Radiocommunications Act 1992

Act No. 174 of 1992 as amended

This compilation was prepared on 7 January 2004
taking into account amendments up to Act No. 148 of 2003

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

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

Prepared by the Office of Legislative Drafting,
Attorney-General’s Department, Canberra
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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

(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.

ABA means the Australian Broadcasting Authority established under the Broadcasting Services Act 1992.

ACA means the Australian Communications Authority.

ACCC means the Australian Competition and Consumer Commission.

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.


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

**certificate** means:
(i) a certificate of proficiency; or
(ii) a compliance certificate; or
Section 5

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

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

change, in relation to information in the Register, means any one or more of the following:
(a) the addition of matter to the information;
(b) the alteration of matter included in the information;
(c) the deletion of matter from the information.

class licence means a class licence issued under Part 3.4.

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

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

community broadcasting service has the same meaning as in the Broadcasting Services Act 1992.
conciliator 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 102 or 102A; or
(b) an NBS transmitter licence; or
(c) a prescribed transmitter licence.

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 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).

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

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.
Section 5

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

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

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

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

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

*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.

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

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

NBS transmitter licence means a transmitter licence for a transmitter that is for use for transmitting, to the public, a national broadcasting service within the meaning of the Broadcasting Services Act 1992.

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

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

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
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(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).

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.

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 ACA 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
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 ACA for the purposes of
this paragraph; or
(b) a radiocommunications receiver of a kind specified in a
written determination made by the ACA 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 ACA
determines in writing to be a radiocommunications
transmitter for the purposes of this Act.
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(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 ACA 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 ACA 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.

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

(1) For the purposes of this Act, a **device** is:
Section 9A

(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.
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Section 9B

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.

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  ACA determinations about space objects

(1) Despite the definition of space object in section 5, the ACA 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.

(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

(c) foreign space objects, in the circumstances specified in a written determination by the ACA; and

(d) anything to which this Act extends because of section 17.
Section 17

(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 Adjacent areas

(1) Subject to subsection (2), this Act applies in relation to the adjacent 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 adjacent 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 adjacent area for a reason directly or indirectly connected with such exploration or exploitation.

(3) In this section:

   adjacent area, in relation to a State or Territory, has the same meaning as in the Petroleum (Submerged Lands) Act 1967.

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.
Section 19

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
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(ix) the making of astronomical or meteorological observations; or

(b) a measurement transmission made by or on behalf of the Commonwealth, an authority or instrumentality of the Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or

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

(d) any other measurement transmission;

in the same way as it applies in relation to radiocommunication.

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

(2) This Act applies in relation to:

(a) a measurement transmitter used in the course of, or in relation to:

(i) trade and commerce between Australia and places outside Australia; or

(ii) trade and commerce among the States; or

(iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or

(iv) any trading activity of a trading corporation, or any other activity of the corporation carried on for the purpose of its trading activities; or

(v) any other activity carried on by a trading corporation; or

(vi) any financial activity of a financial corporation, or any other activity of the corporation carried on for the purpose of its financial activities; or

(vii) any other activity carried on by a financial corporation; or

(viii) the operation of lighthouses, lightships, beacons or buoys; or

(ix) the making of astronomical or meteorological observations; or

(b) a measurement transmitter used by or on behalf of the Commonwealth, an authority or instrumentality of the Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or
Section 20

(c) a measurement transmitter in a Territory or a place outside Australia; or
(d) any other measurement transmitter;
in the same way as it applies in relation to a radiocommunications transmitter.

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

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

(4) In this section:
financial corporation means a financial corporation to which paragraph 51(xx) of the Constitution applies, and includes a body corporate formed within the limits of Australia that carries on as its sole or principal business the business of:
(a) banking within the meaning of paragraph 51(xiii) of the Constitution; or
(b) insurance within the meaning of paragraph 51(xiv) of the Constitution.

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

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

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

trading corporation means a trading corporation to which paragraph 51(xx) of the Constitution applies.
21 Astronomical and meteorological observations

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

22 Lighthouses etc.

This Act applies to a radio emission in connection with the operation of lighthouses, lightships, beacons and buoys in the same way as it applies to a radiocommunication.
Division 4—Matters to which this Act does not apply

23 Foreign space objects, vessels and aircraft

(1) This Act does not apply to foreign space objects, except in accordance with a determination by the ACA 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:
Section 25

(a) that is part of the Defence Force or part of the Department of Defence; and
(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.
Section 27

(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

(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:
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(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 ACA for the purposes of this paragraph; or

(c) a fire-fighting, civil defence or rescue organisation; or

(d) an ambulance service; or

(e) the Royal Flying Doctor Service; or

(f) any other organisation whose sole or principal purpose involves securing the safety of persons during an emergency.

(2) The ACA 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 ACA

Parts 3.1, 4.1 and 4.2 do not apply to anything done by the ACA 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.
Part 2.1—Spectrum plans and frequency band plans

30 Spectrum plans

(1) The ACA may, by written instrument, prepare a spectrum plan.

(2) A spectrum plan must:
   (a) divide into such number of frequency bands as the ACA thinks appropriate so much of the spectrum as the ACA 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 consultation with the ACA and the ABA, and in accordance with the spectrum plan, by written instrument:
   (a) designate a part of the spectrum as being primarily for broadcasting purposes; and
   (b) refer it to the ABA for planning under Part 3 of the Broadcasting Services Act 1992.

(2) If a subsection (1) designation is in force in relation to a particular part of the spectrum, the ACA and the ABA may make a written agreement allowing licences, or specified kinds of licences, to be
issued in specified circumstances in relation to that part of the spectrum or to a specified part or parts of that part of the spectrum.

(3) The ACA and the ABA may agree in writing to vary or revoke a subsection (2) agreement.

(4) In addition, the ABA may revoke a subsection (2) agreement if the ABA considers that the agreement is preventing the ABA from properly performing its planning functions under the *Broadcasting Services Act 1992*.

(5) Before revoking the agreement under subsection (4), the ABA must consult with the ACA and with the holders of any licences that were issued in accordance with the agreement.

(6) A subsection (2) agreement must not be inconsistent with the spectrum plan.

(7) If a subsection (2) agreement is made, varied or revoked, the ACA must publish in the *Gazette* a notice stating:
   (a) that the agreement has been made, varied or revoked; and
   (b) the places where copies of the agreement, as made or varied, can be purchased.

32 Frequency band plans

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

(2) However, the ACA may only prepare a frequency band plan in relation to a frequency band within a part of the spectrum referred to the ABA under subsection 31(1) if:
   (a) the frequency band is within a part of the spectrum that is covered by an agreement under subsection 31(2); and
   (b) the plan is not inconsistent with any frequency allotment plan prepared under section 25 of the *Broadcasting Services Act 1992* that applies to the frequency band, or to any part of it.

(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 ACA 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.
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(3) A person may, not later than the day specified under paragraph (1)(c), make representations to the ACA about the draft plan.

(4) The ACA:
   (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 ACA is satisfied that the preparation of the plan is a matter of urgency.

34 Revocation and variation of plans

(1) The ACA 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.

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 ACA, give to the ACA 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 ACA 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 ACA must give members of the public reasonable opportunity to make representations to the ACA 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 ABA under subsection 31(1), unless the part of the spectrum that the notice relates to is covered by an agreement 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
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(c) the part and area covered by the declaration overlap, to any extent, with the part and area covered by the notice;
then:
(d) the notice; and
(e) any conversion plan prepared by the ACA on receiving the notice; and
(f) any marketing plan prepared by the ACA 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 ACA 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 ACA issuing the spectrum licence.

37 Preparation or variation of frequency band plans

The ACA 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 ACA 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
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(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 ACA 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 ACA 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:
Section 39A

(a) the procedures to be followed for issuing spectrum licences in accordance with the plan; and
(b) the timetable for issuing spectrum licences in accordance with the plan; and
(c) how the spectrum dealt with under the plan is to be apportioned amongst the spectrum licences to be issued; and
(d) how much of the spectrum dealt with under the plan is to be reserved for public or community services; and
(e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

(5) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated 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 ACA 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 ACA 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 ACA about the draft plan.
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(2) This section does not limit any other action the ACA may take in consulting with persons about a conversion plan or a marketing plan.

41 Delays in preparing plans

(1) If the ACA 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 within the part of the spectrum in respect of which the plan is to be prepared, the ACA 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 ACA 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 ACA 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 ACA must take all reasonable steps to ensure that members of the public can obtain copies as set out in the notice.

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44 Expressions of interest in spectrum licences

This Part does not prevent the ACA, prior to preparing a conversion plan or a marketing plan, from seeking from members of the public, in any way the ACA thinks appropriate, expressions of interest in being issued with spectrum licences in accordance with such a plan.
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.
Is the situation one of emergency? (See section 49)

Yes

No

Is the operation of the radiocommunications device authorised by a spectrum licence? (See Part 3.2)

Yes

No

Is it authorised by an apparatus licence? (See Part 3.3)

Yes

No

Is it authorised by a class licence? (See Part 3.4)

Yes

No

SECTION 46 MAY PROHIBIT OPERATION OF THE RADIOCOMMUNICATIONS DEVICE.
SECTION 47 MAY PROHIBIT POSSESSION OF THE DEVICE FOR THE PURPOSES OF OPERATION.
SECTION 50 MAY ALLOW CIVIL PROCEEDINGS TO BE TAKEN.
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.
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(3) A reference in this Division to a person having a radiocommunications device in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

49 Emergency operation etc. of radiocommunications devices

(1) A person does not contravene section 46 or 47 by operating a radiocommunications device, or having a radiocommunications device in his or her possession, in the reasonable belief that the operation or possession was necessary for the purpose of:

(a) securing the safety of a vessel, aircraft or space object that was in danger; or
(b) dealing with an emergency involving a serious threat to the environment; or
(c) dealing with an emergency involving risk of death of, or injury to, persons; or
(d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

(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 ACA 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 ACA 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 ACA 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.
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(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 ACA about the proposed spectrum licence.

(2) The ACA:
   (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 ACA 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 ACA 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 ACA must issue the spectrum licence to the licensee if, on or before the day specified in the offer, the licensee gives the ACA a written notice:
   (a) accepting the offer; and

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(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 ACA, on or before the day specified in the offer, that the licensee does not accept the offer; or
   (b) fails to give the ACA notice under section 57 before that day;
the ACA 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 ACA 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 ACA must ensure that, in issuing a spectrum licence under this Subdivision, the ACA 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 ACA must also ensure that it 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.

(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 ACA 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 ACA to give specified information to the ACCC.

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

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

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

(11) A direction under subsection (10) must be published in the Gazette.

(12) The ACA 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 ACA 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 ACA 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 ACA may allocate such a spectrum licence in accordance with the procedures determined under section 60 but not otherwise.
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(2) The ACA must issue the spectrum licence to the person to whom it is allocated if the person:
   (a) pays to the ACA the spectrum access charge for issuing the licence; or
   (b) reaches an agreement with the ACA 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 ACA 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 ACA must ensure that, in issuing a spectrum licence under this Subdivision, the ACA 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.
Section 65

(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:
   (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.
Section 67

(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 53 of the Australian Communications Authority Act 1997; 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
Chapter 3  Licensing of radiocommunications  
Part 3.2  Spectrum licences  
Division 1  Issuing spectrum licences  

Section 68A  

(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 ACA 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.  

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 ACA 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.
Section 71

71 Other conditions of spectrum licences

(1) The ACA may include such other conditions in a spectrum licence as it thinks fit.

(2) The ACA’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 ACA 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 ACA 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.
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Part 3.2  Spectrum licences
Division 3  Suspending and cancelling spectrum licences

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Division 3—Suspending and cancelling spectrum licences

74 Application of this Division

This Division applies to a spectrum licence if the ACA 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 ACA 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 ACA 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
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(b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or
(c) in any other case—on the expiration of 28 days after the suspension.

(2) If:
(a) the notice of suspension specifies a day as the day on which the suspension of the spectrum licence ceases; and
(b) that day occurs before the day fixed under subsection (1); the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.

(3) In subsection (1):

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

77 Cancelling spectrum licences

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

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

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

(1) The ACA 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 ACA 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 ACA must issue such a spectrum licence without the person:
   (a) paying to the ACA the spectrum access charge for issuing the licence; or
   (b) reaching an agreement with the ACA 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 ACA 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 ACA such information about the assignment as the ACA 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 ACA 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;
Section 88

(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 ACA 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 ACA may resume spectrum licences by agreement

(1) The ACA 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 ACA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and
   (b) the ACA 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 ACA may resume spectrum licences compulsorily

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

(2) The ACA must not resume the licence unless:
   (a) the Minister has given his or her written approval for the resumption; and
   (b) the ACA 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 ACA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and
   (b) the ACA 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.

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 ACA entering into an agreement under section 89 under which a spectrum licence or a part of a spectrum licence is resumed even though the ACA 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 ACA 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 ACA 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 ACA may determine, by written instrument, the types of
    transmitter licences and the types of receiver licences that it may
    issue.

(2) The ACA must not issue an apparatus licence that is not a
    transmitter licence or receiver licence of a type so determined.
Section 98

(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.
Division 2—Issuing apparatus licences

99 Applications for apparatus licences

(1) A person may apply in writing to the ACA for an apparatus licence of the type specified in the application.

(2) The application must be in a form approved by the ACA.

(3) The ACA may approve different forms for the different types of apparatus licence.

100 Issuing apparatus licences

(1) Subject to sections 100B, 102, 102A and 102B, upon such application being made, the ACA may issue to the applicant an apparatus licence of the type applied for.

(1A) The ACA 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 ACA must not issue an apparatus licence authorising operation of a radiocommunications transmitter within a part of the spectrum designated under subsection 31(1) unless:

(a) the issue of the licence is in accordance with a decision of the ABA under subsection 34(1) or (3) of the Broadcasting Services Act 1992; or

(b) the issue of the licence is in accordance with an agreement made between the ACA and the ABA under subsection 31(2) of this Act.

(3) Subsection (2) does not prevent the ACA 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 ACA 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 ACA must not refuse to issue the transmitter licence unless the ACA is satisfied that there are exceptional circumstances that warrant the refusal.

(4) In deciding whether to issue an apparatus licence, the ACA 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.

76 Radiocommunications Act 1992
(4A) The ACA, 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:

(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 ACA 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 ACA must have regard to the following additional matters:

(a) if a licence that the ACA 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 ACA 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 ACA 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 the national broadcasting service 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.

(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 ACA 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 ACA 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 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.

(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
Section 100D

(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 multi-channelled 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, another national television broadcasting service; and

(d)  the other service is a multi-channelled national television broadcasting service;
the licence is also taken to authorise the operation of the
transmitter or transmitters concerned for transmitting the
multi-channelled national television broadcasting service in digital
mode using those channels.

(2) In this section:

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

national broadcaster has the same meaning as in the Broadcasting

national broadcasting service has the same meaning as in

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

(a) submit to the ACA the radiocommunications device specified
in the notice, at a time and place specified in the notice, for
testing; or

(b) permit the ACA, 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 ABA allocates a temporary community broadcasting licence (the related licence) to a person, then the ACA may issue to the person, upon application by the person under section 99, a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the community broadcasting service in accordance with the related licence.

(2) Subsections 100(4) to (8) apply for the purposes of this section.

102 Transmitter licences for certain broadcasting services

(1) 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 ACA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service 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.

(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 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 another commercial television broadcasting service (the additional service); and
(f) the first service and the additional service 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 ACA is not required to issue to the person a new transmitter licence in relation to the additional service; and
(h) the first transmitter licence is taken to authorise the operation of the transmitter or transmitters concerned for transmitting the additional service in accordance with the additional BSA licence.

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

(1) If the ACA 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 ACA must issue to the person a transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service 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 another commercial television broadcasting service (the additional service); and

(f) the first service and the additional service 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 the additional service in accordance with the additional BSA licence.

(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.

102B Datacasting transmitter licences

(1) The ACA must not issue a datacasting transmitter licence to a person unless the person is a qualified company.

(2) If:
   (a) the applicant for a datacasting transmitter licence is a qualified company; and
   (b) the licence is not to be issued in accordance with a price-based allocation system determined under section 106;
the ACA must, within 14 days of receiving the application, refer the application to the ABA.

(3) If:
   (a) an application for a datacasting transmitter licence is referred to the ABA under subsection (2); and
   (b) the ABA is satisfied that the issue of the licence would result in a breach of the BSA control rules;
the ABA may, by written notice given to the ACA within 30 days after the application was referred to the ABA, direct the ACA not to issue the licence to the applicant, and the ACA must comply with the direction.
(4) If:
   (a) an application for a datacasting transmitter licence is referred to the ABA under subsection (2); and
   (b) the ABA is satisfied that the issue of the licence would not result in a breach of the BSA control rules;

   the ABA must, by written notice given to the ACA, inform the ACA accordingly.

(5) If an application for a datacasting transmitter licence is referred to the ABA under subsection (2), the ACA must not issue, or refuse to issue, the licence until whichever of the following first happens:
   (a) the ACA receives a notice from the ABA in relation to the application under subsection (3) or (4);
   (b) the end of 30 days after the application was referred to the ABA.

(6) If the ACA refuses to issue a datacasting transmitter licence because of a direction under subsection (3), the notice of refusal must be accompanied by a copy of the direction.

(7) For the purposes of this section, the issue of a datacasting transmitter licence results in a breach of the BSA control rules if, and only if, the issue of the licence would result in a breach of:
   (a) section 54A or 56A of the Broadcasting Services Act 1992;
   or
   (b) clause 41 of Schedule 6 to the Broadcasting Services Act 1992.

103 Duration of apparatus licences

(1) An apparatus licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.

(2) Subject to Division 6, an apparatus licence (other than an apparatus licence issued under section 101A, 102 or 102A or a datacasting transmitter licence) remains in force for the period specified in the licence.

(3) The licence may specify any period not exceeding 5 years.
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(4) A transmitter licence issued under section 101A or 102A:
   (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 section 102:
   (a) subject to paragraphs (b) and (c), 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; 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.

(5) Subject to Divisions 6 and 6A, a datacasting transmitter licence remains in force for 10 years.

104 Compliance with plans

(1) Subject to subsections (2) and (3), the ACA 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 ACA 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 ACA 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 ACA 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 ACA may issue to:
   (i) any one person; or
   (ii) a specified person; or
(b) impose limits on the number of transmitter licences that the ACA 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 ACA may defer the issue of the licence until the relevant frequencies become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.

(6) A system so determined may require the ACA to give specified information to the ACCC.

(6A) A system so determined may provide that, before a datacasting transmitter licence is issued in accordance with the system, the ABA is to be given an opportunity to direct the ACA not to issue the licence if the ABA is satisfied that the issue of the licence would result in a breach of:
   (a) section 54A or 56A of the Broadcasting Services Act 1992; or
(b) clause 41 of Schedule 6 to the *Broadcasting Services Act 1992*.

(6B) The ACA must comply with a direction given as mentioned in subsection (6A).

(6C) If the ACA refuses to issue a datacasting transmitter licence because of a direction given as mentioned in subsection (6A), the notice of refusal must be accompanied by a copy of the direction.

(7) Subsections (2), (3), (4), (5), (6) and (6A) do not, by implication, limit subsection (1).

(8) The ACA must not determine a system imposing a limit as mentioned in subsection (3) unless the ACA is directed to do so by the Minister under subsection (9).

(9) The Minister may give written directions to the ACA in relation to the exercise of the power to determine procedures imposing a limit as mentioned in subsection (3).

(10) A direction under subsection (9) must be published in the *Gazette*.

(11) The ACA must exercise its powers under subsection (1) in a manner consistent with directions given by the Minister under subsection (9).

(12) Before determining a price-based allocation system under subsection (1), the ACA 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 ACA 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

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(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 ACA a written direction requiring the ACA, 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 ACA 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 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 53 of the
          Australian Communications Authority Act 1997; 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 ACA 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 transmitter licences issued under
   section 101A, 102 or 102A or to datacasting 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

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(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 transmitter licences issued under section 101A, 102 or 102A or to datacasting 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 ABA under section 33 of the Broadcasting Services Act 1992;
   (e) such conditions (if any) as the ACA 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 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 53 of the Australian Communications Authority Act 1997; 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 ABA 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 ABA under section 33 of the Broadcasting Services Act 1992;
(f) such other conditions as are specified in the licence.

(2) The conditions of the licence, 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 53 of the Australian Communications Authority Act 1997; 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, 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 ABA under section 33 of the Broadcasting Services Act 1992;
(fa) a condition that the licensee, and any person so authorised, must comply with any regulations made for the purposes of clause 36B of Schedule 4 to the Broadcasting Services Act 1992;
(g) a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 1 year.
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after the allocation of the licence or within such longer period
as is notified in writing by the ABA;

(ga) a condition that the licensee, or any person so authorised, will
transmit a datacasting service during the whole or a part of
each day in the period:

(i) beginning on the commencement referred to in
paragraph (g); and

(ii) ending immediately before 1 January 2007;
(for this purpose, disregard a particular day if, in that period,
there are fewer than:

(iii) 180 days; or

(iv) if the ABA, by writing, notifies a greater number of
days—that greater number of days;
on which there has been no transmission of a datacasting
service under the licence);

(h) a condition that the licensee, and any person so authorised,
must not operate, or permit the operation of, such a
transmitter before 1 January 2007 for transmitting a
datacasting service unless there is in force a BSA datacasting
licence authorising the provision of that service;

(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 ABA 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;

(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 ABA must not notify a longer period for the purposes of
paragraph (1)(g) unless the ABA is satisfied that there are
exceptional circumstances that warrant the longer period.
(1B) The ABA must not notify a greater number of days for the purposes of paragraph (1)(ga) unless the ABA is satisfied that there are exceptional circumstances that warrant the greater number of days.

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).
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 (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.
110 Conditions relating to interference

The conditions that may be specified in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109A(1)(k) 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 ACA may, by notice in writing given to the licensee of an apparatus licence:

(a) impose one or more further conditions to which the licence is subject; or

(b) revoke or vary any condition imposed under paragraph (a); or

(c) revoke or vary any condition specified under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109A(1)(k); or

(d) if the licence is a transmitter licence, other than a licence issued under section 101A, 102 or 102A or a datacasting transmitter licence—vary a condition of the kind referred to in paragraph 108(2)(a), (b) or (c).

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

(2) The notice given under subsection (1) must specify that:

(a) the licensee may request a statement of reasons for the change; and

(b) a request must be made within 28 days of receipt of the notice.
(3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.

(4) If the ACA receives a request in accordance with subsection (3), the ACA must give the person a statement of reasons within 28 days of receipt of that request.

(5) If the ACA is required, under a scheme in force under clause 6 or 19 of Schedule 4 to the Broadcasting Services Act 1992, to vary the conditions of a transmitter licence, the ACA must, by written notice given to the licensee, vary those conditions accordingly.

112 Guidelines relating to conditions etc.

(1) The ACA 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 ACA 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.
Divison 4—Third party users

114 Licensees may authorise third party users

(1) Subject to subsections (2), (3), (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 ACA 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.

(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 ABA a written notice stating the licensee’s intention to authorise the person.

(3C) If:
   (a) the ABA receives a notice of intention under subsection (3B); and
   (b) the ABA is satisfied that the authorisation would result in a breach of the BSA control rules;
the ABA may, by written notice given to the licensee within 30 days after the notice of intention was sent to the ABA, 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 ABA receives a notice of intention under subsection (3B); and
(b) the ABA is satisfied that the authorisation would not result in a breach of the BSA control rules;
the ABA must, by written notice given to the licensee, inform the licensee accordingly.

(3F) If the licensee gives a notice of intention to the ABA 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 ABA 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 ABA.

(4) Authorising other persons does not prevent the licensee doing anything in accordance with the licence.

(5) For the purposes of this section, an authorisation by the licensee of a datacasting transmitter licence results in a breach of the BSA control rules if, and only if, the authorisation would result in a breach of:

(a) section 54A or 56A of the Broadcasting Services Act 1992;
or
(b) clause 41 of Schedule 6 to the Broadcasting Services Act 1992.
Chapter 3 Licensing of radiocommunications
Part 3.3 Apparatus licences
Division 4 Third party users

Section 114A

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.

115 Determinations limiting authorisation of third party users

(1) The ACA 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 ACA is satisfied that a person authorised under section 114 has contravened a condition of the licence to which the authorisation relates, the ACA 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
Section 118

(c) a notice under subsection 126(1) or 128C(2) suspending the licence; or
(d) a notice under subsection 128(1) or 128B(1) or 128D(2) 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 5—Qualified operators

119 ACA to determine the need for qualified operators

The ACA 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 ACA for a certificate of proficiency.

(2) The application must be in a form approved by the ACA.

121 Issuing certificates of proficiency

(1) Subject to section 122, the ACA 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 ACA 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 ACA must not issue a certificate of proficiency unless:
Section 122A

(a) the ACA 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 ACA:
   (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 ACA; or
   (b) a body or organisation approved by the ACA, by written instrument, for the purposes of this section; or
   (c) an examination approved by the ACA, by written instrument, for the purposes of this section.

   minimum age, in relation to a class of certificates, means the age that the ACA, 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 ACA may, by writing, delegate the power to issue a certificate of proficiency under section 121 to a body or organisation approved by the ACA as mentioned in paragraph (b) of the definition of approved examination in subsection 122(2).

(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 to the ACA for a final decision.

(3) The power conferred on the ACA by subsection (1) is in addition to the powers conferred by section 238 of this Act and section 49 of the Australian Communications Authority Act 1997.

110 Radiocommunications Act 1992
123 Re-examination of qualified operators

(1) If, at any time:
   (a) the ACA 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 ACA 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 ACA 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 ACA 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 ACA must have regard in deciding whether to issue a certificate of proficiency;
      (ii) whether the ACA 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 ACA 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 ACA subsequently cancels the certificate;

the person must not fail to return the certificate to the ACA, 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 ACA 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), (h), (i) 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, 102 or 102A.

126 Suspending apparatus licences

(1) The ACA 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 ACA 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:
   
   (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 ACA may, by written notice given to the licensee, cancel the apparatus licence.

   Note: Cancelations of apparatus licences are reviewable under Part 5.6.

(2) The notice must give the reasons for cancelling the licence.
Subdivision B—International broadcasting services

128A Application of this Subdivision

This Subdivision applies to a transmitter licence if:

(a) the licence authorises the operation of a radiocommunications transmitter for transmitting one or more international broadcasting services; and

(b) each international broadcasting licence that authorised the provision of those international broadcasting services has been surrendered or cancelled.

128B Cancelling transmitter licences

(1) The ACA 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: ABA direction

128C  Suspending datacasting transmitter licences

(1) If the ABA 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), (h), (i) or (j) or subsection 109A(2) or (3), the ABA may, by written notice given to the ACA, direct the ACA to suspend the licence for the period specified in the direction.

(2) If the ACA is given a direction under subsection (1), the ACA must:
   (a) by written notice given to the licensee, suspend the licence; and
   (b) specify in the notice of suspension, as the day on which the suspension ceases, the first day after the end of the period specified in the direction.

Note: A direction is reviewable under Part 5.6.

(3) A notice under subsection (2) must be accompanied by a copy of the direction under subsection (1).

(4) The ABA may, at any time, by written notice given to the ACA, direct the ACA to revoke the suspension of the licence concerned.

(5) The ACA must comply with a direction under subsection (4).

(6) 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

(1) If the ABA 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), (h), (i) or (j) or subsection 109A(2) or (3), the ABA may, by written notice given to the ACA, direct the ACA to cancel the licence.

(2) If the ACA is given a direction under subsection (1), the ACA must, by written notice given to the licensee, cancel the licence.

Note: A direction is reviewable under Part 5.6.

(3) A notice under subsection (2) must be accompanied by a copy of the direction under subsection (1).

128E  Stay of proceedings relating to suspension or cancellation of datacasting transmitter licence

(1) For the purposes of this section, an eligible decision is:
   (a) a decision under subsection 128C(1) to give a direction requiring the ACA to suspend a datacasting transmitter licence on the grounds that there has been a contravention of the condition of the licence set out in paragraph 109A(1)(h); or
   (b) a decision under subsection 128C(2) to suspend a datacasting transmitter licence in compliance with a direction covered by paragraph (a) of this subsection; or
   (c) a decision under subsection 128D(1) to give a direction requiring the ACA to cancel a datacasting transmitter licence on the grounds that there has been a contravention of the condition of the licence set out in paragraph 109A(1)(h); or
   (d) a decision under subsection 128D(2) to cancel a datacasting transmitter licence in compliance with a direction covered by paragraph (c) of this subsection.
Division 6A Suspending and cancelling datacasting transmitter licences: ABA direction

Section 128E

(2) An order must not be made under paragraph 15(1)(a) or 15A(1)(a) of the Administrative Decisions (Judicial Review) Act 1977 in relation to an eligible decision if:
   (a) the order has the effect of suspending the operation of the eligible decision for more than 3 months; or
   (b) the order and any previous order or orders made under the paragraph concerned have the combined effect of suspending the operation of the eligible decision for more than 3 months.

(3) An order must not be made under paragraph 15(1)(b) or 15A(1)(b) of the Administrative Decisions (Judicial Review) Act 1977 in relation to an eligible decision if:
   (a) the order has the effect of staying particular proceedings under the eligible decision for more than 3 months; or
   (b) the order and any previous order or orders made under the paragraph concerned have the combined effect of staying particular proceedings under the eligible decision for more than 3 months.

(4) If:
   (a) a person applies to the Federal Court under subsection 39B(1) of the Judiciary Act 1903 for a writ or injunction in relation to an eligible decision; and
   (b) an order could be made staying, or otherwise affecting the operation or implementation of, the eligible decision pending the finalisation of the application;
   such an order must not be made if:
   (c) the order has the effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months; or
   (d) the order and any previous order or orders covered by paragraph (b) have the combined effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months.

(5) If:
   (a) a person applies to the Administrative Appeals Tribunal for review of an eligible decision; and
Section 128E

(b) an order could be made under subsection 41(2) of the Administrative Appeals Tribunal Act 1975 staying, or otherwise affecting the operation or implementation of, the eligible decision;

such an order must not be made if:

(c) the order has the effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months; or

(d) the order and any previous order or orders covered by paragraph (b) have the combined effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months.
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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, 102 or 102A) 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 ACA for the licence to be renewed.

(2) The application must be in a form approved by the ACA.

(3) The ACA may approve different forms for renewal of different types of apparatus licence.

130 Renewing apparatus licences

(1) When an application is made, the ACA 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 ACA 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 ACA 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 ACA:
   (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
Renewing apparatus licences

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(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 ACA 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 ACA:

(a) refuses to renew the licence; or

(b) renews the licence but not on the same conditions;

the ACA 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 ACA receives a request in accordance with subsection (7), it must give the person a statement of reasons within 28 days of receipt of the request.

131 Application of other provisions

(1) Section 101, subsections 103(2) and (3) 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 ACA for the licence to be transferred to another person.

(2) The application must be in a form approved by the ACA and must be signed by both the licensee and the proposed transferee.

(3) The ACA 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.

131AB Transfer of apparatus licences

(1) Subject to sections 131AC and 131ACA, when an application is made, the ACA may transfer the licence into the name of the transferee.

(2) In deciding whether to transfer the licence, the ACA:
   (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.
Section 131AC

(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 ACA 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

(1) The ACA must not transfer a datacasting transmitter licence to a person unless the person is a qualified company.

(2) If the proposed transferee of a datacasting transmitter licence is a qualified company, the ACA must, within 14 days after receiving the relevant application, refer the relevant application to the ABA.

(3) If:
   (a) an application for the transfer of a datacasting transmitter licence is referred to the ABA under subsection (2); and
   (b) the ABA is satisfied that the transfer of the licence would result in a breach of the BSA control rules;
the ABA may, by written notice given to the ACA within 30 days after the application was referred to the ABA, direct the ACA not to transfer the licence to the proposed transferee, and the ACA must comply with the direction.
(4) If:
(a) an application for the transfer of a datacasting transmitter licence is referred to the ABA under subsection (2); and
(b) the ABA is satisfied that the transfer of the licence would not result in a breach of the BSA control rules;
the ABA must, by written notice given to the ACA, inform the ACA accordingly.

(5) If an application for the transfer of a datacasting transmitter licence is referred to the ABA under subsection (2), the ACA must not transfer, or refuse to transfer, the licence until whichever of the following first happens:
(a) the ACA receives a notice from the ABA in relation to the application under subsection (3) or (4);
(b) the end of 30 days after the application was referred to the ABA.

(6) If the ACA refuses to transfer a datacasting transmitter licence because of a direction under subsection (3), the notice of refusal must be accompanied by a copy of the direction.

(7) For the purposes of this section, the transfer of a datacasting transmitter licence results in a breach of the BSA control rules if, and only if, the transfer of the licence would result in a breach of:
(a) section 54A or 56A of the Broadcasting Services Act 1992;
or
(b) clause 41 of Schedule 6 to the Broadcasting Services Act 1992.
Section 131AE

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 ACA 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 ACA.

131AF Issuing certificates

(1) After considering an application under section 131AE, the ACA 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 ACA will be disposed to issue the transmitter licence.
In deciding whether to issue a provisional international broadcasting certificate, the ACA:

(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 ACA considers relevant.

If the ACA refuses to issue a provisional international broadcasting certificate to a person, the ACA must give written notice of the refusal to the person, together with a statement of its reasons.

131AG Duration of certificates

A provisional international broadcasting certificate comes into force on the day on which it was issued and remains in force for 240 days.

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 ACA may issue class licences

(1) The ACA 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 ACA 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 ACA 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 ACA may, by notice published in the *Gazette*, revoke a class licence.

### 136 Consultation on variations and revocations

(1) Before varying a class licence, the ACA 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.
Section 137

(2) Before revoking a class licence, the ACA 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
(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 ACA about the proposed variation or revocation.

(4) The ACA 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 ACA is satisfied that the variation or revocation is a matter of urgency.

137 Compliance with plans

The ACA 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 ACA 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 ACA 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 ACA.

141 ACA to advise on the operation of radiocommunications devices

(1) The ACA 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 ACA’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 ACA 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 ACA.

(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 ACA 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 ACA determines, in writing, about the conditions of spectrum licences;
    (d) such details as the ACA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under spectrum licences;
    (e) such details as the ACA determines, in writing, about radiocommunications devices that are operated under spectrum licences.

(2) The ACA may include in the Register such other details about spectrum licences as it thinks necessary or convenient for the purposes of this Act.
145 Refusal to register radiocommunications transmitters for operation under spectrum licences

(1) The ACA 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 ACA 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 ACA 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 ACA may require that, before such details are included in the Register, there be presented to the ACA 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 ACA 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 ACA must, as soon as practicable, make the changes to the information in the Register about a spectrum licence that the ACA considers are necessary or convenient for taking into account:
Section 147

(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 ACA 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 ACA has been given the information required under section 86; and
(b) the ACA has been paid the appropriate charge fixed by determination made under section 53 of the Australian Communications Authority Act 1997.

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 ACA determines, in writing, about the conditions of apparatus licences;
(d) such details as the ACA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under apparatus licences;
(e) such details as the ACA 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 ACA may include in the Register such other details about apparatus licences as it thinks necessary or convenient for the purposes of this Act.
148 Updating the Register to take variations etc. of apparatus licences into account

The ACA must, as soon as practicable, make the changes to the information in the Register about an apparatus licence that the ACA 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 ACA determines, in writing, about class licences.

(2) The ACA 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 ACA must, as soon as practicable, make the changes to the information in the Register about a class licence that the ACA 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 ACA must ensure that the Register is available for inspection by any person during the hours that the ACA is open for business.
Section 152

(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 ACA 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 ACA may, at any time, correct information in the Register.

(2) The correction may be made:
   (a) in any case—on the ACA’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 ACA.

(4) On making a correction, the ACA 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 ACA under subsection (6) in relation to the licence to which the correction relates.

(5) On refusing an application for a correction, the ACA 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 ACA 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 ACA.

(2) As soon as practicable after receiving a copy of the declaration, the ACA must:
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Part 3.6  Re-allocation of encumbered spectrum  

Section 153D  

(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 ACA; and  
(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.
Section 153E

153E Minister may make a spectrum re-allocation declaration only after receiving the ACA’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 ACA 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 ACA may recommend that the Minister make a spectrum re-allocation declaration

(1) The ACA 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 ACA’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 ACA must:

(a) prepare a written notice:

(i) stating that the ACA has prepared a draft version of the recommendation; and

(ii) setting out the terms of the draft version; and

(b) both:
Section 153G

(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 ACA 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;
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 ACA must have regard to the comments.

(4) Subsection (3) does not, by implication, limit the matters to which the ACA 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 ACA 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 ACA, exempt the ACA from compliance with those subsections in relation to a recommendation under section 153F that corresponds to the proposal.

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Section 153H

(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 ACA 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 ACA 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 ACA is taken to begin allocating licences if, and only if:
Section 153K

(a) in a case where the licences are to be allocated by auction—the ACA publishes an advertisement for that auction; or
(b) in a case where the licences are to be allocated by tender—the ACA publishes an advertisement calling for suitable tenders; or
(c) in any other case—the ACA 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.

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 ACA 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 ACA must not issue a spectrum licence that authorises the operation of radiocommunications devices:
   (a) at frequencies that are within that part, or those parts, of the spectrum; and
   (b) within the area or areas specified in the declaration;
   unless:
   (c) the licence is issued as mentioned in section 153L (which deals with re-allocation of spectrum by issuing spectrum licences); or
   (d) at the start of the re-allocation period, the licence had already been allocated under subsection 62(1).
Section 153P

153P Restriction on issuing apparatus licences for parts of the spectrum subject to re-allocation

(1) This section applies if a spectrum re-allocation declaration is in force in relation to a particular part or parts of the spectrum.

(2) During the re-allocation period, the ACA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
   (a) at frequencies that are within that part, or those parts, of the spectrum; and
   (b) within the area or areas specified in the declaration;
   unless:
   (c) the licence is issued as mentioned in section 153M (which deals with re-allocation of spectrum by issuing apparatus licences); or
   (d) the licence is issued by way of renewal of an apparatus licence (see Division 7 of Part 3.3); or
   (da) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
   (e) the ACA 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 ACA 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 ACA 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.

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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 ACA to make standards for devices (including the radio emissions made by devices);

(c) Division 4 enables the ACA 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 ACA 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

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(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.

- Does the transmitter contravene a standard? (See Division 3)
  - Yes
  - No

- Is the emission in accordance with a permit? (See Division 4)
  - Yes
  - No

- Is the situation one of emergency? (See section 172)
  - Yes
  - No

THE EMISSION IS PERMITTED

SECTION 157 MAY PROHIBIT THE EMISSION

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.
Does the device contravene a standard? (See Division 3)

Yes →

Is the possession in accordance with a permit? (See Division 4)

Yes → THE POSSESSION IS PERMITTED

No →

Is the situation one of emergency? (See section 172)

Yes →

No →

Is the device intended for use solely outside Australia? (See section 173)

Yes →

No → SECTION 158 MAY PROHIBIT POSSESSION OF THE DEVICE FOR THE PURPOSES OF OPERATION

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.

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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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Does the device contravene a standard? (See Division 3)

Is the device intended for use solely outside Australia? (See section 173)

Has permission for the supply been given? (See section 174)

Is the supply for the purpose of modification etc.? (See section 175)

Is the supply for the purpose of re-export? (See section 176)

SECTION 160 MAY PROHIBIT THE SUPPLY

THE SUPPLY IS PERMITTED
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.
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Division 3—Standards

162 The ACA’s power to make standards

(1) The ACA 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 ACA 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 ACA’s power to make standards in cases of urgency).

(2) The ACA 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 ACA 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
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(g) reports to the ACA 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.

163A Making standards in cases of urgency

(1) The ACA is not required to comply with subsection 163(1) in relation to the making of a particular standard if the ACA 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 ACA 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*. 

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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 ACA may issue permits

(1) A person may apply to the ACA, in a form approved by the ACA, for a permit.

(2) The ACA 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 ACA 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 ACA 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
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(d) are otherwise reasonably likely to be affected by the operation of devices.

(3B) Subsections (3) and (3A) do not, by implication, limit the matters to which the ACA may have regard.

(4) If the ACA 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 ACA 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—indefinately.

(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 ACA 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 ACA 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

(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).
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(3) In this section:

engage in conduct means:
(a) do an act; or
(b) omit to perform an act.

171 Cancelling permits

(1) The ACA 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 ACA:
(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 ACA may, under subsection 167(3), have regard in deciding whether to issue a permit; and
   (ia) any matter to which the ACA 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:
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Part 4.1  Standards and other technical regulation  
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(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 ACA’s written permission.

(2) If the ACA decides to refuse to give such permission to a person who has applied to the ACA for it in a form approved by the ACA, the ACA 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.

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(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.

178 Reasonable excuse

Nothing in this Division limits the scope of the expression “reasonable excuse” in subsection 157(1A), 158(1A) or 160(1A).
182 Requirements to apply labels etc.

(1) The ACA 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;

(b) 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;

(b) 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 ACA in the notice.

(2A) The method of applying the label to the device must be as specified by the ACA 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
(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
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the person must not supply the device unless a label in that form has been applied to the device.

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 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.
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Part 4.1  Standards and other technical regulation
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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:
187A Failure to retain records

(1) If the ACA 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
Section 188A

(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.

(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 1906;

and was so registered 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 ACA.
Section 188A

(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 ACA; 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 ACA; 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 ACA; 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 ACA under subsection (7) or (8) is a disallowable instrument for the purposes of section 46A of the Acts Interpretation Act 1901.

(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
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(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 Authority Act 1997*. 
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 ACA 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.

(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 ACA must, by notice published in the Gazette:
   (a) describe the device; and
   (b) specify the reasons why the ACA 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 ACA.

(3) The ACA must give due consideration to any representations so made.

(4) This section does not apply if the ACA is satisfied that making the declaration is a matter of urgency.
Chapter 4  General regulatory provisions  
Part 4.2  Offences relating to radio emission

Section 192

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 a 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 ACA’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.

188  Radiocommunications Act 1992
(2) If the ACA refuses to give permission to a person who applied for it, the ACA 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 ACA’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.
Section 196

(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.

(3) If the ACA refuses to give permission to a person who applied for it, the ACA 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.

190 Radiocommunications Act 1992
Section 198

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.
Section 200

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

200 Imputed knowledge

For the purposes of establishing a contravention of section 192, 193 or 194, paragraph 195(1)(b) or section 199, if, having regard to:

(a) a person’s abilities, experience, qualifications and other attributes; and

(b) all the circumstances surrounding the alleged contravention;
the person ought reasonably to have known that using the transmitter in question, or doing the act or thing in question, was a contravention of that provision, the person is taken to have known that using the transmitter, or doing the act or thing, was such a contravention.

201 Operation of laws of States or Territories

This Part is not intended to exclude or limit the concurrent operation of:

(a) the law of a State or Territory; or

(b) regulations, Ordinances or other instruments of a legislative character made under an Act other than this Act.
Part 4.3—Settlement of interference disputes

Division 1—Conciliators

202 Appointment of a conciliator

(1) The ACA 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 ACA 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 ACA.

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.
Section 204

(3) A conciliator is to be paid such allowances as are prescribed.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*. 

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194 Radiocommunications Act 1992
Section 205

Division 2—Referral of matters to conciliators

205  Referral of complaints to conciliators

(1) If a complaint in writing is made to the ACA 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 ACA may refer the matter to a conciliator.

(2) If the ACA decides not to refer a complaint to a conciliator, the ACA 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 ACA 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 ACA 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 ACA must have regard to all matters it thinks relevant.

(2) Without limiting subsection (1), the ACA must have regard to:
   (a) whether, in the ACA’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 ACA—whether, in the ACA’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 ACA 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 ACA—the conciliator believes that:
   (i) the complaint is frivolous or vexatious or was not made in good faith; or
   (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct; or
   (iii) there is some other remedy that is reasonably available to the complainant; or
   (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.
Section 210

(2) If a conciliator decides not to inquire into, or not to continue to inquire into, conduct in respect of which a complaint was made, the conciliator must:
   (a) give the complainant written notice of the decision and the reasons for the decision; and
   (b) give to the ACA 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 ACA 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.

(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 ACA may issue directions

(1) If the ACA:
   (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 ACA 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 ACA 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 ACA 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 ACA receives a conciliator’s report in relation to a matter under paragraph 208(c); and
(b) the matter arose as a result of a complaint under subsection 205(1);

the ACA 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 ACA

The ACA 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.
Section 224

224 Application of orders to broadcasting

A restrictive order does not apply to:

(a) a broadcasting station; or

(b) a fixed transmitter the use or operation of which is essential
to the operation of a broadcasting station;

unless the order is expressed so to apply.

225 Revocation of orders

A restrictive order is taken to be revoked:

(a) at the end of the period of emergency during which it came
into force; or

(b) if the order has an extended operation under section 226—at
the end of the last period of emergency during which the
order continues to be in force.

226 Orders may have extended operation

If, during a period of emergency, a Proclamation under subsection
219(1) declares that an emergency will exist during a later period
commencing immediately after the end of the first-mentioned
period, any restrictive order in force immediately before the end of
the first-mentioned period (including an order in force by virtue of
previous applications of this subsection) continues in force unless
it is:

(a) revoked as provided for by subsection 33(3) of the Acts
   Interpretation Act 1901; or

(b) disallowed under section 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 ACA to delegate certain powers to authorities of the Commonwealth.

(3) Part 5.2 provides for the ACA to hold public inquiries into management of the radiofrequency spectrum and other aspects of radiocommunication.

(4) Part 5.3 allows the ACA 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 ACA and reviewed by the AAT.

(8) Part 5.7 provides for the ACA to determine charges for things done by the ACA, including spectrum access charges for spectrum licences.
238 Delegation

(1) The powers conferred on the ACA by this section are in addition to the powers conferred by section 49 of the *Australian Communications Authority Act 1997*.

(2) The ACA may, by writing, delegate to an authority of the Commonwealth the ACA’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) The ACA may, by writing, delegate to the ABA the ACA’s power:

   (a) to issue, renew, suspend or cancel licences authorising operation of radiocommunications devices using a part of the spectrum designated under section 31; and
   (b) to impose one or more further conditions under paragraph 111(a) to which a licence so issued or renewed is subject; and
   (c) to revoke or vary any condition specified under paragraph 107(1)(g), 108(1)(f), 109(1)(f) or 109A(1)(k); and
   (d) to revoke or vary any condition imposed under paragraph 108(2)(a), (b) or (c) or 111(a) to which a licence so issued or renewed is subject.

(4) If:

   (a) a power of the ACA 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 ACA in question may be further delegated under that Act as if it were one of the authority’s powers under that Act.
Chapter 5  Administration and enforcement
Part 5.2  Public inquiries

Section 255

Part 5.2—Public inquiries

255  ACA may hold inquiry

(1) The ACA 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 ACA 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.

256  ACA to hold inquiry when directed

(1) The ACA 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 ACA in writing to hold a public inquiry
    about that matter.

(2) The Minister must not direct the ACA to hold a public inquiry that
    it could not hold under section 255.
257 Informing the public about an inquiry

(1) If the ACA 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 ACA about that matter; and
   (e) the address or addresses to which submissions may be sent.

(2) The ACA may also include in the notice a statement of the matters that the ACA would like submissions to deal with.

(3) The ACA 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 ACA may cause to be prepared a discussion paper that:
   (a) identifies the issues that the ACA 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 ACA thinks is appropriate.

(2) The ACA must make copies of the discussion paper available at each of the ACA’s offices. The ACA may charge a reasonable price for supplying copies of the discussion paper in accordance with this subsection.

(3) The ACA may otherwise publish the discussion paper, including in electronic form. The ACA may charge for supplying a publication under this subsection in accordance with a determination under section 53 of the Australian Communications Authority Act 1997.
Section 259

259 Written submissions

(1) The ACA must provide a reasonable opportunity for any member of the public to make a written submission to the ACA about the matter to which a public inquiry relates.

(2) For the purposes of subsection (1), the ACA 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 ACA 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 ACA 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 ACA may be constituted by:

(a) a member or members determined in writing by the Chairman for the purposes of that hearing; or
(b) if the functions and powers of the ACA in relation to the hearing have been delegated to a person under section 49 of the Australian Communications Authority Act 1997—that person.
Section 261A

(4) The Chairman is to preside at all hearings at which he or she is present.

(5) If, at a hearing:
   (a) the ACA is not constituted by a delegate referred to in paragraph (3)(b); and
   (b) the Chairman is not present at the hearing;
the member specified, in an instrument under paragraph (3)(a), as the member who is to preside at the hearing is to preside.

(6) The ACA 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 ACA 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 ACA 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 ACA is of the opinion that:
      (i) evidence or other material presented to the hearing; or
      (ii) material in a written submission lodged with the ACA;
is of a confidential nature;
the ACA may order that:
(c) the evidence or material not be published; or
(d) its disclosure be restricted.

(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 ACA 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 ACA:
(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).
A person is guilty of an offence if:
   (a) the ACA 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.

A person is guilty of an offence if:
   (a) the ACA 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.

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).

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 ACA holds a public inquiry, the ACA 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 ACA 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 ACA must publish the report.

(4) The ACA is not required to include in a report any material:
   (a) that is of a confidential nature; or
Section 261D

(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 ACA may make advisory guidelines

(1) The ACA 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 ACA must:
   (a) give a copy of each advisory guideline it makes to the Minister; and
   (b) publish each such advisory guideline in the way it thinks fit.
Section 263

Part 5.4—Accreditation

263 ACA may accredit persons

(1) The ACA 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 ACA, to the ACA for an accreditation of that kind; and
   (b) the ACA has been paid the appropriate charge determined under section 53 of the Australian Communications Authority Act 1997.

(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 ACA 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 ACA 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 ACA may, by notice in writing to a person, withdraw an accreditation given to the person if the ACA 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 ACA must give the person written notice:
   (a) stating that the ACA is considering withdrawing the accreditation; and
   (b) inviting the person to make representations to the ACA 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 ACA 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 ACA may, by written instrument, determine principles that:
   (a) govern the accreditation process; and
   (b) specify the matters for which the ACA 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
Section 266A

(d) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.

(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 ACA determination in relation to certificates

(1) The ACA 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 ACA, by written instrument, to be an inspector; or
   (b) an officer included in a class of officers appointed by the ACA, 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 ACA 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 ACA 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 ACA.

(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).
Section 268

(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
Section 270

(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
   (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.

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.
Chapter 5  Administration and enforcement  
Part 5.5  Enforcement  
Division 3  Searches and seizures  

Section 275  

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.
276 Retention of thing seized

(1) If an inspector seizes a thing under this Division, the inspector or the ACA 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 ACA 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 ACA 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).
(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,
Section 279

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 ACA; and

(b) pending such directions, must be kept in such custody as the ACA 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
(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—Review of ACA decisions

285 Decisions that may be subject to reconsideration by the ACA

An application may be made to the ACA 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 direction under subsection 102B(3);
(f) inclusion of conditions in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109A(1)(k);
(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;
Section 286

286 Deadlines for reaching certain decisions

(1) If this Act provides for a person to make an application to the ACA for such a decision, the ACA must make the decision:

(a) within 90 days after receiving the application; or
(b) if the ACA 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 ACA 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 ACA 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 ACA 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 ACA’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 ACA for the ACA to reconsider the decision.

(2) The application must:
   (a) be in a form approved by the ACA; 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 ACA 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 ACA

(1) Upon receiving such an application the ACA must:
(a) reconsider the decision; and
(b) affirm, vary or revoke the decision.

(2) The ACA’s decision on reconsideration of a decision has effect as if it had been made under the application under which the original decision was made.

(3) The ACA 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 ACA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.

(2) The ACA 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.
Chapter 5  Administration and enforcement
Part 5.6  Review of decisions
Division 1  Review of ACA decisions

Section 292

292  Review by the AAT

Applications may be made to the AAT to review a decision of a kind referred to in section 285 if the ACA has affirmed or varied the decision under section 289.
Division 2—Review of ABA decisions

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 ABA:
(a) a decision to give a direction under subsection 102B(3);
(b) a decision to give a direction as mentioned in subsection 106(6A);
(c) a decision to give a direction under subsection 114(3C);
(d) a decision to give a direction under subsection 128C(1);
(e) a decision to give a direction under subsection 128D(1);
(f) a decision to give a direction under subsection 131ACA(3).

292B  Notification of decisions to include notification of reasons and appeal rights

If the ABA makes a decision that is reviewable under section 292A, the ABA 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.
Section 294

Part 5.7—Charges

294 Spectrum access charges

(1) The ACA 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 ACA 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 ACA 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 ACA thinks
appropriate.
296 Collection of charges on behalf of the ACA

The ACA may enter into arrangements with persons or other bodies under which those persons or other bodies may, on the ACA’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 ACA may, by notice published in the Gazette, determine that:
   (a) a specified body or organisation approved by the ACA 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.
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 ACA 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.
Section 303

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.

(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 ACA 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 ACA, 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 ACA 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 ACA and the person, for the ACA to do so.

(2) This section does not enable the ACA 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 ACA may issue a certificate, signed by a person authorised by the ACA 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:
Section 306

(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 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 ACA.

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.

311 Act not to affect performance of functions by States or certain Territories

(1) The ACA 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 radio communications devices the operation of which is authorised under class licences.
Section 313A

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.

314 Regulations

(1) The Governor-General may make regulations prescribing all matters:

(a) required or permitted by this Act to be prescribed; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), the regulations may make provision in relation to:

(a) prohibiting or regulating any act or thing likely to cause interference, or risk of interference, to radiocommunications; or

(b) prohibiting or regulating making of radio emissions from a place within a specified area; or

(c) prohibiting or regulating making of radio emissions in a way likely to cause an explosion; or

(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.
Section 314A

(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:
Section 315

(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.

(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:
Section 315

Penalties payable

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<th>Item</th>
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<th>Penalty for body corporate</th>
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</tbody>
</table>

(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.
Clause 1

Schedule—Resuming spectrum licences by compulsory process

Sections 91 and 93

Part 1—Resumption Procedures

1 Pre-acquisition declarations

(1) The ACA 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 ACA's reasons for the resumption.

2 Service on licensees and third party users

(1) Within 14 days after publication in the Gazette, the ACA 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 ACA.

(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 ACA 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 ACA 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 ACA, on which such a claim is to be made.
Part 2—Compensation

1 The basis on which compensation is payable

(1) If a spectrum licence or a part of a spectrum licence is resumed under section 91, the compensation payable to the licensee under section 93 and this Part is compensation for:

(a) the market value of the licence, or the part of the licence, on the day before the day on which the pre-acquisition declaration was published; and

(b) any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the resumption.

(2) The market value of the licence, or the part of the licence, at a particular time is the amount that would have been paid for it if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

(3) If the market value is assessed upon the basis that the licence, or the part of the licence, had potential to be used for a purpose other than the purpose for which it was used at the relevant time, compensation is not payable in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.

(4) If:

(a) a pre-acquisition declaration is published for resumption of a spectrum licence or a part of a spectrum licence; and

(b) the pre-acquisition declaration is revoked before the resumption takes place;

the compensation payable to the licensee under section 93 and this Part is compensation for any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the publication of the pre-acquisition declaration.
Clause 2

2 Amounts of compensation payable

(1) The amount of compensation payable to the licensee is:
   (a) the amount of compensation agreed by the ACA under paragraph 4(a); or
   (b) the amount of compensation specified in an offer of the ACA 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 ACA a written claim in a form approved by the ACA.

4 Consideration of claims by the ACA

The ACA 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 ACA must give the notice to the licensee within 42 days, or such longer period as is agreed between the ACA and the licensee, after receiving the claim.
(2) The ACA 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 ACA 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 ACA 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 ACA, 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 ACA has rejected the claim; or
   (b) under subclause 5(2), the ACA is taken to have rejected the claim; or
   (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACA; the licensee may apply to the AAT to review the ACA’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 ACA rejected the claim, or the ACA’s offer was taken to be rejected, as the case requires.
 Clause 8

(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 ACA has rejected the claim; or
   (b) under subclause 5(2), the ACA is taken to have rejected the claim; or
   (c) under subclause 6(2), the licensee is taken to have rejected an offer by the ACA;
   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 ACA’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 ACA 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.
**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 all relevant information pertaining to application, saving or transitional provisions *see* Table A.

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</table>
Notes to the Radiocommunications Act 1992

Act Notes

(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.


(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;


(h) Subsection 2(1) (item 5(b)) 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.
### Commencement information

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<td>5. Schedule 2, item 118</td>
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<td>28 November 2003</td>
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</table>

(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.

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(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.

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<th>Provision(s)</th>
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ad. = added or inserted  am. = amended  rep. = repealed  rs. = repealed and substituted

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Radiocommunications Act 1992

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Note 2


The following amendments commence on 17 June 2004 unless proclaimed earlier:

**Schedule 2**

15 **Paragraph 188A(4)(b)**

Omit "1906", substitute "2003".

16 **Subsection 188A(4)**

Omit “so registered”, substitute “registered under the *Trade Marks Act 1995* or the *Designs Act 1906*”.

As at 7 January 2004 the amendments are not incorporated in this compilation.
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.


Schedule 2

21 Transitional—charge determinations

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
(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.


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,
Table A

must cause to be prepared an industry action agenda to assist the development of the Australian broadcasting electronics industry.

(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.

*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.
Table A

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.

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.


Schedule 2

51 Transitional—regulations
   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).


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.
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.
4 Application of amendments

(1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.

(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.

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.