281.....	am. No. 59, 1997; No. 45, 2005
<b>Division 6</b>	
S. 283.....	am. No. 34, 2000
<b>Part 5.6</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part 5.6.....	ad. No. 108, 2000 rs. No. 45, 2005
Heading to s. 285.....	am. No. 59, 1997; No. 45, 2005
S. 285.....	am. No. 32, 1995; Nos. 59 and 119, 1997; Nos. 108 and 172, 2000; No. 45, 2005; No. 68, 2007
Ss. 286–288.....	am. No. 59, 1997; No. 45, 2005
Heading to s. 289.....	am. No. 59, 1997; No. 45, 2005
Ss. 289, 290.....	am. No. 59, 1997; No. 45, 2005
S. 292.....	am. No. 59, 1997; No. 45, 2005
<b>Division 2</b>	
Heading to Div. 2 of Part 5.6.....	rs. No. 45, 2005
Div. 2 of Part 5.6.....	ad. No. 108, 2000
Ss. 292A, 292B.....	ad. No. 108, 2000 am. No. 45, 2005
S. 293.....	am. No. 32, 1995; No. 41, 1997 rep. No. 59, 1997
<b>Part 5.7</b>	
Ss. 294, 295.....	am. No. 59, 1997; No. 45, 2005
Heading to s. 296.....	am. No. 59, 1997; No. 45, 2005
S. 296.....	am. No. 59, 1997; No. 45, 2005
S. 298A.....	ad. No. 34, 2000 am. No. 45, 2005
<b>Part 5.8</b>	
Part 5.8.....	ad. No. 120, 2006
Ss. 298B–298D.....	ad. No. 120, 2006
<b>Chapter 6</b>	
S. 300.....	am. No. 32, 1995; No. 59, 1997; No. 45, 2005
S. 301.....	am. No. 32, 1995; No. 5, 2001
S. 302.....	am. No. 32, 1995 rep. No. 137, 2000
S. 303.....	am. Nos. 41 and 59, 1997; No. 45, 2005
Ss. 304, 305.....	am. No. 59, 1997; No. 45, 2005
S. 306.....	am. No. 137, 2000



**Table of Amendments**


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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 307.....	am. No. 4, 1994; No. 59, 1997; No. 45, 2005
S. 311.....	am. No. 59, 1997; No. 45, 2005
S. 312.....	am. No. 41, 1997
S. 313A.....	ad. No. 5, 2001
S. 313B.....	ad. No. 68, 2007
S. 314.....	am. No. 4, 1994; No. 32, 1995; No. 34, 2000
S. 314A.....	ad. No. 32, 1995 rs. No. 59, 1997
S. 315.....	am. No. 4, 1994; No. 32, 1995 rs. No. 34, 2000
<b>Schedule</b>	
Schedule.....	am. No. 4, 1994; No. 59, 1997; No. 45, 2005

**Table A**

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**Table A**

**Application, saving or transitional provisions**

*Radiocommunications Amendment Act 1997* (No. 41, 1997)

**Schedule 1**

**92 Continuity of section 60 determinations**

The amendments of section 60 of the *Radiocommunications Act 1992* made by this Schedule do not affect the continuity of a determination that was in force under that section immediately before the commencement of this item.

**93 Continuity of section 106 determinations**

The amendments of section 106 of the *Radiocommunications Act 1992* made by this Schedule do not affect the continuity of a determination that was in force under that section immediately before the commencement of this item.

**94 Continuity of section 293 determinations**

The amendments of section 293 of the *Radiocommunications Act 1992* made by this Schedule do not affect the continuity of a determination that was in force under that section immediately before the commencement of this item.

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*Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997* (No. 59, 1997)

**Schedule 2**

**21 Transitional—charge determinations**

- (1) This item applies to a determination that:
- (a) was in force under section 293 of the *Radiocommunications Act 1992* immediately before the commencement of this item; and

**Table A**

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- (b) related to a matter in relation to which expenses are incurred by the SMA under that Act or under regulations under that Act.
  - (2) The *Australian Communications Authority Act 1997* has effect, after the commencement of this item, as if:
    - (a) the determination had been made by the ACA under section 53 of that Act immediately after the commencement of this item; and
    - (b) each reference in the determination to the SMA were a reference to the ACA.
  - (3) This item does not prevent the variation or revocation of the determination.

**71 Transitional—procedures for making standards**

The amendments of section 163 of the *Radiocommunications Act 1992* made by this Schedule do not apply in relation to a standard made before 1 July 1998 if the SMA had taken any action in relation to the standard under that section before the commencement of this item.

**72 Transitional—section 186 of the Radiocommunications Act 1992**

- (1) This item applies to the amendment of section 186 of the *Radiocommunications Act 1992* made by this Schedule, being the amendment that omits the expression “sell or”.
- (2) The amendment does not imply that the expression “supply”, when used in a provision of the *Radiocommunications Act 1992*, does not include supply by way of sale.

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*Television Broadcasting Services (Digital Conversion) Act 1998* (No. 99, 1998)

**4 Industry action agenda**

- (1) Not later than 6 months after the commencement of this Act, the Minister for Communications, the Information Economy and the Arts, in consultation with the Minister for Industry, Science and Tourism, must cause to be prepared an industry action agenda to assist the development of the Australian broadcasting electronics industry.
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**Table A**

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- (2) An agenda prepared under subsection (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the Australian broadcasting electronics industry be efficient, competitive and responsive to the needs of the Australian community;
  - (b) the objective of encouraging investment in innovation and value-adding activities in the broadcasting electronics industry;
  - (c) the objective of providing effective support for Australian exporters of broadcasting electronics technology in gaining access to markets;
  - (d) the objective of encouraging technology transfers throughout the broadcasting electronics industry;
  - (e) the objective of establishing links between educational institutions and the broadcasting electronics industry to improve the skills base for the industry;
  - (f) the objective of promoting strategic commercial relationships between the Australian broadcasting electronics industry and international telecommunications industries.
- (3) An agenda prepared under subsection (1) is a disallowable instrument.

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*Australian Federal Police Legislation Amendment Act 2000* (No. 9, 2000)

**Schedule 3**

**20 Definition**

In this Part:

*commencing time* means the time when this Part commences.

**30 Amendment of the *Radiocommunications Act 1992***

The *Radiocommunications Act 1992* as in force at and after the commencing time applies to a certificate issued under section 305 of that Act at any time before the commencing time by a member or special member of the Australian Federal Police in the same way as it does to a certificate given under that section at or after the commencing time.

**34 Warrants or writs etc. may continue to be executed**

If, immediately before the commencing time, any warrant, writ, order, permission or other instrument (the *authority*) issued under a law of the Commonwealth, a State or a Territory could be executed by a person who was at that time a member, staff member or special member of the Australian Federal Police, the authority continues to be able to be executed at and after the commencing time by the person in his or her capacity as:

- (a) the Commissioner of the Australian Federal Police; or
- (b) a Deputy Commissioner of the Australian Federal Police; or
- (c) an AFP employee; or
- (d) a special member of the Australian Federal Police;

(all within the meaning of the *Australian Federal Police Act 1979* as in force at and after the commencing time).

Note: A person who is a member or staff member of the Australian Federal Police immediately before the commencing time is taken to be engaged as an AFP employee. Similarly, a person who is a special member of the Australian Federal Police immediately before the commencing time is taken to be appointed as a special member. See item 2 of this Schedule.

**35 Regulations dealing with matters of a transitional or saving nature**

- (1) The Governor-General may make regulations, not inconsistent with any other provision of this Schedule, prescribing matters of a transitional or saving nature in relation to the amendments made by Schedule 1 or 2.
- (2) Regulations made under this item within one year after the commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Radiocommunications Legislation Amendment Act 2000* (No. 34, 2000)

**Schedule 3****1 Income tax treatment of spectrum licences**

The amendments made by items 8 and 9 of Schedule 2 apply in relation to the issue of licences on or after 11 March 1998.

**Table A**

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**2 Amendments relating to the issue of licences**

The amendments made by items 11, 12, 14 and 15 of Schedule 2 apply in relation to the issue of licences after those items commence.

**3 Civil penalties**

The amendments made by items 22 and 23 of Schedule 2 apply in relation to all offences (whether alleged to have been committed before or after those items commence) in respect of which no penalty had yet been imposed as at the time of that commencement.

**4 Time tax becomes payable**

The amendments made by items 24, 25 and 26 of Schedule 2 apply in relation to the imposition of tax in respect of an instrument, if both:

- (a) the relevant anniversary of the issue of the instrument; and
- (b) the corresponding anniversary of the instrument coming into force;

occur after the commencement of those items.

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*Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000 (No. 108, 2000)*

**Schedule 2**

**51 Transitional—regulations**

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Part 1 of this Schedule.
  - (2) The Governor-General may make regulations for the purposes of subitem (1).
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**Table A**

*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2**

**418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

**419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.
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**Table A**

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*Broadcasting Services Amendment Act 2000* (No. 172, 2000)

**Schedule 1**

**36 Transitional—existing providers of international broadcasting services**

- (1) If a person was providing an international broadcasting service immediately before the commencement of this item, sections 121FG and 121FH of the *Broadcasting Services Act 1992* and paragraph 108(2)(da) of the *Radiocommunications Act 1992* do not apply to the provision of the service by the person at any time during the period:
- (a) beginning at the commencement of this item; and
  - (b) ending at whichever of the following times is applicable:
    - (i) if the person does not apply for an international broadcasting licence for the service within 30 days after the commencement of this item—the end of 30 days after the commencement of this item;
    - (ii) if the person applies for an international broadcasting licence for the service within 30 days after the commencement of this item, but an international broadcasting licence is not allocated to the person—the time when the person receives the relevant notification under subsection 121FB(3) or (7) or 121FD(6) of the *Broadcasting Services Act 1992*;
    - (iii) if the person applies for an international broadcasting licence for the service within 30 days after the commencement of this item and such a licence is allocated to the person—the time when the licence is allocated.

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*Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001* (No. 5, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.



**Table A**

- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Australian Crime Commission Establishment Act 2002* (No. 125, 2002)

**Schedule 2****226 Transitional regulations**

- (1) The Governor-General may make regulations prescribing matters of a transitional nature (including prescribing any saving or application provisions) arising out of the amendments made by this Schedule.
- (2) Despite subsection 48(2) of the *Acts Interpretation Act 1901*, regulations made under this item within 1 year after commencement of this item may commence on a day earlier than the day on which they are made, but not earlier than the commencement of this item.

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*Broadcasting Legislation Amendment (Digital Television) Act 2006*  
(No. 128, 2006)

**Schedule 1****28A Variation of national television conversion scheme**

- (1) This item applies to a variation by the ACMA of the national television conversion scheme if:
- (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) the variation is made within 30 days after the commencement of this item.
- (2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

**Table A**

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- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

**29 NBS transmitter licences issued under section 100B of the *Radiocommunications Act 1992***

- (1) This item applies to an NBS transmitter licence that:
- (a) was in force immediately before the commencement of this Schedule; and
  - (b) was issued under subsection 100B(1) of the *Radiocommunications Act 1992*.
- (2) To avoid doubt, the amendment of subsection 100B(1) of the *Radiocommunications Act 1992* made by this Schedule does not affect the continuity of the NBS transmitter licence.

**Schedule 2**

**93C Variation of program standards**

- (1) This item applies to a variation by the ACMA of a program standard if:
- (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:
    - (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
    - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Section 126 of the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

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**93D Variation of commercial television conversion scheme**

- (1) This item applies to a variation by the ACMA of the commercial television conversion scheme if:
  - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:
    - (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
    - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Clause 18 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

**93E Variation of national television conversion scheme**

- (1) This item applies to a variation by the ACMA of the national television conversion scheme if:
  - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:
    - (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
    - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.

**Table A**

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- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

**94 Transmitter licences issued under section 102 of the *Radiocommunications Act 1992***

- (1) This item applies to a transmitter licence that:
- (a) was in force immediately before 1 January 2007; and
  - (b) was issued under subsection 102(1) of the *Radiocommunications Act 1992*.
- (2) To avoid doubt, the amendment of subsection 102(1) of the *Radiocommunications Act 1992* made by this Schedule does not affect the continuity of the transmitter licence.

**95 Transmitter licences issued under section 102A of the *Radiocommunications Act 1992***

- (1) This item applies to a transmitter licence that:
- (a) was in force immediately before 1 January 2007; and
  - (b) was issued under subsection 102A(1) of the *Radiocommunications Act 1992*.
- (2) To avoid doubt, the amendment of subsection 102A(1) of the *Radiocommunications Act 1992* made by this Schedule does not affect the continuity of the transmitter licence.

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*Offshore Petroleum Amendment (Greater Sunrise) Act 2007* (No. 49, 2007)

**Schedule 1**

**97 Regulations**

- (1) The Governor-General may make regulations in relation to transitional matters arising out of the amendments made by this Act.
- (2) The Governor-General may make regulations making provision (including provision by way of modification or adaptation of any Act) for or in relation to matters consequential on amendments made by this Act.

**Table A**

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- (3) The Governor-General may make regulations that:
- (a) in the Minister's opinion, are necessary or convenient for giving effect to any provision of the Greater Sunrise unitisation agreement; and
  - (b) are not inconsistent with any amendment made by this Act.
- (4) In this item:  
***Greater Sunrise unitisation agreement*** has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

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*Broadcasting Legislation Amendment (Digital Radio) Act 2007* (No. 68, 2007)

**Schedule 1****183 Frequency allotment plan prepared under section 25 of the *Broadcasting Services Act 1992***

- (1) This item applies to a frequency allotment plan that:
- (a) was in force immediately before the commencement of this item; and
  - (b) was prepared under subsection 25(1) of the *Broadcasting Services Act 1992*.
- (2) The amendments of:
- (a) section 25 of the *Broadcasting Services Act 1992*; and
  - (b) section 31 of the *Radiocommunications Act 1992*;
- made by this Schedule do not affect the continuity of the frequency allotment plan.

**184 Instrument made under subsection 31(1) of the *Radiocommunications Act 1992***

- (1) This item applies to an instrument that:
- (a) was in force immediately before the commencement of this item; and
  - (b) was made under subsection 31(1) of the *Radiocommunications Act 1992*.
- (2) The amendments of:
- (a) section 31 of the *Radiocommunications Act 1992*; and

**Table A**

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(b) section 25 of the *Broadcasting Services Act 1992*;  
made by this Schedule do not affect the continuity of the instrument.

**186 Pre-commencement transmitter licences issued under the *Radiocommunications Act 1992***

- (1) This item applies to a transmitter licence that:
- (a) was in force immediately before the commencement of this item; and
  - (b) authorises operation of a radiocommunications transmitter within a part of the spectrum designated under subsection 31(1A) of the *Radiocommunications Act 1992*.
- (2) The amendments of section 31 of the *Radiocommunications Act 1992* made by this Schedule do not affect:
- (a) the continuity of the licence; or
  - (b) the operations authorised by the licence; or
  - (c) the renewal of the licence.