



Radiocommunications Legislation Amendment Act 2000

No. 34, 2000

**An Act to amend the law relating to
radiocommunications, and for related purposes**

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No. 34, 2000

An Act to amend the law relating to radiocommunications, and for related purposes

[Assented to 3 May 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Radiocommunications Legislation Amendment Act 2000*.

2 Commencement

This Act commences 28 days after the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendments relating to space objects

Part 1—Amendment of Part 5.5 of the Radiocommunications Act 1992

1 Multiple amendments

The following provisions are amended by omitting “vessel, aircraft” (wherever occurring) and substituting “vessel, aircraft, space object”.

2 Subsection 269(1)

3 Subsection 272(1)

4 Subsection 272(2)

5 Subsection 272(3)

6 Paragraph 275(2)(a)

7 Paragraph 275(2)(c)

8 Subsection 275(3)

9 Paragraph 277(1)(a)

10 Paragraph 277(1)(b)

11 Paragraph 277(1)(d)

12 Subsection 277(3)

13 Paragraph 283(b)

14 Paragraph 283(c)

15 Paragraph 283(d)

Part 2—Other amendments of the Radiocommunications Act 1992

16 Section 5 (definition of *Australian satellite*)

Repeal the definition.

17 Section 5

Insert:

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*.

18 Section 5

Insert:

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

19 Section 5 (definition of *member of the crew*)

Omit “aircraft or vessel” (wherever occurring), substitute “vessel, aircraft or space object”.

20 Section 5

Insert:

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.

21 Paragraphs 7(1)(a) and (b)

Omit “the regulations”, substitute “a written determination made by the ACA for the purposes of this paragraph”.

22 At the end of section 7

Add:

- (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*.

23 After section 10

Insert:

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*.

24 Subparagraph 16(1)(a)(i)

Omit “or foreign aircraft”, substitute “, foreign aircraft or foreign space object”.

25 Paragraph 16(1)(b)

Omit “and Australian vessels”, substitute “, Australian vessels and Australian space objects”.

26 Paragraph 16(1)(c)

Omit “satellites”, substitute “space objects”.

27 After paragraph 16(1)(c)

Insert:

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

28 At the end of section 16

Add:

(4) A determination under paragraph 16(1)(ca) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

29 Subsection 23(1)

Omit “space satellites that are not Australian satellites”, substitute “foreign space objects, except in accordance with a determination by the ACA under paragraph 16(1)(ca)”.

Note: The heading to section 23 is altered by omitting “satellites” and substituting “space objects”.

30 At the end of section 23

Add:

(5) However, nothing in this section limits section 195 or Part 5.5.

31 Paragraph 49(1)(a), subparagraph 108(3)(c)(i) and paragraph 172(a)

Omit “vessel or aircraft”, substitute “vessel, aircraft or space object”.

32 Section 192

Omit “aircraft or vessel”, substitute “vessel, aircraft or space object”.

Note: The heading to section 192 is altered by omitting “aircraft or vessels” and substituting “vessels, aircraft or space objects”.

33 Subsection 195(1)

Omit “foreign vessel or foreign aircraft”, substitute “foreign vessel, foreign aircraft or foreign space object”.

Note: The heading to section 195 is altered by omitting “vessel or aircraft” and substituting “vessel, aircraft or space object”.

34 Paragraphs 196(1)(a) and 227(2)(a)

Omit “vessel or aircraft”, substitute “vessel, aircraft or space object”.

Part 3—Consequential amendments

Development Allowance Authority Act 1992

35 Section 6 (definition of *Australian satellite*)

Repeal the definition.

36 Section 6

Insert:

Australian space object has the same meaning as in the
Radiocommunications Act 1992.

37 Section 12

Omit “satellite”, substitute “space object”.

Note: The heading to section 12 is amended by omitting “satellites” and substituting “space objects”.

Income Tax Assessment Act 1936

38 Subsection 82AQ(1) (definition of *Australian satellite*)

Repeal the definition.

39 Subsection 82AQ(1)

Insert:

Australian space object has the same meaning as in the
Radiocommunications Act 1992.

40 Subsection 82AQ(4)

Omit “satellite”, substitute “space object”.

Schedule 2—Other amendments

Radiocommunications Act 1992

1 At the end of subsection 7(2)

Add:

- ; 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.

2 At the end of subsection 7(3)

Add:

- ; 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.

3 At the end of section 31

Add:

- (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.

4 Subsection 32(2)

Repeal the subsection, substitute:

- (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.

5 Subsection 36(5)

Omit “section 31”, substitute “subsection 31(1), unless the part of the spectrum that the notice relates to is covered by an agreement under subsection 31(2)”.

6 After subsection 60(6)

Insert:

- (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 Subsection 60(8)

Omit “(6) and (7)”, substitute “(6), (6A) and (7)”.

8 After section 69

Insert:

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*.

9 Subsection 71(2)

Omit “sections 67 to 69”, substitute “sections 67 to 69A”.

10 Subsection 100(2)

Repeal the subsection, substitute:

- (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) 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.

11 Subsection 100(4A)

Omit “will not cause an unacceptable level of interference to the operation of radiocommunications”, substitute “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”.

12 Subsection 100(4B)

Repeal the subsection.

13 After section 122

Insert:

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*.

14 Subsection 129(1)

Omit “of 6 months before the licence is due to expire”, substitute “beginning 6 months before the licence is due to expire and ending 60 days after it expires”.

15 Subsection 130(4)

After “comes into force”, insert “, or is taken to have come into force,”.

16 Subsection 145(3)

Omit all the words after “under the licence”, substitute “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.”.

17 After subsection 263(2A)

Insert:

- (2B) A condition may relate to matters existing or arising at, before or after the time when a certificate is issued.

18 After paragraph 264(b)

Insert:

- (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

19 After subsection 266(2)

Insert:

- (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.

20 Paragraph 279(1)(e)

Omit “quality assurance program”.

21 At the end of Part 5.7

Add:

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.

22 Paragraph 314(2)(d)

Omit “paragraph 315(a), (b), (c), (ca) or (d)”, substitute “the table in subsection 315(1)”.

23 Section 315

Repeal the section, substitute:

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:

Penalties payable			
Item	Provision alleged to have been contravened	Penalty for individual	Penalty for body corporate
1	section 46	see subsection (2) of this section	see subsection (3) of this section
2	section 47	see subsection (2) of this section	see subsection (3) of this section
3	section 113	2 penalty units	10 penalty units
4	section 117	2 penalty units	10 penalty units
5	section 118	2 penalty units	10 penalty units
6	section 170	2 penalty units	10 penalty units
7	section 186	3 penalty units	15 penalty units
8	section 187	3 penalty units	15 penalty units
9	section 187A	2 penalty units	10 penalty units
10	section 197	3 penalty units	15 penalty units
11	section 278	2 penalty units	10 penalty units
12	section 279	2 penalty units	10 penalty units
13	subsection 300(4)	2 penalty units	10 penalty units
14	subsection 301(3)	2 penalty units	10 penalty units
15	the regulations	2 penalty units	10 penalty units

- (2) The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence an individual is alleged to have committed against section 46 or 47, in relation to a particular radiocommunications device, is:
- (a) if the radiocommunications device was of a kind covered by a class licence at the time the offence was allegedly committed—2 penalty units; or
 - (b) in any other case—3 penalty units.
- (3) The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence a body corporate is alleged to have committed against section 46 or 47, in relation to a particular radiocommunications device, is:

- (a) if the radiocommunications device was of a kind covered by a class licence at the time the offence was allegedly committed—10 penalty units; or
- (b) in any other case—15 penalty units.

Radiocommunications Taxes Collection Act 1983

24 Subsection 7(2)

Omit “issue of an instrument is payable on that day”, substitute “day on which an instrument came into force is payable on that anniversary”.

25 Subsection 7(3)

Omit “issue of the instrument is payable on that day”, substitute “day on which the instrument came into force is payable on that anniversary”.

26 Subsection 7(4)

Omit “issue of the instrument”, substitute “day on which the instrument came into force”.

Schedule 3—Application of amendments

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.

*[Minister's second reading speech made in—
House of Representatives on 18 February 1999
Senate on 29 March 2000]*

(14/99)