



Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000

No. 108, 2000



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**An Act to amend the *Broadcasting Services Act
1992*, and for other purposes**

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An Act to amend the *Broadcasting Services Act 1992*, and for other purposes

[Assented to 3 August 2000]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.

2 Commencement

- (1) The following provisions commence on the day on which this Act receives the Royal Assent:

-
- (a) sections 1, 2 and 3;
 - (b) items 75, 137, 137A, 142 and 143 of Schedule 1.
- (1A) Subject to subsection (1B), items 134A to 134D (inclusive), 136A, 136B, 136D to 136J (inclusive), 139A, 139D and 139E of Schedule 1 commence on a day to be fixed by Proclamation.
- (1B) If items 134A to 134D (inclusive), 136A, 136B, 136D to 136J (inclusive), 139A, 139D and 139E of Schedule 1 do not commence under subsection (1A) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.
- (2) Subject to subsection (3), the remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (3) If the remaining provisions of this Act do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

3 Schedule(s)

Subject to section 2, each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Broadcasting Services Act 1992

Part 1—Amendments

1 Title

After “broadcasting services”, insert “, datacasting services”.

2 After paragraph 3(1)(a)

Insert:

- (aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and

2A After paragraph 3(1)(b)

Insert:

- (ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and

2B After paragraph 3(1)(f)

Insert:

- (fa) to promote the provision of high quality and innovative content by providers of datacasting services; and

2C At the end of subsection 3(1)

Add:

- ; and (n) to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.

3 Subsection 4(1)

After “broadcasting services” (wherever occurring), insert “, datacasting services”.

4 Subsection 4(2)

After “broadcasting services” (wherever occurring), insert “and datacasting services”.

5 Subparagraph 4(2)(c)(i)

After “broadcasting technologies”, insert “and datacasting technologies,”.

6 Paragraph 5(1)(a)

After “broadcasting industry”, insert “, the datacasting industry”.

7 Subsection 6(1) (at the end of the definition of *associate*)

Add:

Note: *Licence* is given an extended meaning by this subsection.

8 Subsection 6(1) (definition of *commercial radio broadcasting licence*)

After “a licence”, insert “under Part 4”.

9 Subsection 6(1) (definition of *commercial television broadcasting licence*)

After “a licence”, insert “under Part 4”.

10 Subsection 6(1) (definition of *community broadcasting licence*)

After “a licence”, insert “under Part 6 or 6A”.

11 Subsection 6(1)

Insert:

datacasting licence means a licence under Schedule 6 to provide a datacasting service.

12 Subsection 6(1)

Insert:

datacasting service means a service that delivers content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or

- (d) whether in the form of visual images (animated or otherwise); or
 - (e) whether in any other form; or
 - (f) whether in any combination of forms;
- to persons having equipment appropriate for receiving that content, where the delivery of the service uses the broadcasting services bands.

13 Subsection 6(1)

Insert:

datacasting transmitter licence has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

14 Subsection 6(1) (definition of *licence*)

Repeal the definition, substitute:

licence means:

- (a) in the definition of *associate*, section 7, Part 5 and Schedule 1:
 - (i) a licence allocated by the ABA under this Act (other than a class licence); or
 - (ii) a datacasting transmitter licence; and
- (b) in any other provision of this Act—a licence allocated by the ABA under this Act (other than a class licence).

15 Subsection 6(1)

Insert:

subscription television broadcasting licence means a licence under Part 7 to provide one or more subscription television broadcasting services.

16 At the end of section 7

Add:

Note: *Licence* is given an extended meaning by subsection 6(1).

17 After section 8

Insert:

8A Captioning taken to be part of program

- (1) For the purposes of this Act, if a television program is captioned for the deaf and hearing impaired, the captioning is taken to be part of the program.
- (2) Subsection (1) is enacted for the avoidance of doubt.

17A At the end of section 18

Add:

- (2) A multi-channelled national television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

18 Section 28

Before “licences”, insert “broadcasting”.

19 At the end of section 28A

Add “or 38B”.

Note: The heading to section 28A is altered by adding at the end “or 38B”.

20 After subsection 34(4)

Insert:

- (4A) Each part determined under subsection (3) must be 7 MHz. However, this rule does not prevent a particular part from being determined even if it adjoins:
 - (a) another part that is also specified in the determination; or
 - (b) 2 other parts that are also specified in the determination.

21 Subsection 34(5)

Repeal the subsection, substitute:

- (5) For the purposes of the application of this section to the availability of the spectrum before 1 January 2007, a *datacasting service* is a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.
 - (6) For the purposes of the application of this section to the availability of the spectrum on or after 1 January 2007, a *datacasting service* is:
-

- (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
- (b) a datacasting service provided under any other licence allocated by the ABA under this Act; or
- (c) a datacasting service provided in accordance with a class licence.

22 At the end of subsection 38A(2)

Add:

, so long as:

- (a) all of the following conditions are satisfied:
 - (i) no licence for the licence area previously allocated under this section to the existing licensee has been cancelled because of a breach of the condition set out in paragraph 7(1)(i) of Schedule 2;
 - (ii) no licence for the licence area previously held by the existing licensee has been cancelled because of a breach of the condition set out in subsection (9);
 - (iii) no licence for the licence area previously held by the existing licensee has been surrendered; or
- (b) both:
 - (i) paragraph (a) does not apply; and
 - (ii) the ABA is satisfied that there are exceptional circumstances.

23 After section 38A

Insert:

38B Additional commercial television licences in 2-station markets

- (1) If:
 - (a) a particular licence area is the licence area of only 2 commercial television broadcasting licences (the *parent licences*) that are in force; and
 - (b) neither of those licences was allocated under section 38A; and
 - (c) an additional commercial television broadcasting licence can be allocated for the licence area;

the existing licensees may, within 90 days after the designated time for the licence area, give to the ABA:

- (d) a joint written notice stating that:
 - (i) a company specified in the notice (the *joint-venture company*) will apply for an additional commercial television broadcasting licence for the licence area; and
 - (ii) the joint-venture company is jointly owned by the existing licensees; and
 - (iii) the joint-venture company is formed in Australia or an external Territory and has a share capital; or
- (e) a joint written notice stating that each of the existing licensees will apply separately for an additional commercial television broadcasting licence for the licence area; or
- (f) a joint written notice stating that only the existing licensee specified in the notice will apply for an additional commercial television broadcasting licence for the licence area.

Application by joint-venture company

- (2) If a notice is given under paragraph (1)(d), the joint-venture company may, within 12 months after the designated time for the licence area, apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.

Separate applications by existing licensees

- (3) If a notice is given under paragraph (1)(e), each existing licensee may, within 12 months after the designated time for the licence area, apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.

Application by only one of the existing licensees

- (4) If a notice is given under paragraph (1)(f), the existing licensee specified in the notice may, within 12 months after the designated time for the licence area, apply in writing to the ABA for an additional commercial television broadcasting licence for the licence area.

Allocation of additional licence to joint-venture company

- (5) As soon as practicable after receiving an application under subsection (2), the ABA must allocate an additional commercial television broadcasting licence to the joint-venture company for the licence area, so long as the ABA is satisfied that the joint-venture company is jointly owned by the existing licensees.

Allocation of additional licence to existing licensee

- (6) If the ABA has received applications from both of the existing licensees under subsection (3), the ABA must allocate an additional commercial television broadcasting licence to one of those licensees for the licence area in accordance with a price-based system determined under subsection (10).
- (7) If, by the end of the 12-month period beginning at the designated time for the licence area:
- (a) the ABA has received an application from only one existing licensee (the *first licensee*) under subsection (3); and
 - (b) the ABA has not received a notice from the other existing licensee stating that it will not be applying under subsection (3);

the ABA must, as soon as practicable after the end of that 12-month period, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.

- (8) If the ABA has received:
- (a) an application from an existing licensee (the *first licensee*) under subsection (3); and
 - (b) a notice from the other existing licensee stating that it will not be applying under subsection (3);
- the ABA must, as soon as practicable after both have been received, allocate an additional commercial television broadcasting licence to the first licensee for the licence area.
- (9) As soon as practicable after receiving an application under subsection (4), the ABA must allocate an additional commercial television broadcasting licence to the existing licensee concerned for the licence area.

Price-based system for allocating licences where separate applications have been received

- (10) The ABA may determine in writing a price-based system for allocating commercial television broadcasting licences under subsection (6).
- (11) The Minister may give specific directions to the ABA for the purpose of a determination.
- (12) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.
- (13) If a commercial television broadcasting licence is allocated under subsection (6), the ABA must, unless the allocation system adopted was public, publish in the *Gazette*:
 - (a) the name of the successful applicant; and
 - (b) the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.

Amalgamation of licence areas in some cases

- (14) The ABA may, by writing, determine that, if:
 - (a) more than 30% of the licence area population of a specified licence area is attributable to a specified overlap area; or
 - (b) a specified licence area is entirely within another specified licence area;this section applies as if the 2 licence areas were one.
- (15) A determination under subsection (14) has effect accordingly.
- (16) A determination under subsection (14) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Fee for additional licence

- (17) On allocation of the additional licence under subsection (5), (7), (8) or (9), the applicant must pay to the ABA a fee determined by the ABA. The fee must not be more than the amount that, in the opinion of the ABA, represents the costs (including planning costs) incurred by the ABA in allocating the additional licence.

Licence conditions

- (18) Each additional licence allocated under this section is subject to the following conditions:
- (a) the licensee may only provide the commercial television broadcasting service concerned in digital mode (within the meaning of Schedule 4); and
 - (b) if the licence area for the licence is wholly outside a remote licence area (within the meaning of Schedule 4)—the licensee will commence to provide the commercial television broadcasting service concerned in SDTV digital mode (within the meaning of Schedule 4) by whichever is the earlier of the following times:
 - (i) the time that is notified in writing to the licensee by the ABA;
 - (ii) the start of 1 January 2004; and
 - (c) if any part of the licence area for the licence is within a remote licence area (within the meaning of Schedule 4)—the licensee will commence to provide the commercial television broadcasting service concerned in SDTV digital mode (within the meaning of Schedule 4) by the time that is notified in writing to the licensee by the ABA, being a time that is not earlier than the date determined by the ABA in relation to the remote licence area as mentioned in subclause 6(6A) of Schedule 4.
- (19) Paragraphs 7(1)(i), 7(1)(l) and 7(1)(m) of Schedule 2 do not apply to an additional licence allocated under this section.
- (20) On the allocation of an additional licence under subsection (5), it becomes a condition of:
- (a) the additional licence; and
 - (b) each parent licence;
- that the licensee concerned will continue to provide services under the licence concerned for at least 2 years after the commencement of the provision of the commercial television broadcasting service under the additional licence.
- (21) On the allocation of an additional licence under subsection (6), (7), (8) or (9), it becomes a condition of:
- (a) the additional licence; and

(b) the parent licence concerned;
that the licensee will continue to provide services under those licences for at least 2 years after the commencement of the provision of the commercial television broadcasting service under the additional licence.

Restrictions on transfer of licences

- (22) During the period of 2 years after the date of allocation of an additional licence under subsection (5), any attempt by any person to transfer the additional licence is of no effect.
- (23) During the period of 2 years after the date of allocation of an additional licence under subsection (6), (7), (8) or (9), any attempt by any person to transfer either:
- (a) the additional licence; or
 - (b) the parent licence concerned;
- is of no effect unless both of those licences are transferred at the same time by the same person to the same transferee.

Section 37 restrictions apply

- (24) This section has effect subject to section 37.

Jointly owned company

- (25) For the purposes of this section, a company (the **first company**) is **jointly owned** by 2 other companies if, and only if, each share in the first company is beneficially owned by either or both of those other companies.

Designated time

- (26) In this section:
- designated time**, in relation to a licence area, means:
- (a) if the licence area is wholly outside a remote licence area (within the meaning of Schedule 4)—the commencement of this section; or
 - (b) if any part of the licence area is within a remote licence area (within the meaning of Schedule 4)—the time determined by the ABA in relation to the remote licence area for the purposes of this paragraph.

24 At the end of section 41

Add:

- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

25 Part 5 (heading)

Repeal the heading, substitute:

**Part 5—Control of commercial broadcasting
licences and datacasting transmitter
licences**

26 Before section 53

Insert:

Subdivision A—Commercial broadcasting licences

27 After section 54

Insert:

**Subdivision B—Commercial television broadcasting licences
and datacasting transmitter licences**

**54A Limitation on control of commercial television broadcasting
licences and datacasting transmitter licences**

A person must not be in a position to exercise control of:

- (a) a commercial television broadcasting licence; and
- (b) a datacasting transmitter licence.

28 Before section 55

Insert:

Subdivision A—Television and radio

29 After section 56

Insert:

Subdivision B—Television and datacasting

56A Limitation on directorships—television and datacasting

- (1) A person must not be a director of:
 - (a) a company that is in a position to exercise control of a commercial television broadcasting licence; and
 - (b) a company that is in a position to exercise control of a datacasting transmitter licence.
- (2) A person must not:
 - (a) be in a position to exercise control of a commercial television broadcasting licence; and
 - (b) be a director of a company that is in a position to exercise control of a datacasting transmitter licence.
- (3) A person must not:
 - (a) be a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
 - (b) be in a position to exercise control of a datacasting transmitter licence.

30 Subsection 62(1)

Omit “and commercial radio broadcasting licensee”, substitute “, commercial radio broadcasting licensee and datacasting transmitter licensee”.

31 Paragraph 62(1)(c)

Before “the name of”, insert “in the case of a commercial television broadcasting licensee or a commercial radio broadcasting licensee—”.

32 Section 62 (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

33 Subsection 63(1)

Omit “or commercial radio broadcasting licensee”, substitute “, commercial radio broadcasting licensee or datacasting transmitter licensee”.

34 Section 63 (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

35 Subsection 64(1)

Omit “or a commercial radio broadcasting licence”, substitute “, a commercial radio broadcasting licence or a datacasting transmitter licence”.

Note: The heading to section 64 is altered by omitting “**commercial**” and substituting “**a**”.

36 Section 64 (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

37 Subsection 66(1) (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

38 Section 69 (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

39 Section 72 (penalty)

After “commercial television broadcasting licence”, insert “or datacasting transmitter licence”.

40 At the end of section 73

Add:

- (2) This section does not apply to the licences at any time after either of the licences is first held by a different person (whether or not it continues to be held by a different person).

41 After section 73

Insert:

73A Additional licence under section 38B not to result in breach of ownership limits

- (1) If an additional licence has been allocated under subsection 38B(6), (7), (8) or (9) to the holder of an existing licence, the existing licence and additional licence are to be treated, for the purposes of this Part, as being only one licence.
- (2) Subsection (1) does not apply to the licences at any time after either of the licences is first held by a different person (whether or not it continues to be held by a different person).
- (3) If an additional licence has been allocated under subsection 38B(5) to a company, then, while:
 - (a) the company remains:
 - (i) the holder of the additional licence; and
 - (ii) partly owned by another company that was the holder of one of the existing licences at the time of the allocation; and
 - (b) the other company remains the holder of the existing licence; the existing licence and the additional licence are to be treated, for the purposes of this Part, as being only one licence.
- (4) For the purposes of this section, a company (the *first company*) is *partly owned* by another company if, and only if, at least one share in the first company is beneficially owned by the other company.

42 Paragraphs 74(1)(a) and (b)

Before “a newspaper”, insert “a datacasting transmitter licence,”.

43 Subsection 74(2)

Before “the newspaper”, insert “the datacasting transmitter licence,”.

44 Paragraph 75(1)(aa)

After “38A”, insert “or 38B”.

45 At the end of section 83

Add:

- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

46 At the end of section 92D

Add:

- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

47 At the end of section 98

Add:

- (4) This section does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

48 Paragraph 158(g)

After “programs”, insert “and datacasting content”.

49 Paragraph 158(h)

After “broadcasting service providers”, insert “and datacasting service providers”.

50 Paragraph 158(l)

After “(including national broadcasting services)”, insert “and datacasting services”.

51 Paragraph 158(m)

After “the broadcasting industry”, insert “and the datacasting industry”.

52 Paragraph 202(4)(c)

Repeal the paragraph, substitute:

(c) the information has been used for the purposes of:

- (i) a television or radio program; or
- (ii) datacasting content.

53 Subsection 202(5)

Repeal the subsection, substitute:

(5) For the purposes of this section, *journalist* means a person engaged in the profession or practice of reporting for, photographing, editing, recording or making:

(a) television or radio programs; or

(b) datacasting content;

of a news, current affairs, information or documentary character.

54 Section 204 (after table item dealing with refusal to allocate an additional licence)

Insert:

Refusal to allocate an additional licence	Section 38B	The applicant
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55 Section 206

After “broadcasting”, insert “or datacasting”.

Note: The heading to section 206 is altered by inserting “**or datacasting**” after “**Broadcasting**”.

56 Subsection 214(1)

After “section 140”, insert “or subclause 49(2), 50(3), 52(2) or 53(5) of Schedule 6”.

57 After section 216B

Insert:

216C Schedule 6 (datacasting services)

Schedule 6 has effect.

216D Review of Schedules 4 and 6

- (1) As soon as practicable after 1 January 2003 and before 1 January 2004, the Minister may cause to be conducted a review of the operation of Schedules 4 and 6.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

216E Review of streamed Internet, audio and video content

- (1) Before 1 January 2002, the Minister must cause to be conducted a review of whether, in the context of converging media technologies, streamed audio and video content obtainable on the Internet should be regarded as a broadcasting service.
- (2) The Minister must cause to be prepared a report of a review under subsection (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

58 Subclause 1(1) of Schedule 1

Before “newspapers”, insert “datacasting transmitter licences,”.

59 Subclause 1(2) of Schedule 1

Omit “industry” (first occurring), substitute “and datacasting industries”.

60 Subclause 1(2) of Schedule 1

Omit “the industry”, substitute “those industries”.

61 Paragraph 2(1)(b) of Schedule 1

After “licence” (first occurring), insert “(other than a datacasting transmitter licence)”.

62 After paragraph 2(1)(b) of Schedule 1

Insert:

- (ba) in the case of a datacasting transmitter licence:
 - (i) the person is the licensee; or
 - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the datacasting content transmitted by the licensee; or
 - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in transmitting datacasting services under the licence; or

63 After subclause 2(2) of Schedule 1

Insert:

- (2A) Paragraph (1)(ba) does not apply to the provision of datacasting content by a person to a licensee under an agreement for the supply of datacasting content to the licensee if:
 - (a) the conditions of the agreement relate only to the datacasting content so supplied or its promotion; and
 - (b) the content so supplied is a minority of the datacasting content transmitted by the licensee.

64 Paragraph 4(2)(b) of Schedule 1

Before “controls”, insert “in the case of a licensee other than a datacasting transmitter licensee—”.

65 After paragraph 4(2)(b) of Schedule 1

Insert:

- (ba) in the case of a datacasting transmitter licensee—controls the selection or provision of any of the datacasting content to be transmitted by the licensee; or

66 Subclause 4(4) of Schedule 1 (before paragraph (c) of the definition of *media company*)

Insert:

- (bb) a company that holds a datacasting transmitter licence; or

67 Paragraph 7(1)(m) of Schedule 2

Omit “digital mode”, substitute “SDTV digital mode”.

68 Paragraph 7(1)(n) of Schedule 2

Omit “clause 37”, substitute “Division 1 of Part 4”.

69 After paragraph 7(1)(n) of Schedule 2

Insert:

- (na) the licensee will comply with standards applicable to the licence under Division 2 of Part 4 of Schedule 4 (which deals with HDTV quotas);

69A After paragraph 7(1)(o) of Schedule 2

Insert:

- (oa) the licensee will comply with any regulations made for the purposes of clause 36B of Schedule 4 (which deals with the accessibility of domestic reception equipment);

69AA After subclause 7(2A) of Schedule 2

Insert:

- (2B) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to another commercial television broadcasting licensee:
 - (a) in a timely manner; and
 - (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;if required to do so by that other licensee for the purpose of compiling information for an electronic program guide.

69B Before subclause 7(3) of Schedule 2

Insert:

- (2C) Each commercial television broadcasting licence is also subject to the condition that the licensee will provide information to a national broadcaster (within the meaning of Schedule 4):
 - (a) in a timely manner; and

- (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
if required to do so by that national broadcaster for the purpose of compiling information for an electronic program guide.
- (2D) For the purposes of the application of subclause (2B) to information provided to a commercial television broadcasting licensee, *electronic program guide* has the same meaning as in subclause 6(24) of Schedule 4.
- (2E) For the purposes of the application of subclause (2C) to information provided to a national broadcaster, *electronic program guide* has the same meaning as in subclause 19(24) of Schedule 4.

70 At the end of subclause 18(2) of Schedule 3

Add:

- ; or (p) make, vary or revoke an instrument that is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*; or
- (q) make or vary a digital channel plan under a scheme in force under clause 6 of Schedule 4; or
- (r) make or vary a digital channel plan under a scheme in force under clause 19 of Schedule 4.

71 Clause 1 of Schedule 4

Omit “both analog mode and digital mode”, substitute “both analog mode and SDTV digital mode”.

72 Clause 1 of Schedule 4

Omit “High Definition Television (HDTV) format transmission of television programs in digital mode”, substitute “quotas for the transmission of programs in HDTV digital mode”.

73 Clause 1 of Schedule 4

After “1 January 2000”, insert “, 1 January 2004”.

73A Clause 2 of Schedule 4 (definition of *broadcasting transmission tower*)

Omit all the words after “used”, substitute:

to supply:

- (e) a broadcasting service by means of radiocommunications using the broadcasting services bands; or
- (f) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

74 Clause 2 of Schedule 4 (definition of *datacasting service*)

Repeal the definition.

75 Clause 2 of Schedule 4

Insert:

designated teletext service means a teletext service provided by a commercial television broadcasting licensee, where:

- (a) the licensee provided the service throughout the 2-year period ending immediately before the commencement of Schedule 6; and
- (b) the service remains substantially the same as the service provided throughout that 2-year period.

76 Clause 2 of Schedule 4

Insert:

HDTV digital mode has the meaning given by clause 4A.

76AA Clause 2 of Schedule 4

Insert:

multi-channelled national television broadcasting service has the meaning given by clause 5A.

76A Clause 2 of Schedule 4

Insert:

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

77 Clause 2 of Schedule 4

Insert:

SDTV digital mode has the meaning given by clause 4B.

78 Clause 2 of Schedule 4

Insert:

television broadcasting service means:

- (a) a commercial television broadcasting service; or
- (b) a national television broadcasting service.

79 After clause 4 of Schedule 4

Insert:

4A HDTV digital mode

For the purposes of this Schedule, a television program or a television broadcasting service is broadcast or transmitted in *HDTV digital mode* if the program or service is broadcast or transmitted in digital mode in a high definition format.

4B SDTV digital mode

For the purposes of this Schedule, a program or a television broadcasting service is broadcast or transmitted in *SDTV digital mode* if the program or service is broadcast or transmitted in digital mode in a standard definition format.

79A After clause 5 of Schedule 4

Insert:

5A Multi-channelled national television broadcasting service

- (1) For the purposes of this Schedule, a broadcasting service is a *multi-channelled national television broadcasting service* if:
 - (a) the service provides television programs; and
 - (b) either:
 - (i) the service is provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
 - (ii) the service is provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; and
-

- (c) the service is transmitted in digital mode using multi-channelling transmission capacity; and
 - (d) the only programs delivered by the service are programs to which subclause (2) applies; and
 - (e) the service is promoted as a service that is distinct from any other broadcasting service provided by the Corporation concerned; and
 - (f) the service is neither a subscription broadcasting service nor a subscription narrowcasting service; and
 - (g) the Corporation concerned has given the Minister a written notice electing that this subclause apply to the service; and
 - (h) if the Corporation concerned transmits the service in a particular coverage area:
 - (i) the Corporation transmits another broadcasting service in that coverage area; and
 - (ii) the other service is a national television broadcasting service; and
 - (iii) clause 19 applies to the other service during the simulcast period for that coverage area.
- (2) This subclause applies to the following television programs:
- (a) a program (including a news bulletin or a current affairs program) that deals wholly or principally with regional matters;
 - (b) an educational program;
 - (c) a science program;
 - (d) a religious program;
 - (e) a health program;
 - (f) an arts-related program;
 - (g) a culture-related program;
 - (h) a financial, market or business information bulletin;
 - (i) a program that consists of:
 - (i) the proceedings of, or the proceedings of a committee of, a Parliament; or
 - (ii) the proceedings of a court or tribunal in Australia; or
 - (iii) the proceedings of an official inquiry or Royal Commission in Australia; or

- (iv) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory;
- (j) a public policy program;
- (k) a foreign-language news bulletin;
- (l) a program about community-based multicultural or indigenous activities;
- (m) a children's program;
- (n) a history program;
- (o) a program that:
 - (i) is produced by the Australian Broadcasting Corporation; and
 - (ii) deals with international news (including analysis of items of international news);
- (p) a national program about rural affairs;
- (q) an information-only program;
- (r) a stand-alone international social documentary;
- (s) a stand-alone social documentary that is produced by the Special Broadcasting Service Corporation;
- (t) a subtitled foreign-language program;
- (u) an occasional stand-alone drama program;
- (v) incidental matter.

(3) In this clause:

drama program has the same meaning as in section 103B.

educational program has the same meaning as in Schedule 6 (disregarding subclauses 3(2) to (7) (inclusive) of Schedule 6).

financial, market or business information bulletin has the same meaning as in Schedule 6.

foreign-language news bulletin means a news bulletin the audio component of which is wholly in a language other than English (for this purpose, disregard minor and infrequent uses of the English language).

incidental matter means:

- (a) advertising or sponsorship matter (whether or not of a commercial kind); or

- (b) a program promotion; or
- (c) an announcement; or
- (d) a hosting; or
- (e) any other interstitial program.

information-only program has the same meaning as in Schedule 6 (disregarding subclauses 4(2) to (7) (inclusive) of Schedule 6).

public policy program means a program that consists of a lecture, speech, debate or forum, where:

- (a) the lecture, speech, debate or forum deals wholly or principally with one or more matters of public policy; and
- (b) there is no editing of the substance of the lecture, speech, debate or forum; and
- (c) if there is any analysis, commentary or discussion about the substance of the lecture, speech, debate or forum—the analysis, commentary or discussion has a balanced presentation of points of view.

subtitled foreign-language program means a subtitled program the audio content of which is wholly in a language other than English (for this purpose, disregard minor and infrequent uses of the English language).

80 Paragraphs 6(3)(a), (b) and (c) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

81 Paragraph 6(3)(e) of Schedule 4

Repeal the paragraph, substitute:

- (e) the objective that each additional channel should occupy 7 MHz of bandwidth;

82 Paragraph 6(3)(f) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

83 Paragraph 6(3)(h) of Schedule 4

Repeal the paragraph, substitute:

- (h) the objective that, at the end of the simulcast period for a licence area, all transmissions of commercial television

broadcasting services in analog mode in that area are to cease;

- (ha) the objective that, after the end of the simulcast period for a licence area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area using such channel or channels as the ABA allots under the scheme or a digital channel plan, having regard to:
- (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of the scheme;

84 Paragraph 6(3)(j) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

85 At the end of paragraph 6(3)(k) of Schedule 4

Add “provided under, and in accordance with the conditions of, datacasting licences”.

85A At the end of subclause 6(3) of Schedule 4

Add:

- ; (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ABA must have regard to:
- (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of the scheme.

86 After subclause 6(5) of Schedule 4

Insert:

(5A) If:

- (a) the holder of a commercial television broadcasting licence holds another commercial television broadcasting licence; and
- (b) the other licence was allocated under section 38A or 38B; and
- (c) the licences relate to the same licence area (within the meaning of whichever of those sections is applicable); and

(d) at or about the time when the other licence was allocated, the holder gave the ABA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned;

then:

- (e) paragraphs (3)(d), (e) and (ha) do not apply to either of the commercial television broadcasting services concerned; and
- (f) Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the objectives set out in subclause (5B).

(5B) The objectives mentioned in paragraph (5A)(f) are as follows:

- (a) the objective that, throughout the simulcast period for the licence area, the holder should be authorised, under one or more transmitter licences, to use one or more particular channels to transmit both of the commercial television broadcasting services concerned in digital mode in that area using multi-channelling transmission capacity on each channel;
- (b) the objective that each channel should occupy 7 MHz of bandwidth;
- (c) the objective that, after the end of the simulcast period for the licence area, the holder is to transmit both of the commercial television broadcasting services concerned in digital mode in that area using multi-channelling transmission capacity of a channel or channels allotted by the ABA under the scheme or a digital channel plan, having regard to:
 - (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other relevant policy objectives of the scheme.

(5C) Paragraphs (3)(c), (d), (e), (f), (h) and (j) do not apply to a commercial television broadcasting service provided under a licence allocated under section 38B.

Note: Under section 38B, it is a condition of the licence that the service may only be transmitted in digital mode.

86A Before subclause 6(6) of Schedule 4

Insert:

(5D) For the purposes of paragraphs (3)(ha) and (n) and (5B)(c), in determining the most efficient use of the spectrum, the ABA is to have regard to:

- (a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and
- (b) such other matters as the ABA considers relevant.

87 After subclause 6(6) of Schedule 4

Insert:

Remote licence areas—start-up of digital transmission

(6A) Part B of the commercial television conversion scheme must be directed towards ensuring the achievement of the policy objective that each holder of a commercial television broadcasting licence for a remote licence area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area by such date as the ABA determines under the scheme.

88 Subclause 6(7) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

89 After subclause 6(7) of Schedule 4

Insert:

(7A) The simulcast period for a particular remote licence area:

- (a) is to begin on the date determined in relation to that area in accordance with subclause (6A); and
- (b) is to run for such period as the ABA determines under the scheme.

90 Subclause 6(8) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

91 At the end of subclause 6(8) of Schedule 4

Add:

- ; and (c) ignore any digital program-enhancement content (as defined by subclause (14)); and
- (ca) ignore a particular item of category B digital program-enhancement content (as defined by subclause (15)), so long as the licensee does not transmit simultaneously any other item of category B digital program-enhancement content; and
 - (d) ignore a particular television program transmitted using multi-channelling transmission capacity, where:
 - (i) the program is a scheduled program that provides live coverage of a designated event (as defined by subclause (20)); and
 - (ii) the other television program broadcast using that multi-channelling transmission capacity is a regularly scheduled news program; and
 - (iii) the end of the designated event is delayed for reasons that are not within the control of the licensee or of the person (if any) who supplied the first-mentioned program to the licensee (either directly or indirectly through one or more interposed persons); and
 - (iv) the sole purpose of the use of the multi-channelling transmission capacity is to allow viewers of the SDTV version of the commercial television broadcasting service to choose between viewing the regularly scheduled news program and viewing so much of the designated event as overlaps the other television program; and
 - (e) ignore an electronic program guide (as defined by subclause (24)).

92 After subclause 6(8) of Schedule 4

Insert:

- (8A) For the purposes of this Act (other than paragraph (3)(c) or subclauses (7), (8) and (11) of this clause or Division 2 of Part 4 of this Schedule) and any other law of the Commonwealth, if the holder of a commercial television broadcasting licence transmits matter that is required to be ignored by paragraph (8)(c), (d) or (e) of this clause, that matter is taken to be part of the commercial television broadcasting service concerned.

93 Subclause 6(11) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

94 At the end of clause 6 of Schedule 4

Add:

Digital program-enhancement content

(14) For the purposes of this clause, ***digital program-enhancement content*** is content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

where:

- (g) the content is transmitted using a digital modulation technique; and
- (h) the sole purpose of the transmission of the content is to enhance a television program (the ***primary program***); and
- (i) the subject matter of the content is closely and directly linked to the subject matter of the primary program; and
- (j) the licensee transmits simultaneously the content and the primary program; and
- (k) either:
 - (i) the licensee transmits simultaneously the primary program in both analog mode and SDTV digital mode; or
 - (ii) the primary program is covered by a determination under subclause (9) or (10).

Note: For example, if the primary program is live coverage of a tennis match, the digital program-enhancement content could consist of any or all of the following:

- (a) the match from different camera angles;
- (b) each player’s results in past matches;
- (c) video highlights from those past matches;

- (d) each player's ranking and career highlights.

Designated event

- (20) For the purposes of this clause, a **designated event** is:
- (a) a sporting event; or
 - (b) a declared designated event (as defined by subclause (21)).
- (21) The ABA may, by writing, determine that a specified event is a **declared designated event** for the purposes of this clause.
- Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.
- (22) A determination under subclause (21) has effect accordingly.
- (23) A determination under subclause (21) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Electronic program guide

- (24) For the purposes of this clause, an **electronic program guide** is matter transmitted using a uniform digital modulation technique, where the matter consists of no more than:
- (a) a schedule of the television programs provided by:
 - (i) the commercial television broadcasting service transmitting the matter; or
 - (ii) all of the commercial television broadcasting services and all of the national television broadcasting services; or
 - (b) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; or
 - (c) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) a facility the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule; or
 - (d) a combination of:
 - (i) a schedule covered by paragraph (a); and

- (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; and
- (iii) a facility the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule.

95 After clause 7 of Schedule 4

Insert:

7A Scheme may confer power to make digital channel plans

- (1) The commercial television conversion scheme may provide for the ABA to make one or more plans (*digital channel plans*) that:
 - (a) allot channels to holders of commercial television broadcasting licences; and
 - (b) set out any technical limitations on the use of a particular channel that the ABA believes should be shown in the plan; and
 - (c) set out whether the use of a channel depends on any event or circumstances described in the plan.
- (2) The commercial television conversion scheme may provide that a digital channel plan may include other matters.
- (3) The commercial television conversion scheme may provide for the ABA to vary a digital channel plan.

96 Subclauses 8(4), (5) and (6) of Schedule 4

Repeal the subclauses, substitute:

Return of spectrum at end of simulcast period

- (4) If, at the end of the simulcast period for a licence area, the holder of a commercial television broadcasting licence for the area holds one or more transmitter licences that authorised the transmission of the commercial television broadcasting service concerned in that area, Part A of the commercial television conversion scheme must make provision for:
 - (a) requiring the holder to surrender the transmitter licence or licences, with effect from the end of the simulcast period; and
-

- (b) requiring the ACA to issue, with effect from the end of the simulcast period, one or more transmitter licences that authorise the transmission of the commercial television broadcasting service concerned using the channel or channels mentioned in whichever of the following provisions is applicable:
- (i) paragraph 6(3)(ha) of this Schedule;
 - (ii) paragraph 6(5B)(c) of this Schedule.

97 Paragraph 8(7)(a) of Schedule 4

Repeal the paragraph, substitute:

- (a) the holder contravenes a standard under subclause 37(1) or 37A(1) or 37E(1) or (3); and

Note: The heading to subclause 8(7) of Schedule 4 is altered by inserting “*format and*” after “*if*”.

98 Subclause 8(8) of Schedule 4

Omit “the licence that was surrendered as mentioned in that subclause”, substitute “a licence that was surrendered on the grounds of a contravention of a standard under subclause 37A(1) or 37E(1) or (3)”.

99 Subclause 8(9) of Schedule 4

Repeal the subclause.

100 Subclause 8(10) of Schedule 4

Omit all the words after “if the holder”, substitute:

does not comply with:

- (a) a specified requirement of that Part of the scheme; or
- (b) a standard applicable to the holder under subclause 37B(1) or 37C(1) or 37G(1) or (2).

101 After subclause 8(10) of Schedule 4

Insert:

- (10A) Subclause (10) does not prevent the commercial television conversion scheme from making provision for requiring the ACA to issue a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37C(1) or 37G(1) or (2). However, the amount of transmission capacity covered by the replacement licence must be

less than the amount of transmission capacity covered by the surrendered licence.

102 Paragraphs 19(3)(a), (b) and (c) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

103 Paragraph 19(3)(e) of Schedule 4

Repeal the paragraph, substitute:

- (e) the objective that each additional channel should occupy 7 MHz of bandwidth;

104 Paragraph 19(3)(f) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

105 Paragraph 19(3)(h) of Schedule 4

Repeal the paragraph, substitute:

- (h) the objective that, at the end of the simulcast period for a coverage area, all transmissions of national television broadcasting services in analog mode in that area are to cease;
- (ha) the objective that, after the end of the simulcast period for a coverage area, each national broadcaster is to transmit the national broadcasting service concerned in digital mode in that area using such channel or channels as the ABA allots under the scheme or a digital channel plan, having regard to:
 - (i) the need to plan the most efficient use of the spectrum; and
 - (ii) the other policy objectives of the scheme;

106 Paragraph 19(3)(j) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

107 At the end of paragraph 19(3)(k) of Schedule 4

Add “provided under, and in accordance with the conditions of, datacasting licences or for the purpose of the transmission of national radio broadcasting services”.

107A At the end of subclause 19(3) of Schedule 4

Add:

- ; (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ABA must have regard to:
- (i) the need to plan the most efficient use of the spectrum;
and
 - (ii) the other relevant policy objectives of the scheme.

107B Before subclause 19(6) of Schedule 4

Insert:

- (5A) For the purposes of paragraphs (3)(ha) and (n), in determining the most efficient use of the spectrum, the ABA is to have regard to:
- (a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and
 - (b) such other matters as the ABA considers relevant.

108 After subclause 19(6) of Schedule 4

Insert:

Remote coverage areas—start-up of digital transmission

- (6A) Part B of the national television conversion scheme must be directed towards ensuring the achievement of the policy objective that each national broadcaster is required to commence transmitting the national television broadcasting service concerned in SDTV digital mode in a remote coverage area by such date as is ascertained in relation to that area in accordance with an implementation plan that was given by the broadcaster, and is in force, under clause 20.

109 Subclause 19(7) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

110 After subclause 19(7) of Schedule 4

Insert:

- (7A) The simulcast period for a particular remote coverage area:
- (a) is to begin on the date mentioned in subclause (6A); and

- (b) is to end at the end of the simulcast period (within the meaning of subclause 6(7)) for the licence area that corresponds to that coverage area.

110A Before subclause 19(8) of Schedule 4

Insert:

Multi-channelled national television broadcasting services

- (7B) This clause does not apply to a multi-channelled national television broadcasting service.

111 Subclause 19(8) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

112 At the end of subclause 19(8) of Schedule 4

Add:

- ; and (c) ignore any digital program-enhancement content (as defined by subclause (14)); and
- (ca) ignore a particular item of category B digital program-enhancement content (as defined by subclause (15)), so long as the national broadcaster does not transmit simultaneously any other item of category B digital program-enhancement content; and
- (d) ignore a particular television program transmitted using multi-channelling transmission capacity, where:
 - (i) the program is a scheduled program that provides live coverage of a designated event (as defined by subclause (20)); and
 - (ii) the other television program broadcast using that multi-channelling transmission capacity is a regularly scheduled news program; and
 - (iii) the end of the designated event is delayed for reasons that are not within the control of the national broadcaster or of the person (if any) who supplied the first-mentioned program to the national broadcaster (either directly or indirectly through one or more interposed persons); and
 - (iv) the sole purpose of the use of the multi-channelling transmission capacity is to allow viewers of the SDTV

version of the national television broadcasting service to choose between viewing the regularly scheduled news program and viewing so much of the designated event as overlaps the other television program; and

- (e) ignore an electronic program guide (as defined by subclause (24)).

113 After subclause 19(8) of Schedule 4

Insert:

- (8A) For the purposes of this Act (other than paragraph (3)(c) or subclauses (7), (8) and (11) of this clause or Division 2 of Part 4 of this Schedule) and any other law of the Commonwealth, if a national broadcaster transmits matter that is required to be ignored by paragraph (8)(c), (d) or (e) of this clause, that matter is taken to be part of the national television broadcasting service concerned.

114 Subclause 19(11) of Schedule 4

Omit “digital mode”, substitute “SDTV digital mode”.

115 At the end of clause 19 of Schedule 4

Add:

Digital program-enhancement content

- (14) For the purposes of this clause, ***digital program-enhancement content*** is content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

where:

- (g) the content is transmitted using a digital modulation technique; and
- (h) the sole purpose of the transmission of the content is to enhance a television program (the ***primary program***); and

- (i) the subject matter of the content is closely and directly linked to the subject matter of the primary program; and
- (j) the national broadcaster transmits simultaneously the content and the primary program; and
- (k) either:
 - (i) the national broadcaster transmits simultaneously the primary program in both analog mode and SDTV digital mode; or
 - (ii) the primary program is covered by a determination under subclause (9) or (10).

Note: For example, if the primary program is live coverage of a tennis match, the digital program-enhancement content could consist of any or all of the following:

- (a) the match from different camera angles;
- (b) each player's results in past matches;
- (c) video highlights from those past matches;
- (d) each player's ranking and career highlights.

Designated event

- (20) For the purposes of this clause, a **designated event** is:
 - (a) a sporting event; or
 - (b) a declared designated event (as defined by subclause (21)).
- (21) The ABA may, by writing, determine that a specified event is a **declared designated event** for the purposes of this clause.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (22) A determination under subclause (21) has effect accordingly.
- (23) A determination under subclause (21) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Electronic program guide

- (24) For the purposes of this clause, an **electronic program guide** is matter transmitted using a uniform digital modulation technique, where the matter consists of no more than:
 - (a) a schedule of the television programs provided by:

- (i) the national television broadcasting service transmitting the matter; or
- (ii) all of the commercial television broadcasting services and all of the national television broadcasting services; or
- (b) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; or
- (c) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) a facility the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule; or
- (d) a combination of:
 - (i) a schedule covered by paragraph (a); and
 - (ii) items of factual information, and/or items of comment, about some or all of the programs in the schedule, where each item is brief and in the form of text; and
 - (iii) a facility the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule.

115A After subclause 20(1) of Schedule 4

Insert:

- (1A) Subclause (1) does not apply to a multi-channelled national television broadcasting service.

116 After clause 22 of Schedule 4

Insert:

22A Scheme may confer power to make digital channel plans

- (1) The national television conversion scheme may provide for the ABA to make one or more plans (*digital channel plans*) that:
 - (a) allot channels to national broadcasters; and

- (b) set out any technical limitations on the use of a particular channel that the ABA believes should be shown in the plan; and
 - (c) set out whether the use of a channel depends on any event or circumstances described in the plan.
- (2) The national television conversion scheme may provide that a digital channel plan may include other matters.
- (3) The national television conversion scheme may provide for the ABA to vary a digital channel plan.

117 Subclauses 23(4), (5) and (6) of Schedule 4

Repeal the subclauses, substitute:

Return of spectrum at end of simulcast period

- (4) If, at the end of the simulcast period for a coverage area, a national broadcaster holds one or more transmitter licences that authorised the transmission of the national television broadcasting service concerned in that area, Part A of the national television conversion scheme must make provision for:
- (a) requiring the national broadcaster to surrender the licence or licences, with effect from the end of the simulcast period; and
 - (b) requiring the ACA to issue, with effect from the end of the simulcast period, one or more transmitter licences that authorise the transmission of the national broadcasting service concerned using the channel or channels mentioned in paragraph 19(3)(ha) of this Schedule.

118 Paragraph 23(7)(a) of Schedule 4

Repeal the paragraph, substitute:

- (a) the national broadcaster contravenes a standard under subclause 37(1) or 37A(1) or 37F(1) or (3); and

Note: The heading to subclause 23(7) of Schedule 4 is altered by inserting “*format and*” after “*if*”.

119 Subclause 23(8) of Schedule 4

Omit “the licence that was surrendered as mentioned in that subclause”, substitute “a licence that was surrendered on the grounds of a contravention of a standard under subclause 37A(1) or 37F(1) or (3)”.

120 Subclause 23(9) of Schedule 4

Repeal the subclause.

121 Subclause 23(10) of Schedule 4

Omit all the words after “if the national broadcaster”, substitute:
does not comply with:

- (a) a specified requirement of that Part of the scheme; or
- (b) a standard applicable to the national broadcaster under subclause 37B(1) or 37C(1) or 37H(1) or (2).

122 After subclause 23(10) of Schedule 4

Insert:

- (10A) Subclause (10) does not prevent the national television conversion scheme from making provision for requiring the ACA to issue a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37C(1) or 37H(1) or (2). However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

123 Clause 35 of Schedule 4

Repeal the clause, substitute:

35 Simulcasting requirements

- (1) If there is a simulcast period for a coverage area, a national broadcaster must not broadcast a television program in SDTV digital mode in that area during the simulcast period for that area unless the program is broadcast simultaneously by the national broadcaster in analog mode in that area.
- (2) Subclause 19(8) applies to this clause in a corresponding way to the way in which it applies to paragraph 19(3)(c) of this Schedule and subclause 19(7) of this Schedule.

- (3) This clause does not apply to a multi-channelled national television broadcasting service.

123A Before clause 36 of Schedule 4

Insert:

35A Provision of electronic program guide information

- (1) Each national broadcaster must provide information to a commercial television broadcasting licensee:
- (a) in a timely manner; and
 - (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
- if required to do so by that licensee for the purpose of compiling information for an electronic program guide.
- (2) Each national broadcaster must provide information to the other national broadcaster:
- (a) in a timely manner; and
 - (b) at no cost; and
 - (c) in a form (and accompanied by any necessary digital systems information) that reasonably enables its inclusion in an electronic program guide;
- if required to do so by that other national broadcaster for the purpose of compiling information for an electronic program guide.
- (3) For the purposes of the application of subclause (1) to information provided to a commercial television broadcasting licensee, *electronic program guide* has the same meaning as in subclause 6(24).
- (4) For the purposes of the application of subclause (2) to information provided to a national broadcaster, *electronic program guide* has the same meaning as in subclause 19(24) of Schedule 4.

124 Subclause 36(2) of Schedule 4

Repeal the subclause.

125 Clause 36A of Schedule 4

Repeal the clause.

125A After Part 3 of Schedule 4

Insert:

Part 3A—Accessibility of domestic reception equipment

36B Accessibility of domestic reception equipment

- (1) The regulations may provide that a designated person must not:
- (a) provide domestic reception equipment; or
 - (b) enter into an agreement, arrangement or understanding in relation to the provision of domestic reception equipment;
- unless the equipment is accessible by:
- (c) each commercial television broadcasting service; and
 - (d) each national television broadcasting service; and
 - (e) each datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

- (2) In this clause:

designated person means:

- (a) the holder of a commercial television broadcasting licence; or
- (b) a national broadcaster; or
- (c) the holder of a datacasting licence; or
- (d) the holder of a datacasting transmitter licence.

reception equipment means equipment that is capable of receiving either or both of the following:

- (a) a television broadcasting service transmitted in digital mode;
- (b) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence.

36C Compliance by national broadcasters

A national broadcaster must comply with any regulations made for the purposes of clause 36B.

- Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.
- Note 2: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.
- Note 3: For compliance by holders of datacasting transmitter licences, see section 109A of the *Radiocommunications Act 1992*.

126 Clause 37 of Schedule 4

Repeal the clause, substitute:

Division 1—Digital television format standards

37 Non-remote areas—SDTV format standards

- (1) The regulations may determine standards that are to be observed by:
 - (a) commercial television broadcasting licensees; and
 - (b) national broadcasters;in relation to the format in which television programs are to be transmitted in SDTV digital mode.
- (2) Subclause (1) applies in relation to the transmission of a commercial television broadcasting service in a licence area that is not a remote licence area, where that service is transmitted in digital mode in that area.
- (3) Subclause (1) applies in relation to the transmission of a national television broadcasting service in a coverage area that is not a remote coverage area, where that service is transmitted in digital mode in that area.

37A Non-remote areas—HDTV format standards

- (1) The regulations may determine standards that are to be observed by:
 - (a) commercial television broadcasting licensees; and
 - (b) national broadcasters;in relation to the format in which television programs are to be transmitted in HDTV digital mode.

- (2) Subclause (1) applies in relation to the transmission of a commercial television broadcasting service in a licence area that is not a remote licence area, where:
 - (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8).
- (3) Subclause (1) applies in relation to the transmission of a national television broadcasting service in a coverage area that is not a remote coverage area, where:
 - (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(8).

37B Remote areas—SDTV format standards

- (1) The regulations may determine standards that are to be observed by:
 - (a) commercial television broadcasting licensees; and
 - (b) national broadcasters;in relation to the format in which television programs are to be transmitted in SDTV digital mode.
- (2) Subclause (1) applies in relation to the transmission of a commercial television broadcasting service in a remote licence area, where that service is transmitted in digital mode in that area.
- (3) Subclause (1) applies in relation to the transmission of a national television broadcasting service in a remote coverage area, where that service is transmitted in digital mode in that area.

37C Remote areas—HDTV format standards

- (1) The regulations may determine standards that are to be observed by:
 - (a) commercial television broadcasting licensees; and
 - (b) national broadcasters;in relation to the format in which television programs are to be transmitted in HDTV digital mode.

- (2) Subclause (1) applies in relation to the transmission of a commercial television broadcasting service in a remote licence area, where:
 - (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(10A).
- (3) Subclause (1) applies in relation to the transmission of a national television broadcasting service in a remote coverage area, where:
 - (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(10A).

37D Compliance by national broadcasters

A national broadcaster must comply with a standard under this Division that is applicable to the broadcaster.

Note: For compliance by licensees, see clause 7 of Schedule 2.

Division 2—HDTV quota standards

37E Non-remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations must determine standards that require each commercial television broadcasting licensee:
 - (a) in addition to transmitting a version of the commercial television broadcasting service concerned in SDTV digital mode in the licence area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) if the licence was not allocated under section 38B—to ensure that a particular television program transmitted on the HDTV

version of that service in that area during the simulcast period for that area is the same as:

- (i) a program (the *analog program*) that is transmitted simultaneously by the licensee on that service in analog mode in that area and that is not covered by a determination under subclause 6(9) or (10); or
 - (ii) a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area and that is covered by a determination under subclause 6(9) or (10); and
 - (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.
- (2) Standards made for the purposes of subclause (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
 - (i) as soon as practicable after the licensee begins to transmit the commercial television broadcasting service concerned in SDTV mode in that area; and
 - (ii) in any event, within the 2-year period beginning when the licensee is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area;
 - (b) the objective that, after the end of that 2-year period, each holder of a commercial television broadcasting licence for a licence area is required to transmit at least 20 hours per week of high-definition television programs in HDTV digital mode in that area on the HDTV version of the commercial television broadcasting service concerned.

Prime viewing hours quotas

- (3) The regulations may determine standards that require commercial television broadcasting licensees to meet specified quotas in relation to the extent to which high-definition television programs,

or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the commercial television broadcasting service concerned.

Application

- (4) Subclauses (1), (2) and (3) apply in relation to the transmission of a commercial television broadcasting service in a licence area that is not a remote licence area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8); and
 - (c) that service is not the subject of an election under subclause 6(5A).

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37F Non-remote areas—HDTV quotas for national broadcasters

- (1) The regulations must determine standards that require each national broadcaster:
- (a) in addition to transmitting a version of the national television broadcasting service concerned in SDTV digital mode in the coverage area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the broadcaster on that service in analog mode in that area and that is not covered by a determination under subclause 19(9) or (10); or

- (ii) a program (the *SDTV program*) that is transmitted simultaneously by the broadcaster on that service in SDTV digital mode in that area and that is covered by a determination under subclause 19(9) or (10).
- (2) Standards made for the purposes of subclause (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
 - (i) as soon as practicable after the broadcaster begins to transmit the national television broadcasting service concerned in SDTV mode in that area; and
 - (ii) in any event, within the 2-year period beginning when the broadcaster is required to commence transmitting the national television broadcasting service concerned in SDTV digital mode in that area;
 - (b) the objective that, after the end of that 2-year period each national broadcaster is required to transmit at least 20 hours per week of high-definition television programs in HDTV digital mode in a coverage area on the HDTV version of the national television broadcasting service concerned.

Prime viewing hours quotas

- (3) The regulations may determine standards that require national broadcasters to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the national television broadcasting service concerned.

Application

- (4) Subclauses (1), (2) and (3) apply in relation to the transmission of a national television broadcasting service in a coverage area that is not a remote coverage area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(8); and

- (c) that service is not a multi-channelled national television broadcasting service.

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37G Remote areas—HDTV quotas for commercial television broadcasting licensees

- (1) The regulations may determine standards that require each commercial television broadcasting licensee:
 - (a) in addition to transmitting a version of the commercial television broadcasting service concerned in SDTV digital mode in the licence area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) if the licence was not allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the licensee on that service in analog mode in that area and that is not covered by a determination under subclause 6(9) or (10); or
 - (ii) a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area and that is covered by a determination under subclause 6(9) or (10); and
 - (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.

Prime viewing hours quotas

- (2) The regulations may determine standards that require commercial television broadcasting licensees to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the commercial television broadcasting service concerned.

Application

- (3) Subclauses (1) and (2) apply in relation to the transmission of a commercial television broadcasting service in a remote licence area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(10A).

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37H Remote areas—HDTV quotas for national broadcasters

- (1) The regulations may determine standards that require each national broadcaster:
- (a) in addition to transmitting a version of the national television broadcasting service concerned in SDTV digital mode in the coverage area concerned, to transmit another version (the *HDTV version*) of the service in digital mode in that area; and
 - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
 - (c) to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
 - (i) a program (the *analog program*) that is transmitted simultaneously by the broadcaster on that service in

- analog mode in that area and that is not covered by a determination under subclause 19(9) or (10); or
- (ii) a program (the ***SDTV program***) that is transmitted simultaneously by the broadcaster on that service in SDTV digital mode in that area and that is covered by a determination under subclause 19(9) or (10).

Prime viewing hours quotas

- (2) The regulations may determine standards that require national broadcasters to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode in prime viewing hours on the HDTV version of the national television broadcasting service concerned.
- (3) Subclauses (1) and (2) apply in relation to the transmission of a national television broadcasting service in a remote coverage area, where:
- (a) that service is transmitted in digital mode in that area; and
 - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(10A); and
 - (c) that service is not a multi-channelled national television broadcasting service.

Note 1: For *high-definition television program*, see clause 37L.

Note 2: For *prime viewing hours*, see clause 37M.

37J HDTV version

To avoid doubt, a HDTV version of a commercial television broadcasting service or of a national television broadcasting service need not transmit all of the television programs that are broadcast on the version of the service that is transmitted in SDTV digital mode.

Note: For example, a HDTV version of a particular service could consist of programs transmitted in HDTV digital mode. In such a case, receivers would pick up the remaining programs from the version of the service that is transmitted in SDTV digital mode.

37K Compliance by national broadcasters

A national broadcaster must comply with a standard under this Division that is applicable to the broadcaster.

Note: For compliance by licensees, see clause 7 of Schedule 2.

37L High-definition television programs

- (1) For the purposes of the application of this Division to a commercial television broadcasting licensee, a ***high-definition television program*** is:
- (a) a television program that was originally produced in a high-definition digital video format; or
 - (b) a television program that:
 - (i) was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
 - (ii) has been converted to a high-definition digital video format;where the conversion has not resulted in a significant reduction in picture quality.
- (2) For the purposes of the application of this Division to a national broadcaster, a ***high-definition television program*** is:
- (a) a television program that was originally produced in a high-definition digital video format; or
 - (b) a television program that:
 - (i) was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
 - (ii) has been converted to a high-definition digital video format;where the conversion has not resulted in a significant reduction in picture quality; or
 - (c) a television program that:
 - (i) was originally produced in a standard definition digital video format; and

- (ii) has been converted to a high-definition digital video format; or
- (d) a television program that:
 - (i) was originally produced in an analog video format; and
 - (ii) has been converted to a standard definition digital video format;where the converted program was subsequently converted to a high-definition digital video format.

37M Prime viewing hours

For the purposes of this Division, *prime viewing hours* are the hours:

- (a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

Division 3—Captioning standards

127 After subclause 38(4) of Schedule 4

Insert:

- (4A) Subclause (4) has effect subject to subclause (4B).

128 Before subclause 38(5) of Schedule 4

Insert:

- (4B) Standards under subclause (1) must not require the provision of a captioning service for:
 - (a) a television program, or a part of a television program, that is wholly in a language other than English; or
 - (b) a television program, or a part of a television program, the audio component of which consists only of music that has no human vocal content that is recognisable as being in the English language; or
 - (c) so much of the audio component of a television program as consists of incidental or background music.
 - (4C) For the purposes of paragraphs (4B)(a) and (b), disregard minor and infrequent uses of the English language.
-

129 After clause 38 of Schedule 4

Insert:

Division 4—Technical standards

130 Subclause 39(2) of Schedule 4

Repeal the subclause, substitute:

- (2) Standards under subclause (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.
- (2AA) Standards under subclause (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.
- (2A) For the purposes of this clause, an *eligible datacasting service* is:
 - (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
 - (b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

131 Subclause 39(5) of Schedule 4 (definition of *conditional access system*)

Repeal the definition, substitute:

conditional access system means a conditional access system that:

- (a) relates to the provision of one or more eligible datacasting services; and
- (b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

131A Subclause 39(5) of Schedule 4

Insert:

application program interface has the meaning generally accepted within the broadcasting industry.

132 Clause 40 of Schedule 4

Repeal the clause.

133 Before clause 41 of Schedule 4

Insert:

Division 5—Miscellaneous

134 Clause 41A of Schedule 4

Repeal the clause.

134A Clause 42 of Schedule 4

After “a broadcasting transmission tower” (wherever occurring), insert “or a designated associated facility”.

134B Clause 42 of Schedule 4

Omit “tower, and the site of the tower, for the purpose of installing or maintaining a transmitter for use in transmitting television broadcasting services in digital mode”, substitute “tower or facility”.

134C Clause 42 of Schedule 4

Omit “tower, and the site of the tower, for the purpose of installing or maintaining a transmitter for use in transmitting datacasting services in digital mode”, substitute “tower or facility”.

134D At the end of clause 42 of Schedule 4

Add:

- | |
|--|
| <ul style="list-style-type: none">• The owner or operator of a broadcasting transmission tower must provide:<ul style="list-style-type: none">(a) the holder of a commercial television broadcasting licence; or(b) a national broadcaster; |
|--|

with access to the site of the tower.

- The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the site of the tower.

135 Clause 43 of Schedule 4 (definition of *datacaster*)

Repeal the definition, substitute:

datacaster means a person who holds a datacasting transmitter licence.

136 Clause 43 of Schedule 4

Insert:

datacasting transmitter licence does not include an authorisation under section 114 of the *Radiocommunications Act 1992*.

136A Clause 43 of Schedule 4

Insert:

designated associated facility has the meaning given by clause 43A.

136B Clause 43 of Schedule 4 (definition of *facility*)

Omit “or a line”, substitute “, a line or an electricity cable or wire”.

136C Clause 43 of Schedule 4 (definition of *television broadcasting service*)

Repeal the definition.

136D After clause 43 of Schedule 4

Insert:

43A Designated associated facilities

For the purposes of this Part, a *designated associated facility* means any of the following facilities:

- (a) an antenna;
- (b) a combiner;

- (c) a feeder system;
- (d) a facility of a kind specified in the regulations;

where:

- (e) the facility is, or is to be, associated with a transmitter; and
- (f) the facility is used, or capable of being used, in connection with:
 - (i) the transmission of a television broadcasting service in digital mode; or
 - (ii) the provision of datacasting services in digital mode.

136E At the end of clause 44 of Schedule 4

Add:

- (3) For the purposes of this Part, *giving access* to a designated associated facility includes:
 - (a) replacing the facility with another facility located on the same site and giving access to the replacement facility; or
 - (b) giving access to a service provided by means of the designated associated facility.

136F After clause 45 of Schedule 4

Insert:

45A Access to designated associated facilities

- (1) This clause applies to a designated associated facility if the facility is situated on, at, in or under:
 - (a) a broadcasting transmission tower; or
 - (b) the site on which a broadcasting transmission tower is situated.

Television broadcasting services in digital mode

- (2) The owner or operator of the designated associated facility must, if requested to do so by the holder of a commercial television broadcasting licence (the *access seeker*), or a national broadcaster (also called the *access seeker*), give the access seeker access to the facility.
 - (3) The owner or operator of the designated associated facility is not required to comply with subclause (2) unless:
-

- (a) the access is provided for the sole purpose of enabling the access seeker to use the facility, or a service provided by means of the facility, wholly or principally in connection with the transmission of the access seeker's television broadcasting service in digital mode; and
- (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

Datacasting services in digital mode

- (4) The owner or operator of the designated associated facility must, if requested to do so by a datacaster (the *access seeker*), give the access seeker access to the facility.
- (5) The owner or operator of the designated associated facility is not required to comply with subclause (4) unless:
 - (a) the access is provided for the sole purpose of enabling the access seeker to use the facility, or a service provided by means of the facility, wholly or principally in connection with the provision of datacasting services in digital mode; and
 - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

Compliance not technically feasible

- (6) The owner or operator of a designated associated facility is not required to comply with subclause (2) or (4) if there is in force a written certificate issued by the ABA stating that, in the ABA's opinion, compliance with subclause (2) or (4), as the case may be, in relation to that facility is not technically feasible.
- (7) In determining whether compliance with subclause (2) or (4) in relation to a facility is technically feasible, the ABA must have regard to:
 - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
 - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and

- (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
 - (i) changing the configuration or operating parameters of a facility situated on the site; and
 - (ii) making alterations to a facility situated on the site; and
- (d) such other matters (if any) as the ABA considers relevant.

Issue of certificate

- (8) If the ABA receives a request to make a decision about the issue of a certificate under subclause (6), the ABA must use its best endeavours to make that decision within 10 business days after the request was made.

Exemptions

- (9) The regulations may provide for exemptions from subclauses (2) and (4).
- (10) Regulations made for the purposes of subclause (9) may make provision with respect to a matter by conferring on the ACCC a power to make a decision of an administrative character.

136G After subclause 47(1) of Schedule 4

Insert:

Access to designated associated facilities

- (1A) The owner or operator of a designated associated facility must comply with subclause 45A(2) or (4) on such terms and conditions as are:
 - (a) agreed between the following parties:
 - (i) the owner or operator;
 - (ii) the access seeker (within the meaning of that subclause); or
 - (b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

136H At the end of subclause 48(4) of Schedule 4

Add “, to the extent to which the Code relates to the provision of access under clause 45 or 46”.

136J After subclause 48(4) of Schedule 4

Insert:

- (4A) The owner or operator of a designated associated facility must comply with the Code, to the extent to which the Code relates to the provision of access under clause 45A.

137 After subclause 53(2) of Schedule 4

Insert:

- (2A) The report must be directed towards ensuring the achievement of the policy objective that only datacasting services that:
- (a) are authorised by datacasting licences; and
 - (b) are not designated teletext services;
- are to be taken into account in calculating the amount of charge.

137A After clause 59 of Schedule 4

Insert:

59A Reviews before 31 October 2000

- (1) Before 31 October 2000, the Minister must cause to be conducted a review of the following matters:
- (a) whether the ABA has sufficient powers to allow the most efficient use of the broadcasting services bands spectrum (including for the purposes of promoting the availability to audiences and users throughout Australia of a diverse range of datacasting services provided under, and in accordance with the conditions of, datacasting licences);
 - (b) if those powers are insufficient, what additional powers should be provided for in laws of the Commonwealth.
- (2) The Minister must ensure that, in the conduct of a review under subclause (1), provision is made for:
- (a) public consultation; and
 - (b) consultation with national broadcasters; and
 - (c) consultation with holders of commercial television broadcasting licences.

- (3) The Minister must cause to be prepared a report of a review under subclause (1).
- (4) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (5) For the purposes of this clause, in determining the meaning of the expressions *datacasting service* and *datacasting licence*, it is to be assumed that all of the amendments made by the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* had commenced at the commencement of this clause.

137AA Subclause 60(1) of Schedule 4

Omit “31 December 2005”, substitute “1 January 2005”.

Note: The heading to clause 60 of Schedule 4 is altered by omitting “31 December 2005” and substituting “1 January 2005”.

137AB Paragraph 60(1)(b) of Schedule 4

Repeal the paragraph, substitute:

- (b) whether paragraph 7(1)(m) of Schedule 2 (which deals with simulcast requirements for commercial television broadcasting licensees) should be amended or repealed;

137B Paragraph 60(1)(d) of Schedule 4

Repeal the paragraph.

138 At the end of subclause 60(1) of Schedule 4

Add:

- ; (g) whether the following provisions (which deal with additional commercial television broadcasting licences) should be amended or repealed:
 - (i) section 28A;
 - (ii) section 38A;
 - (iii) section 38B;
 - (iv) section 73;
 - (v) section 73A;
 - (vi) subclauses 6(5A), (5B) and (5C) of this Schedule;
 - (vii) paragraph 37E(1)(d) of this Schedule;
 - (viii) paragraph 37E(4)(c) of this Schedule;

- (ix) paragraph 37G(1)(d) of this Schedule;
- (h) the competitive and regulatory arrangements that should apply to the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:
 - (i) there is in force a licence (other than a datacasting licence) allocated by the ABA under this Act authorising the provision of that service; or
 - (ii) that service is provided in accordance with a class licence;
- (i) the arrangements that should apply in relation to revenue to be raised by the Commonwealth (whether by way of taxation or otherwise) in connection with the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:
 - (i) there is in force a licence (other than a datacasting licence) allocated by the ABA under this Act authorising the provision of that service; or
 - (ii) that service is provided in accordance with a class licence;
- (j) the conditions that should apply to commercial television broadcasting licences on or after 1 January 2007 for the provision of commercial television broadcasting services;
- (k) the viability of creating an indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands.

138A After subclause 60(1) of Schedule 4

Insert:

- (1A) A review under subclause (1) of a matter referred to in paragraph (1)(h) or (i) is to be conducted on the basis that, if the licence referred to in subparagraph (1)(h)(i) or (i)(i) is a commercial television broadcasting licence, the licensee should, on and after 1 January 2007, be treated in the same way as persons who held commercial television broadcasting licences immediately before that date, in relation to:
 - (a) the duration of related transmitter licences; and

(b) fees under the *Television Licence Fees Act 1964*.

139 After clause 60 of Schedule 4

Insert:

60A Reviews before 1 January 2004

- (1) Before 1 January 2004, the Minister must cause to be conducted a review of the following matters:
 - (a) whether Division 2 of Part 4 of this Schedule (which deals with HDTV quotas) should be amended or repealed;
 - (b) the regulatory arrangements that should apply to:
 - (i) the transmission of television programs by commercial television broadcasting licensees in HDTV digital mode in remote licence areas; and
 - (ii) the transmission of television programs by national broadcasters in HDTV digital mode in remote coverage areas.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

60B Review before 1 January 2006

- (1) Before 1 January 2006, the Minister must cause to be conducted a review of the content of any regulations made for the purposes of paragraph 6(3)(c) of this Schedule (which deals with the duration of the simulcast period).
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

60C Review before 1 January 2002

- (1) Before 1 January 2002, the Minister must cause to be conducted a review of the regulatory arrangements that should apply to the digital transmission of community television broadcasting services using spectrum in the broadcasting services bands and how access to spectrum should be provided free of charge.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

139A Paragraph 61(1)(c) of Schedule 4

Insert “, 45A(6)” before “or 46(5)”.

139B At the end of paragraph 62(1)(c) of Schedule 4

Add “or (10A)”.

139C At the end of paragraph 62(3)(b) of Schedule 4

Add “or (10A)”.

139D Subclause 62(5) of Schedule 4

Insert “, 45A(6)” before “or 46(5)”.

139E At the end of clause 62 of Schedule 4

Add:

- (9) An application may be made to the AAT for a review of a decision of the ABA to refuse to issue a certificate under subclause 45A(6).
- (10) An application under subclause (9) may only be made by the owner or operator of the designated associated facility concerned.

140 At the end of the Act

Add:

Schedule 6—Datacasting services

Note: See section 216C.

Part 1—Introduction

1 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating the provision of datacasting services.
- Datacasting service providers must hold datacasting licences.
- Datacasting content will be subject to restrictions. Those restrictions are designed to encourage datacasting licensees to provide a range of innovative services that are different to traditional broadcasting services.
- The main restrictions on datacasting content are as follows:
 - (a) restrictions on the provision of certain genres of television programs;
 - (b) restrictions on the provision of audio content.
- Datacasting licensees will be allowed to provide the following types of content:
 - (a) information-only programs (including matter that enables people to carry out transactions);
 - (b) educational programs;
 - (c) interactive computer games;
 - (d) content in the form of text or still visual images;
 - (e) Parliamentary broadcasts;
 - (f) ordinary electronic mail;
 - (g) Internet content.

- A group that represents datacasting licensees may develop codes of practice.
- The ABA has a reserve power to make a standard if there are no codes of practice or if a code of practice is deficient.
- The ABA is to investigate complaints about datacasting licensees.

2 Definitions

(1) In this Schedule, unless the contrary intention appears:

advertising or sponsorship material means advertising or sponsorship material (whether or not of a commercial kind).

Classification Board means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

compilation program means a program that consists of video clips or other matter edited together to form a structured program, where there is a heavy emphasis on entertainment value.

declared Internet carriage service has the meaning given by clause 23B.

drama program has the same meaning as in section 103B.

educational program has the meaning given by clause 3.

engage in conduct (except in clause 55 or 56) means:

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

financial, market or business information bulletin means a bulletin the sole or dominant purpose of which is to provide information, analysis, commentary or discussion in relation to financial, market or business matters.

foreign-language news bulletin has the meaning given by clause 5.

information-only program has the meaning given by clause 4.

infotainment or lifestyle program means a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value.

interactive computer game means a computer game, where:

- (a) the way the game proceeds, and the result achieved at various stages of the game, is determined in response to the decisions, inputs and direct involvement of the player; and
- (b) a part of the software that enables end-users to play the game is under the control of the datacasting licensee concerned.

Internet carriage service has the same meaning as in Schedule 5, but does not include a service that transmits content that has been copied from the Internet, where the content is selected by the datacasting licensee concerned.

music program means a program the sole or dominant purpose of which is to provide:

- (a) music with video clips; or
 - (b) video footage of musical performances;
- or both.

news or current affairs program means any of the following:

- (a) a news bulletin;
- (b) a sports news bulletin;
- (c) a program (whether presenter-based or not) whose sole or dominant purpose is to provide analysis, commentary or discussion principally designed to inform the general community about social, economic or political issues of current relevance to the general community.

nominated datacaster declaration means a declaration under clause 45.

ordinary electronic mail does not include a posting to a newsgroup.

qualified entity means:

- (a) a company that:
 - (i) is formed in Australia or in an external Territory; and
 - (ii) has a share capital; or

- (b) the Commonwealth, a State or a Territory; or
- (c) the Australian Broadcasting Corporation; or
- (d) the Special Broadcasting Service Corporation; or
- (e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or Territory.

“reality television” program means a program the sole or dominant purpose of which is to depict actual, contemporary events, people or situations in a dramatic or entertaining way, where there is a heavy emphasis on dramatic impact or entertainment value.

related body corporate has the same meaning as in the Corporations Law.

sports program means a program the sole or dominant purpose of which is to provide:

- (a) coverage of one or more sporting events; or
 - (b) analysis, commentary or discussion in relation to one or more sporting events;
- or both, but does not include a sports news bulletin.

transmitter licence has the same meaning as in the *Radiocommunications Act 1992*.

- (2) In determining the meaning of an expression used in a provision of this Act (other than this Schedule), this clause is to be disregarded.

3 Educational programs

- (1) For the purposes of this Schedule, an **educational program** is matter, where, having regard to:
 - (a) the substance of the matter; and
 - (b) the way in which the matter is advertised or promoted; and
 - (c) any other relevant matters;it would be concluded that the sole or dominant purpose of the matter is to assist a person in education or learning, whether or not in connection with a course of study or instruction.
- (2) Subclause (1) has effect subject to subclauses (3) and (4).

ABA determinations

- (3) The ABA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken to be an ***educational program***.
- (4) The ABA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken not to be an ***educational program***.
- (5) A determination under subclause (3) or (4) has effect accordingly.
- (6) A determination under subclause (3) or (4) is to be an instrument of a legislative character.
- (7) A determination under subclause (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

4 Information-only programs

- (1) For the purposes of this Schedule, an ***information-only program*** is matter the sole or dominant purpose of which is to:
 - (a) provide factual information, or directly-related comment, about any of a wide range of matters, including but not limited to any of the following:
 - (i) products;
 - (ii) services;
 - (iii) community activities;
 - (iv) domestic or household matters;
 - (v) private recreational pursuits or hobbies;
 - (vi) legal rights, obligations or responsibilities;
 - (vii) first aid, health or safety matters;
 - (viii) emergencies or natural disasters;
 - (ix) rural matters;
 - (x) travel matters;
 - (xi) crime prevention matters; or
 - (b) enable and/or facilitate the carrying out and/or completion of transactions;

or both, where there is not a significant emphasis on dramatic impact or entertainment.

- (2) Subclause (1) has effect subject to subclauses (3) and (4).

ABA determinations

- (3) The ABA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken to be an **information-only program**.
- (4) The ABA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken not to be an **information-only program**.
- (5) A determination under subclause (3) or (4) has effect accordingly.
- (6) A determination under subclause (3) or (4) is to be an instrument of a legislative character.
- (7) A determination under subclause (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Definitions

- (8) In this clause:

community activity means:

- (a) a meeting, event, performance or other activity that can be attended by:
- (i) the public; or
 - (ii) a section of the public; or
 - (iii) members of a particular club, society or organisation; or
- (b) the activity of visiting an institution, a tourist attraction or other place;

whether on payment of a charge or otherwise.

product includes real property.

services means any services, benefits, rights, privileges or facilities that are capable of being provided, granted or conferred:

- (a) in trade or commerce; or
- (b) by a government or government authority; or
- (c) in any other way.

transactions includes:

- (a) commercial transactions; and
- (b) banking transactions; and
- (c) insurance transactions; and
- (d) dealings about employment matters; and
- (e) dealings with governments and government authorities.

5 Foreign-language news bulletins

- (1) For the purposes of this Schedule, a *foreign-language news bulletin* is a news bulletin that is wholly in a language other than English.
- (2) For the purposes of subclause (1), disregard minor and infrequent uses of the English language.
- (3) For the purposes of subclause (1), disregard any English language subtitles or captioning.
- (4) A bulletin referred to in subclause (1) may include discussion, commentary or analysis in relation to the items included in such a bulletin.

6 Datacasting content is taken not to be a television program or a radio program etc.

For the purposes of this Act (other than Divisions 1 and 2 of Part 3 of this Schedule) and any other law of the Commonwealth (other than the *Tobacco Advertising Prohibition Act 1992*), if a datacasting service is provided under, and in accordance with the conditions of, a datacasting licence:

- (a) any matter provided on that service is taken not to be a television program or a radio program; and
- (b) any matter provided on that service is taken not to be broadcast or televised; and
- (c) that service is taken not to be a broadcasting service, a television service or a radio service.

Part 2—Datacasting licences

7 Allocation of datacasting licence

- (1) The ABA may allocate a datacasting licence to a person, on written application by the person.
- (2) Applications must:
 - (a) be in accordance with a form approved in writing by the ABA; and
 - (b) be accompanied by the application fee determined in writing by the ABA.

8 When datacasting licence must not be allocated

- (1) A datacasting licence is not to be allocated to an applicant if:
 - (a) the applicant is not a qualified entity; or
 - (b) the ABA decides that subclause 9(1) applies to the applicant.
- (2) The ABA may refuse to allocate a datacasting licence to an applicant if a datacasting licence held by the applicant, or by a related body corporate of the applicant, was cancelled at any time during the previous 12 months.
- (3) Paragraph (1)(b) does not require the ABA to consider the application of clause 9 in relation to an applicant before allocating a licence to the applicant.

9 Unsuitable applicant

- (1) The ABA may, if it is satisfied that allowing a particular person to provide a datacasting service under a datacasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (b) a breach of the conditions of the licence occurring;decide that this subclause applies to the person.
- (2) In deciding whether such a risk exists, the ABA is to take into account:
 - (a) the business record of the person; and

- (b) the person's record in situations requiring trust and candour; and
 - (c) the business record of each person who would be, if a datacasting licence were allocated to the first-mentioned person, in a position to control the licence; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the first-mentioned person, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.
- (3) This clause does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

10 Transfer of datacasting licences

- (1) A datacasting licensee may transfer the licence to another qualified entity.
- (2) A transferee of a datacasting licence must, within 7 days after the transfer, notify the ABA of the transfer.

Penalty: 50 penalty units.
- (3) A notification must be in accordance with a form approved in writing by the ABA.

11 Surrender of datacasting licences

A datacasting licensee may, by written notice given to the ABA, surrender the licence.

12 ABA to maintain Register of datacasting licences

- (1) The ABA is to maintain a Register in which the ABA includes:
 - (a) particulars of datacasting licences; and
 - (b) such information about transmitter licences as the ABA determines.
 - (2) The Register may be maintained by electronic means.
-

- (3) The Register is to be made available for inspection on the Internet.

Part 3—Conditions of datacasting licences

Division 1—Genre conditions

13 Category A television programs

- (1) For the purposes of this Division, each of the following television programs is a ***category A television program***:
- (a) a drama program;
 - (c) a sports program;
 - (d) a music program;
 - (e) an infotainment or lifestyle program;
 - (f) a documentary program;
 - (g) a “reality television” program;
 - (h) a children’s entertainment program;
 - (i) a light entertainment or variety program;
 - (j) a compilation program;
 - (k) a quiz or games program;
 - (l) a comedy program;
 - (m) a program that consists of a combination of any or all of the above programs.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (5).
- (3) For the purposes of this Division, neither of the following television programs is a ***category A television program***:
- (a) an information-only program;
 - (b) an educational program.

ABA genre determinations

- (4) The ABA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken to be a ***category A television program*** covered by a specified paragraph of subclause (1).
- (5) The ABA may make a written determination providing that, for the purposes of this Division, a specified television program or

specified matter is taken not to be a **category A television program** covered by a specified paragraph of subclause (1).

- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

14 Condition relating to category A television programs

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial television broadcasting service, would be:
 - (a) a category A television program; or
 - (b) an extract from a category A television program.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting an extract from a category A television program, so long as:
 - (a) the extract is not longer than 10 minutes; and
 - (c) the extract is not combined with one or more other extracts from category A television programs in such a way that the extracts together constitute the whole or a majority of a particular category A television program; and
 - (d) having regard to:
 - (i) the nature of the extract; and
 - (ii) the circumstances in which the extract is provided;it would be concluded that the licensee did not intend that the extract be combined with one or more other extracts from category A television programs in such a way that the extracts together constitute the whole or a majority of a particular category A television program.
- (3) A reference in subclause (2) to a **category A television program** is a reference to matter that is covered by subclause (1) because of paragraph (1)(a).

- (4) A reference in subclause (2) to an *extract from a category A television program* is a reference to matter that is covered by subclause (1) because of paragraph (1)(b).
- (5) If, because of subclause (2) of this clause, a datacasting licensee can transmit matter without breaching the condition set out in subclause (1) of this clause, the condition set out in subclause 16(1) does not prevent the licensee from transmitting that matter.

15 Category B television programs

- (1) For the purposes of this Division, each of the following television programs is a *category B television program*:
 - (a) a news or current affairs program;
 - (b) a financial, market or business information bulletin;
 - (c) a weather bulletin;
 - (d) a bulletin or program that consists of a combination of any or all of the above bulletins or programs.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (5).
- (3) For the purposes of this Division, none of the following television programs is a *category B television program*:
 - (a) an information-only program;
 - (b) an educational program;
 - (c) a foreign-language news bulletin.

ABA genre determinations

- (4) The ABA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken to be a *category B television program* covered by a specified paragraph of subclause (1).
- (5) The ABA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken not to be a *category B television program* covered by a specified paragraph of subclause (1).
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.

- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

16 Condition relating to category B television programs

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial television broadcasting service, would be:
- (a) a category B television program; or
 - (b) an extract from a category B television program.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin (whether presenter-based or not), so long as:
- (a) the bulletin or program is not longer than 10 minutes; and
 - (b) if:
 - (i) an earlier bulletin or program covered by subclause (1) was transmitted by the licensee; and
 - (ii) the content of the first-mentioned bulletin or program differs in any respect from the content of the earlier bulletin or program;the interval between the start of the transmission of the earlier bulletin or program and the start of the transmission of the first-mentioned bulletin or program is at least 30 minutes; and
 - (c) the bulletin or program is not combined with one or more other bulletins or programs in such a way that the bulletins or programs together constitute a bulletin or program longer than 10 minutes; and
 - (d) having regard to:
 - (i) the nature of the bulletin or program; and
 - (ii) the circumstances in which the bulletin or program is provided;it would be concluded that the licensee did not intend that the bulletin or program be combined with one or more other bulletins or programs in such a way that the bulletins or

programs together constitute a bulletin or program longer than 10 minutes.

- (3) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin or program, so long as:
- (a) the bulletin or program is not a presenter-based bulletin or program; and
 - (b) one of the following applies:
 - (i) the bulletin or program consists of a single item of news (including a single item of sports news);
 - (ii) the bulletin or program is a financial, market or business information bulletin or program that deals with a single topic;
 - (iia) the bulletin or program is a compilation of items, the subject of which is the same or directly related, and is not longer than 10 minutes;
 - (iii) the bulletin or program is a weather bulletin or program; and
 - (c) the bulletin or program can only be accessed by an end-user who makes a selection from an on-screen menu.

- (4) In this clause:

presenter-based bulletin or program means a bulletin or program that consists of, or includes, a combination of:

- (a) introductory or closing segments, or both, spoken by a host, or an anchor presenter, who is visible on the screen; and
 - (b) video images (whether or not with accompanying sound).
- (5) If, because of subclause (2) or (3) of this clause, a datacasting licensee can transmit matter without breaching the condition set out in subclause (1) of this clause, the condition set out in subclause 14(1) does not prevent the licensee from transmitting that matter.

17 Genre conditions do not apply to Parliamentary proceedings etc.

The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting live matter that consists of:

- (a) the proceedings of, or the proceedings of a committee of, a Parliament; or

- (b) the proceedings of a court or tribunal in Australia; or
- (c) the proceedings of an official inquiry or Royal Commission in Australia; or
- (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.

18 Genre conditions do not apply to matter that consists of no more than text or still visual images etc.

- (1) The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting matter that consists of no more than:
 - (a) text; or
 - (b) text accompanied by associated sounds; or
 - (c) still visual images; or
 - (d) still visual images accompanied by associated sounds; or
 - (e) any combination of matter covered by the above paragraphs; or
 - (f) any combination of:
 - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
 - (ii) animated images (with or without associated sounds);where:
 - (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
 - (iv) the animated images consist of advertising or sponsorship material.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

18A Genre conditions do not apply to advertising or sponsorship material

The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting advertising or sponsorship material.

19 Genre conditions do not apply to interactive computer games

- (1) The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from providing an interactive computer game.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

20 Genre conditions do not apply to Internet carriage services or ordinary electronic mail

- (1) The conditions set out in clauses 14 and 16 do not apply to:
 - (a) the transmission of so much of a datacasting service as consists of an Internet carriage service (other than a declared Internet carriage service); or
 - (b) the transmission of ordinary electronic mail.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

20AA Genre conditions do not apply to certain content copied from the Internet

- (1) The conditions set out in clauses 14 and 16 do not apply to the transmission of matter if:
 - (a) the matter is content that has been copied from the Internet; and
 - (b) the content is selected by the datacasting licensee concerned; and
 - (c) there is in force an exemption order under subclause 27A(1) in relation to the transmission of the matter.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

Division 1A—Electronic program guide condition

20A Electronic program guides

For the purposes of this Division, an *electronic program guide* is matter transmitted using a digital modulation technique, where the matter consists of no more than:

- (a) a schedule of programs provided by a broadcasting service or a datacasting service; or
- (b) a schedule covered by paragraph (a) and either or both of the following:
 - (i) items of factual information, and/or items of comment, about some or all of the program in the schedule, where each item is brief and in the form of text;
 - (ii) a facility, the sole purpose of which is to enable an end-user to select, and commence viewing, one or more of the programs in the schedule.

20B Condition relating to electronic program guides

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit an electronic program guide except in accordance with the following rules:
 - (a) a licensee may transmit an electronic program guide containing information about the programs transmitted by the licensee;
 - (b) if a licensee transmits an electronic program guide containing information about any programs transmitted by a commercial television broadcasting service or a national television broadcasting service, the licensee must transmit equivalent information about programs transmitted by itself and by each other commercial television broadcasting service or a national television broadcasting service.
- (2) Subclause (1) does not require a datacasting licensee to transmit information about programs transmitted by a commercial television broadcasting service unless the commercial television broadcasting licensee concerned has requested the datacasting licensee to transmit that information.

- (3) Subclause (1) does not require a datacasting licensee to transmit information about programs transmitted by a national television broadcasting service unless the national broadcaster concerned has requested the datacasting licensee to transmit that information.

Division 2—Audio content condition

21 Audio content condition

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial radio broadcasting service, would be a designated radio program.

Designated radio program

- (2) For the purposes of this clause, a **designated radio program** is a radio program other than:
- (a) an information-only program; or
 - (b) an educational program; or
 - (c) a foreign-language news bulletin.

- (3) Subclause (2) has effect subject to subclauses (4) and (5).

ABA determinations

- (4) The ABA may make a written determination providing that, for the purposes of this clause, a specified radio program or specified matter is taken to be a **designated radio program**.
- (5) The ABA may make a written determination providing that, for the purposes of this clause, a specified radio program or specified matter is taken not to be a **designated radio program**.
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

Condition does not apply to incidental or background audio content

- (8A) The condition set out in subclause (1) does not apply to the transmission of audio content that is incidental to, or provided as background to, matter displayed on the screen.

Condition does not apply to Internet carriage services

- (9) The condition set out in subclause (1) does not apply to the transmission of so much of a datacasting service as consists of an Internet carriage service (other than a declared Internet carriage service).

Condition does not apply to certain content copied from the Internet

- (10) The condition set out in subclause (1) does not apply to the transmission of matter if:
- (a) the matter is content that has been copied from the Internet; and
 - (b) the content is selected by the datacasting licensee concerned; and
 - (c) there is in force an exemption order under subclause 27A(1) in relation to the transmission of the matter.

22 Audio content condition does not apply to Parliamentary proceedings etc.

The condition set out in clause 21 does not prevent a datacasting licensee from transmitting live audio content that consists of:

- (a) the proceedings of, or the proceedings of a committee of, a Parliament; or
- (b) the proceedings of a court or tribunal in Australia; or
- (c) the proceedings of an official inquiry or Royal Commission in Australia; or
- (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.

23 Audio content condition does not apply to matter that consists of no more than text or still visual images etc.

- (1) The condition set out in clause 21 does not prevent a datacasting licensee from transmitting matter that consists of no more than:
- (a) text; or
 - (b) text accompanied by associated sounds; or
 - (c) still visual images; or
 - (d) still visual images accompanied by associated sounds; or
 - (e) any combination of matter covered by the above paragraphs; or
- or
- (f) any combination of:
 - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
 - (ii) animated images (with or without associated sounds);where:
 - (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
 - (iv) the animated images consist of advertising or sponsorship material.
- (2) In determining the meaning of the expressions *radio* or *radio program*, when used in a provision of this Act, subclause (1) is to be disregarded.

23A Audio content condition does not apply to advertising or sponsorship material

The condition set out in clause 21 does not prevent a datacasting licensee from transmitting advertising or sponsorship material.

Division 2A—Genre conditions: anti-avoidance

23B Anti-avoidance—declared Internet carriage services

- (1) If:
- (a) the whole or a part of a datacasting service provided under a datacasting licence consists of an Internet carriage service; and

- (b) one or more persons enter into, begin to carry out, or carry out, a scheme; and
 - (c) the ABA is of the opinion that the person, or any of the persons, who entered into, began to carry out, or carried out, the scheme did so for the sole or dominant purpose of avoiding the application to the licensee of Division 1 or 2; the ABA may, by writing, determine that, for the purposes of the application of this Schedule to the licensee, the Internet carriage service is a ***declared Internet carriage service***.
- (2) The person, or any of the persons, referred to in paragraphs (1)(b) and (c) may be the licensee.
 - (3) A determination under subclause (1) has effect accordingly.
 - (4) In this clause:
 - scheme* means:
 - (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
 - (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

Division 3—Other conditions

24 General conditions

- (1) Each datacasting licence is subject to the following conditions:
 - (a) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6 of Schedule 2 (as modified by subclause (4) of this clause);
 - (b) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, transmit a tobacco advertisement within the meaning of that Act;
 - (c) the licensee will comply with standards applicable to the licence under clause 31;
 - (ca) the licensee will comply with any regulations made for the purposes of clause 36B of Schedule 4;
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- (d) the licensee will not use the datacasting service in the commission of an offence against another Act or a law of a State or Territory;
 - (e) the licensee will not transmit datacasting content that has been classified as RC, X or NVE by the Classification Board;
 - (f) the licensee will not transmit datacasting content that has been classified R by the Classification Board unless:
 - (i) the content has been modified as mentioned in paragraph 28(4)(b); or
 - (ii) access to the program is subject to a restricted access system (within the meaning of clause 27);
 - (g) the licensee will comply with technical standards applicable to the licensee under clause 60;
 - (h) if the whole or a part of the datacasting service consists of an Internet carriage service—the licensee will comply with an online provider rule (within the meaning of Schedule 5) that is applicable to the licensee in relation to the Internet carriage service.
- (2) The conditions set out in paragraphs (1)(a), (c), (e) and (f) do not apply in relation to:
- (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
 - (b) the transmission of ordinary electronic mail.
- (3) The condition set out in paragraph (1)(b) does not apply in relation to the transmission of ordinary electronic mail.
- (4) Clauses 3, 3A, 4, 5 and 6 of Schedule 2 apply to datacasting services provided under datacasting licences in a corresponding way to the way in which those clauses apply to broadcasting services, and, in particular, those clauses have effect as if:
- (a) a reference in those clauses to a person providing broadcasting services under a class licence included a reference to a person who is a datacasting licensee; and
 - (b) a reference in those clauses to a broadcasting service included a reference to a datacasting service; and
 - (c) a reference in those clauses to broadcast included a reference to provide on a datacasting service; and

- (d) subclause 4(2) of Schedule 2 were not applicable to political matter provided under a datacasting licence, where the political matter consists of no more than:
 - (i) text; or
 - (ii) still visual images; or
 - (iii) any combination of matter covered by the above subparagraphs; and
 - (e) clause 4 of Schedule 2 also provided that, if a datacasting licensee provides on a datacasting service, at the request of another person, political matter that consists of no more than:
 - (i) text; or
 - (ii) still visual images; or
 - (iii) any combination of matter covered by the above subparagraphs;the licensee must also cause to be displayed to end-users the required particulars in relation to the political matter in a form approved in writing by the ABA.
- (5) Subclause (4) does not apply to:
- (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
 - (b) the transmission of ordinary electronic mail.

25 Suitability condition

- (1) Each datacasting licence is subject to the condition that the licensee will remain a suitable licensee.
 - (2) For the purposes of this clause, a person is a suitable licensee if the ABA has not decided that subclause (3) applies to the person.
 - (3) The ABA may, if it is satisfied that allowing a particular person to provide, or continue to provide, datacasting services under a datacasting licence would lead to a significant risk of:
 - (a) an offence against this Act or the regulations being committed; or
 - (b) a breach of the conditions of the licence occurring;decide that this subclause applies to the person.
 - (4) In deciding whether such a risk exists, the ABA is to take into account:
-

- (a) the business record of the person; and
 - (b) the person's record in situations requiring trust and candour; and
 - (c) the business record of each person who is in a position to control the licence; and
 - (d) the record in situations requiring trust and candour of each such person; and
 - (e) whether the first-mentioned person, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.
- (5) This clause does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

26 Additional conditions imposed by the ABA

- (1) The ABA may, by written notice given to a datacasting licensee:
 - (a) impose an additional condition on the licence; or
 - (b) vary or revoke a condition of the licence imposed under this clause.
- (2) If the ABA proposes to vary or revoke a condition or to impose a new condition, the ABA must:
 - (a) give to the licensee written notice of its intention; and
 - (b) give to the licensee a reasonable opportunity to make representations to the ABA in relation to the proposed action; and
 - (c) make the proposed changes available on the Internet.
- (3) Action taken under subclause (1) must not be inconsistent with conditions set out in:
 - (a) clause 14; or
 - (b) clause 16; or
 - (c) clause 21; or
 - (d) clause 24; or
 - (e) clause 25.

- (4) Conditions of datacasting licences varied or imposed by the ABA must be relevant to the datacasting services to which those licences relate.
- (5) Without limiting the range of conditions that may be imposed, the ABA may impose a condition on a datacasting licensee:
 - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
 - (b) designed to ensure that a breach of a condition by the licensee does not recur.

ABA to maintain Register of conditions

- (6) The ABA is to maintain a register in which it includes particulars of:
 - (a) conditions imposed under this clause; and
 - (b) variations of conditions under this clause; and
 - (c) revocations of conditions under this clause.
- (7) The Register may be maintained by electronic means.
- (8) The Register is to be made available for inspection on the Internet.

27 Restricted access system

- (1) The ABA may, by written instrument, declare that a specified access-control system is a *restricted access system* for the purposes of this Division. A declaration under this subclause has effect accordingly.

Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.

- (2) In making an instrument under subclause (1), the ABA must have regard to:
 - (a) the objective of protecting children from exposure to matter that is unsuitable for children; and
 - (b) such other matters (if any) as the ABA considers relevant.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 4—Exemption orders for content copied from the Internet

27A Exemption orders in relation to content copied from the Internet

- (1) If the ABA is satisfied that:
 - (a) matter is proposed to be transmitted by a datacasting licensee; and
 - (b) the matter is content that is proposed to be copied from the Internet; and
 - (c) the content is proposed to be selected by the datacasting licensee; and
 - (d) if it were assumed that clause 20A and subclause 21(10) had not been enacted:
 - (i) any breach of the conditions set out in clauses 14 and 16 and subclause 21(1) that would arise from the transmission of the matter would be of a minor, infrequent or incidental nature; or
 - (ii) the transmission of the matter would not be contrary to the purpose of clauses 14, 16 and 21;the ABA may, by writing, make an exemption order in relation to the transmission of the matter.
- (2) If the ABA receives a request from a datacasting licensee to make an exemption order in relation to the transmission of matter by the licensee, the ABA must use its best endeavours to make that decision within 28 days after the request was made.

Part 4—Codes of practice

28 Development of codes of practice

- (1) The Parliament intends that:
 - (a) a group that the ABA is satisfied represents datacasting licensees should develop codes of practice that are to be applicable to the datacasting operations of datacasting licensees; and
 - (b) those codes of practice should be developed:

- (i) in consultation with the ABA; and
- (ii) taking account of any relevant research conducted by the ABA.

Content of codes of practice

- (2) Codes of practice may relate to:
 - (a) preventing the transmission of matter that, in accordance with community standards, is not suitable to be transmitted by datacasting licensees; and
 - (b) methods of ensuring that the protection of children from exposure to datacasting content which may be harmful to them is a high priority; and
 - (c) methods of classifying datacasting content that reflect community standards; and
 - (d) promoting accuracy and fairness in datacasting content that consists of news or current affairs; and
 - (e) preventing the transmission of datacasting content that:
 - (i) simulates news or events in a way that misleads or alarms end-users; or
 - (ii) depicts the actual process of putting a person into a hypnotic state; or
 - (iii) is designed to induce a hypnotic state in end-users; or
 - (iv) uses or involves the process known as subliminal perception or any other technique that attempts to convey information to end-users by transmitting messages below or near the threshold of normal awareness; and
 - (f) datacasting content that consists of:
 - (i) advertising; or
 - (ii) sponsorship announcements; and
 - (g) methods of:
 - (i) handling complaints from the public about datacasting content or compliance with codes of practice; and
 - (ii) reporting to the ABA on complaints so made; and
 - (h) in a case where there are customers of datacasting licensees—dealings with those customers, including methods of billing, fault repair, privacy and credit management; and

- (i) such other matters relating to datacasting content as are of concern to the community.

Classification etc.

- (3) In developing codes of practice relating to matters referred to in paragraphs (2)(a) and (c), community attitudes to the following matters are to be taken into account:
 - (a) the portrayal in datacasting content of physical and psychological violence;
 - (b) the portrayal in datacasting content of sexual conduct and nudity;
 - (c) the use in datacasting content of offensive language;
 - (d) the portrayal in datacasting content of the use of drugs, including alcohol and tobacco;
 - (e) the portrayal in datacasting content of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
 - (f) such other matters relating to datacasting content as are of concern to the community.
 - (4) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), the group that the ABA is satisfied represents datacasting licensees must ensure that:
 - (a) for the purpose of classifying films—those codes apply the film classification system administered by the Classification Board; and
 - (b) those codes provide for methods of modifying films having particular classifications under that system so that the films are suitable to be transmitted; and
 - (c) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification; and
 - (d) for the purpose of classifying interactive computer games—those codes apply the computer games classification system administered by the Classification Board; and
 - (e) those codes provide for the provision of advice to consumers on the reasons for interactive computer games receiving a particular classification; and
-

- (f) for the purpose of classifying content (other than films or interactive computer games)—those codes apply the film classification system administered by the Classification Board in a corresponding way to the way in which that system applies to films; and
 - (g) those codes provide for methods of modifying content (other than films or interactive computer games) having particular classifications under that system (as correspondingly applied) so that the content is suitable to be transmitted; and
 - (h) those codes provide for the provision of advice to consumers on the reasons for content (other than films or interactive computer games) receiving a particular classification.
- (5) In developing codes of practice referred to in paragraph (2)(a) or (b), the group that the ABA is satisfied represents datacasting licensees must ensure that films classified as “M” or “MA” do not portray material that goes beyond the previous “AO” classification criteria.

Registration of codes of practice

- (6) If:
- (a) the group that the ABA is satisfied represents datacasting licensees develops a code of practice to be observed in the conduct of the datacasting operations of those licensees; and
 - (b) the ABA is satisfied that:
 - (i) the code of practice provides appropriate community safeguards for the matters covered by the code; and
 - (ii) the code is endorsed by a majority of datacasting licensees; and
 - (iii) members of the public have been given an adequate opportunity to comment on the code;

the ABA must include that code in the Register of codes of practice.

Interactive computer game

- (7) In this clause:

interactive computer game includes a computer game within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*.

29 Review by the ABA

- (1) The ABA must periodically conduct a review of the operation of subclause 28(4) to see whether that subclause is in accordance with prevailing community standards.
- (2) If, after conducting such a review, the ABA concludes that subclause 28(4) is not in accordance with prevailing community standards, the ABA must recommend to the Minister appropriate amendments to this Act that would ensure that subclause 28(4) is in accordance with prevailing community standards.
- (3) If the Minister receives a recommendation under subclause (2), the Minister must cause a copy of the recommendation to be tabled in each House of the Parliament within 15 sitting days of that House after receiving the recommendation.

30 ABA to maintain Register of codes of practice

- (1) The ABA is to maintain a Register in which it includes all codes of practice registered under clause 28.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

31 ABA may determine standards where codes of practice fail or where no code of practice developed

- (1) If:
 - (a) the ABA is satisfied that there is convincing evidence that a code of practice registered under clause 28 is not operating to provide appropriate community safeguards for a matter referred to in subclause 28(2) in relation to the datacasting operations of datacasting licensees; and
 - (b) the ABA is satisfied that it should determine a standard in relation to that matter;the ABA must, in writing, determine a standard in relation to that matter.
- (2) If:
 - (a) no code of practice has been registered under clause 28 for a matter referred to in subclause 28(2); and

- (b) the ABA is satisfied that it should determine a standard in relation to that matter;
the ABA must, by notice in writing, determine a standard in relation to that matter.
- (3) A standard determined under this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

32 Consultation on standards

The ABA must, before determining, varying or revoking a standard, seek public comment on the proposed standard or the variation or revocation.

33 Notification of determination or variation or revocation of standards

If the ABA determines or varies or revokes a standard, the ABA must publish in the *Gazette* a notice stating:

- (a) that the standard has been determined, varied or revoked; and
- (b) the places where copies of the standard or of the variation or revocation can be purchased.

34 Limitation of ABA's power in relation to standards

- (1) The ABA must not determine a standard that requires that, before datacasting content is transmitted, the datacasting content, or a sample of the datacasting content, be approved by the ABA or by a person or body appointed by the ABA.
- (2) However, the ABA may determine such a standard in relation to datacasting content for children.

35 This Part does not apply to Internet carriage services or ordinary electronic mail

This Part does not apply to:

- (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
- (b) the transmission of ordinary electronic mail.

Part 5—Complaints to the ABA about datacasting services

36 Complaints about offences or breach of licence conditions

- (1) If a person believes that a datacasting licensee has:
 - (a) committed an offence against this Act or the regulations; or
 - (b) breached a condition of the datacasting licence;the person may make a complaint to the ABA about the matter.
- (2) If a person believes that another person is providing a datacasting service without a datacasting licence that authorises the provision of that service, the first-mentioned person may make a complaint to the ABA about the matter.

37 Complaints under codes of practice

- (1) If:
 - (a) a person has made a complaint to a datacasting licensee about a matter relating to:
 - (i) datacasting content; or
 - (ii) compliance with a code of practice that applies to the datacasting operations of datacasting licensees and that is included in the Register of codes of practice; and
 - (b) if there is a relevant code of practice relating to the handling of complaints of that kind—the complaint was made in accordance with that code of practice; and
 - (c) either:
 - (i) the person has not received a response within 60 days after making the complaint; or
 - (ii) the person has received a response within that period but considers that response to be inadequate;the person may make a complaint to the ABA about the matter.
- (2) This clause does not apply to:
 - (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
 - (b) the transmission of ordinary electronic mail.

38 Investigation of complaints by the ABA

- (1) The ABA must investigate the complaint.
- (2) However, the ABA need not investigate the complaint if it is satisfied that:
 - (a) the complaint is frivolous or vexatious or was not made in good faith; or
 - (b) in the case of a complaint referred to in subclause 36(1)—the complaint does not relate to:
 - (i) an offence against this Act or the regulations; or
 - (ii) a breach of a condition of a licence.
- (3) The ABA must notify the complainant of the results of such an investigation.

Part 6—ABC/SBS datacasting

39 Provision of datacasting services by the ABC etc.

- (1) If:
 - (a) the Australian Broadcasting Corporation applies for a datacasting licence; and
 - (b) the licence is allocated to the Australian Broadcasting Corporation;then, in addition to the functions conferred on the Australian Broadcasting Corporation by the *Australian Broadcasting Corporation Act 1983*, the Australian Broadcasting Corporation has the function of providing a datacasting service under, and in accordance with the conditions of, the licence.
- (2) For the purposes of section 25A of the *Australian Broadcasting Corporation Act 1983*, the activity of providing a datacasting service under, and in accordance with the conditions of, a datacasting licence is taken to be an authorised business.

40 Provision of datacasting services by the SBS etc.

- (1) If:
 - (a) the Special Broadcasting Service Corporation applies for a datacasting licence; and
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(b) the licence is allocated to the Special Broadcasting Service Corporation;

then, in addition to the functions conferred on the Special Broadcasting Service Corporation by the *Special Broadcasting Service Act 1991*, the Special Broadcasting Service Corporation has the function of providing a datacasting service under, and in accordance with the conditions of, the licence.

- (2) For the purposes of section 52 of the *Special Broadcasting Service Act 1991*, the activity of providing a datacasting service under, and in accordance with the conditions of, a datacasting licence is taken to be an authorised business.

41 Control of datacasting transmitter licences

- (1) The Australian Broadcasting Corporation must not be in a position to exercise control of a datacasting transmitter licence.
- (2) The Special Broadcasting Service Corporation must not be in a position to exercise control of a datacasting transmitter licence.

Part 7—Nominated datacaster declarations

42 Object of this Part

The object of this Part is to provide for the making of declarations (*nominated datacaster declarations*) that allow the following licences to be held by different persons:

- (a) a datacasting licence that authorises the provision of a datacasting service;
- (b) a datacasting transmitter licence for a radiocommunications transmitter that is for use for transmitting the datacasting service.

43 Datacasting transmitter licence

A reference in this Part to a *datacasting transmitter licence* does not include a reference to an authorisation under section 114 of the *Radiocommunications Act 1992*.

44 Applications for nominated datacaster declarations

- (1) If there is:
 - (a) a datacasting licence that authorises the provision of a datacasting service; and
 - (b) a datacasting transmitter licence for a transmitter that is intended for use for transmitting the datacasting service;
the licensee of the datacasting transmitter licence may apply to the ABA for a nominated datacaster declaration in relation to the provision of the datacasting service under the datacasting licence.
- (2) An application must be accompanied by:
 - (a) the application fee determined in writing by the ABA; and
 - (b) the consent of the licensee of the datacasting licence.
- (3) The application and consent must be:
 - (a) in writing; and
 - (b) in accordance with a form approved in writing by the ABA.

45 Making a nominated datacaster declaration

- (1) After considering the application, the ABA must declare in writing that the provision of the datacasting service under the datacasting licence is nominated in relation to the datacasting transmitter licence if the ABA is satisfied that:
 - (a) the licensee of the datacasting transmitter licence will transmit the datacasting service on behalf of the licensee of the datacasting licence; and
 - (b) the licensee of the datacasting transmitter licence will not be involved in the selection or provision of datacasting content to be transmitted on the datacasting service.
- (2) The ABA must give a copy of the declaration to:
 - (a) the applicant; and
 - (b) the licensee of the datacasting licence.
- (3) If the ABA refuses to make a nominated datacaster declaration, the ABA must give written notice of the refusal to:
 - (a) the applicant; and
 - (b) the licensee of the datacasting licence.

46 Effect of nominated datacaster declaration

If:

- (a) a nominated datacaster declaration is in force; and
- (b) the licensee of the datacasting transmitter licence transmits the datacasting service on behalf of the licensee of the datacasting licence;

then:

- (c) for the purposes of the *Radiocommunications Act 1992*, the licensee of the datacasting licence is taken not to operate the radiocommunications transmitter for any purpose in connection with that transmission; and
- (d) for the purposes of this Act:
 - (i) the licensee of the datacasting licence is taken to provide the datacasting service; and
 - (ii) the licensee of the datacasting transmitter licence is taken not to provide the datacasting service; and
- (e) for the purposes of this Act (other than Schedule 1 or clause 60 of this Schedule) and the *Tobacco Advertising Prohibition Act 1992*, any content that is transmitted by the licensee of the datacasting transmitter licence on behalf of the licensee of the datacasting licence:
 - (i) is taken to be content transmitted by the licensee of the datacasting licence; and
 - (ii) is not taken to be content transmitted by the licensee of the datacasting transmitter licence.

47 Revocation of nominated datacaster declaration

- (1) The ABA must, by writing, revoke a nominated datacaster declaration if the ABA is satisfied that:
 - (a) the licensee of the datacasting transmitter licence is not transmitting, or does not propose to transmit, the datacasting service on behalf of the licensee of the datacasting licence; or
 - (b) the licensee of the datacasting transmitter licence is involved, or proposes to become involved, in the selection or provision of datacasting content to be transmitted on the datacasting service.
 - (2) The ABA must, by writing, revoke a nominated datacaster declaration if:
-

- (a) the licensee of the datacasting transmitter licence; or
 - (b) the licensee of the datacasting licence;gives the ABA a written notice stating that the licensee does not consent to the continued operation of the declaration.
- (3) The ABA must give a copy of the revocation to:
 - (a) the licensee of the datacasting transmitter licence; and
 - (b) the licensee of the datacasting licence.
- (4) A revocation under subclause (1) or (2) takes effect on the date specified in the revocation.
- (5) The ABA must not revoke a nominated datacaster declaration under subclause (1) unless the ABA has first:
 - (a) given the licensee of the datacasting transmitter licence a written notice:
 - (i) setting out a proposal to revoke the declaration; and
 - (ii) inviting the licensee to make a submission to the ABA on the proposal; and
 - (b) given the licensee of the datacasting licence a written notice:
 - (i) setting out a proposal to revoke the declaration; and
 - (ii) inviting the licensee to make a submission to the ABA on the proposal; and
 - (c) considered any submission that was received under paragraph (a) or (b) within the time limit specified in the notice concerned.
- (6) A time limit specified in a notice under subclause (5) must run for at least 7 days.
- (7) A person must not enter into a contract or arrangement under which the person or another person is:
 - (a) prevented from giving a notice under subclause (2); or
 - (b) subject to any restriction in relation to the giving of a notice under subclause (2).
- (8) A contract or arrangement entered into in contravention of subclause (7) is void.

48 Register of nominated datacaster declarations

- (1) The ABA is to maintain a register in which the ABA includes particulars of all nominated datacaster declarations currently in force.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

Part 8—Remedies for breaches of licensing provisions

Division 1—Providing a datacasting service without a licence

49 Prohibition on providing a datacasting service without a licence

- (1) A person is guilty of an offence if the person:
 - (a) intentionally provides a datacasting service; and
 - (b) does not have a datacasting licence to provide the service.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subclause (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Note: For exemptions for broadcasters, see clause 51.

50 Notice for providing a datacasting service without a licence

- (1) If a person is providing a datacasting service without a datacasting licence that authorises the provision of that service, the ABA may, by notice in writing given to the person, direct the person to cease providing the service.
- (2) A person is guilty of an offence if:
 - (a) a person has been given a notice under subclause (1); and
 - (b) the person intentionally engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (3) A person who contravenes subclause (2) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

Note: For exemptions for broadcasters, see clause 51.

51 Exemption for broadcasting licensees etc.

- (1) Clauses 49 and 50 do not apply to the provision of a broadcasting service under, and in accordance with the conditions of:
- (a) a licence allocated by the ABA under this Act (other than this Schedule); or
 - (b) a class licence.
- (2) Clauses 49 and 50 do not apply to the provision of a national broadcasting service.

Division 2—Breaches of licence conditions

52 Offence for breach of conditions

- (1) A person is guilty of an offence if:
- (a) the person is a datacasting licensee; and
 - (b) the person intentionally engages in conduct; and
 - (c) the person's conduct breaches a condition of the licence set out in clause 14, 16, 20B, 21 or 24.

Penalty: 2,000 penalty units.

- (2) A person who contravenes subclause (1) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

53 Remedial directions—breach of conditions

- (1) If a datacasting licensee has breached, or is breaching, a condition of the licence (other than the condition set out in clause 25), the ABA may, by written notice given to the licensee, direct the licensee to take action directed towards ensuring that the licensee

does not breach the condition, or is unlikely to breach the condition, in the future.

- (2) The following are examples of the kinds of direction that may be given to a licensee under subclause (1):
- (a) a direction that the licensee implement effective administrative systems for monitoring compliance with a condition of the licence;
 - (b) a direction that the licensee implement a system designed to give the licensee's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.
- (3) A person is not required to comply with a notice under subclause (1) until the end of the period specified in the notice. That period must be reasonable.
- (4) A person is guilty of an offence if:
- (a) a person has been given a notice under subclause (1); and
 - (b) the person intentionally engages in conduct; and
 - (c) the person's conduct contravenes a requirement in the notice.
- Penalty: 20,000 penalty units.
- (5) A person who contravenes subclause (4) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

54 Suspension and cancellation

- (1) If a person who is a datacasting licensee:
- (a) fails to comply with a notice under clause 53; or
 - (b) breaches a condition of the licence;
- the ABA may, by written notice given to the person:
- (c) suspend the licence for such period, not exceeding 3 months, as is specified in the notice; or
 - (d) cancel the licence.
- (2) If a datacasting licence is suspended because of a breach of a condition set out in clause 14, 16, 20B or 21, the ABA may take

such action, by way of suspending one or more datacasting licences held by:

- (a) the licensee; or
- (b) a related body corporate of the licensee;

as the ABA considers necessary to ensure that the same, or a substantially similar, datacasting service is not transmitted by the licensee or the related body corporate, as the case may be, during the period of suspension.

- (3) If a datacasting licence is cancelled because of a breach of a condition set out in clause 14, 16, 20B or 21, the ABA may take such action, by way of cancelling one or more datacasting licences held by:

- (a) the licensee; or
- (b) a related body corporate of the licensee;

as the ABA considers necessary to ensure that the same, or a substantially similar, datacasting service is not transmitted by the licensee or the related body corporate, as the case may be, at a time after the cancellation.

- (4) If the ABA proposes to take action against a person under subclause (1), (2) or (3), the ABA must give to the person:

- (a) written notice of its intention; and
- (b) a reasonable opportunity to make representations to the ABA in relation to the proposed action.

55 Injunctions

Restraining injunctions

- (1) If a person who is a datacasting licensee has engaged, is engaging or is proposing to engage, in any conduct in contravention of a condition of the licence (other than a condition set out in clause 25), the Federal Court may, on the application of the ABA, grant an injunction:

- (a) restraining the person from engaging in the conduct; and
- (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

- (2) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of clause 49, the Federal Court may, on the application of the ABA, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
 - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Performance injunctions

- (3) If:
- (a) a person who is a datacasting licensee has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
 - (b) the refusal or failure was, is or would be a contravention of a condition of the licence (other than a condition set out in clause 25);
- the Federal Court may, on the application of the ABA, grant an injunction requiring the person to do that act or thing.

56 Federal Court's powers relating to injunctions

Grant of interim injunction

- (1) If an application is made to the Federal Court for an injunction under clause 55, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that clause.

No undertakings as to damages

- (2) The Federal Court is not to require an applicant for an injunction under clause 55, as a condition of granting an interim injunction, to give any undertakings as to damages.

Discharge etc. of injunctions

- (3) The Federal Court may discharge or vary an injunction granted under clause 55.

Certain limits on granting injunctions do not apply

- (4) The power of the Federal Court under clause 55 to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.
- (5) The power of the Federal Court under clause 55 to grant an injunction requiring a person to do an act or thing may be exercised:
- (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
 - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

Other powers of the court unaffected

- (6) The powers conferred on the Federal Court under clause 55 are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

57 Stay of proceedings relating to additional licence conditions, remedial directions and suspension/cancellation decisions

- (1) For the purposes of this clause, an *eligible decision* is:
- (a) a decision under clause 26 to impose or vary a condition of a datacasting licence; or

- (b) a decision to give a direction under clause 53 (which deals with remedial directions); or
 - (c) a decision to suspend or cancel a datacasting licence under clause 54.
- (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
- (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.

Part 9—Review of decisions

58 Review by the Administrative Appeals Tribunal

An application may be made to the Administrative Appeals Tribunal for a review of a decision set out in the second column of the table made under the provision of this Schedule set out in the third column, but such an application may only be made by the person described in the fourth column.

Reviewable decisions			
Item	Decision	Provision	Person who may apply
1	refusal to allocate datacasting licence	clause 7 or 8	the applicant
2	that a person is not a suitable applicant	subclause 9(1)	the person
2A	that an Internet carriage service is a declared Internet carriage service	subclause 23B(1)	the licensee
3	that a person is not a suitable licensee	subclause 25(3)	the licensee
4	Variation of datacasting licence conditions or imposition of new conditions	subclause 26(1)	the licensee

Reviewable decisions			
Item	Decision	Provision	Person who may apply
4A	refusal to make an exemption order	clause 27B	the licensee
5	refusal to include a code of practice in the Register	subclause 28(6)	the relevant industry group
6	refusal to make a nominated datacaster declaration	clause 45	the licensee of the datacasting transmitter licence or the licensee of the datacasting licence
7	revocation of a nominated datacaster declaration	clause 47	the licensee of the datacasting transmitter licence or the licensee of the datacasting licence
8	to give or vary, or to refuse to revoke, a direction	clause 53	the licensee
9	suspension or cancellation of datacasting licence	clause 54	the licensee

59 Notification of decisions to include notification of reasons and appeal rights

If the ABA makes a decision that is reviewable under clause 58, 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 Administrative Appeals Tribunal for a review of the decision.

Part 10—Miscellaneous

60 Datacasting technical standards

- (1) The regulations may determine technical standards:
 - (a) that are to be observed by datacasting licensees in relation to the provision by the licensees of datacasting services; and
 - (b) that are to be observed by holders of:
 - (i) datacasting transmitter licences; and
 - (ii) designated broadcasting transmitter licences;in relation to the transmission by the holders of datacasting services, where there is in force a datacasting licence authorising the provision of the datacasting service concerned.
 - (2) Standards under subclause (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.
 - (2A) Standards under subclause (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.
 - (3) If a transmitter licence is:
 - (a) a datacasting transmitter licence; or
 - (b) a designated broadcasting transmitter licence;then, in addition to any conditions to which that licence is subject under the *Radiocommunications Act 1992*, the licence is taken to be subject to a condition that the holder of the transmitter licence, and any person authorised by the holder of the transmitter licence, must comply with a standard under subclause (1).
 - (4) Section 589 of the *Telecommunications Act 1997* applies to regulations made for the purposes of this clause in a corresponding way to the way in which it applies to an instrument under that Act.
 - (5) In this clause:
-

application program interface has the meaning generally accepted within the broadcasting industry.

conditional access system means a conditional access system that:

- (a) relates to the provision of one or more eligible datacasting services; and
- (b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

designated broadcasting transmitter licence means a transmitter licence that, under section 100A, 100B, 102 or 102A of the *Radiocommunications Act 1992*, is taken to authorise the operation of a transmitter for transmitting datacasting services.

eligible datacasting service means:

- (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
- (b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

61 Review before 1 January 2003

- (1) Before 1 January 2003, the Minister must cause to be conducted a review of whether any amendments of this Schedule should be made.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

Part 2—Transitional provisions

141 Transitional—section 34 of the *Broadcasting Services Act 1992*

- (1) This item applies to an instrument if:
 - (a) the instrument was made under subsection 34(1) or (3) of the *Broadcasting Services Act 1992*; and
 - (b) the instrument was in force immediately before the commencement of this item.
- (2) The instrument has effect, after the commencement of this item, as if it had been made under the corresponding provision of the *Broadcasting Services Act 1992* as amended by this Schedule.

142 Transitional—variation of digital conversion schemes

- (1) A power conferred by clause 16 or 30 of Schedule 4 to the *Broadcasting Services Act 1992* may be exercised before Part 1 of this Schedule comes into operation as if that Part had come into operation.
- (2) If, because of some or all of its provisions (the *relevant provisions*), an instrument under clause 16 of Schedule 4 to the *Broadcasting Services Act 1992* is made in accordance with subitem (1), each relevant provision takes effect at the same time as the commencement of Part 1 of this Schedule.
- (3) If, because of some or all of its provisions (the *relevant provisions*), an instrument under clause 30 of Schedule 4 to the *Broadcasting Services Act 1992* is made in accordance with subitem (1), each relevant provision takes effect at whichever is the later of the following times:
 - (a) the same time as the commencement of Part 1 of this Schedule;
 - (b) the time when the provision is approved under clause 32 of Schedule 4 to the *Broadcasting Services Act 1992*.
- (4) A reference in this item to *Part 1 of this Schedule* does not include a reference to an item that commences under subsection 2(1) or (1A).

143 Transitional—allocation of datacasting licences

- (1) A power conferred by Schedule 6 to the *Broadcasting Services Act 1992* to allocate a datacasting licence may be exercised before that Schedule comes into operation as if that Schedule had come into operation.
- (2) A datacasting licence allocated in accordance with subitem (1) takes effect at the same time as the commencement of Schedule 6 to the *Broadcasting Services Act 1992*.

144 Transitional—validation of digital channel plans

- (1) If, before the commencement of this item, the ABA purported to make a scheme under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992* that included provisions relating directly or indirectly to digital channel plans:
 - (a) those provisions are as valid, and are taken to have been as valid, as they would have been; and
 - (b) anything done under those provisions (including the making or variation of a digital channel plan) is as valid, and is taken to have been as valid, as it would have been; and
 - (c) anything done under a digital channel plan is as valid, and is taken to have been as valid, as it would have been;if clause 7A of Schedule 4 to the *Broadcasting Services Act 1992* had:
 - (d) been in force at the time the scheme was made; and
 - (e) contained an additional subclause that authorised the scheme to provide that a digital channel plan may deal with the allotment of channels to national broadcasters.
- (2) If, before the commencement of this item, the ABA purported to make a scheme under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992* that included provisions relating directly or indirectly to digital channel plans:
 - (a) those provisions are as valid, and are taken to have been as valid, as they would have been; and
 - (b) anything done under those provisions (including the making, adoption or variation of a digital channel plan) is as valid, and is taken to have been as valid, as it would have been; and
 - (c) anything done under a digital channel plan is as valid, and is taken to have been as valid, as it would have been;if:

- (d) clause 22A of Schedule 4 to the *Broadcasting Services Act 1992* had been in force at the time the scheme was made; and
 - (e) clause 7A of Schedule 4 to the *Broadcasting Services Act 1992* had:
 - (i) been in force at the time the commercial television conversion scheme was made; and
 - (ii) contained an additional subclause that authorised the commercial television conversion scheme to provide that a digital channel plan may deal with the allotment of channels to national broadcasters.
- (3) Section 13 of the *National Television Conversion Scheme 1999* has effect, and is taken to have had effect, as if the reference in that section to a digital channel plan made by the ABA under subsection 12(1) of the *Commercial Television Conversion Scheme 1999* were, by express words, confined to so much of the digital channel plan as relates to national broadcasters.
- (4) A notice published in the *Gazette* on 16 February 2000 purporting to be in accordance with section 13 of the *National Television Conversion Scheme 1999* has effect, and is taken to have had effect, as if the reference in that notice to a digital channel plan made by the ABA pursuant to subsection 12(1) of the commercial scheme were, by express words, confined to so much of the digital channel plan as relates to national broadcasters.

145 Transitional—regulations

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Part 1 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Schedule 2—Amendment of the Radiocommunications Act 1992

Part 1—Amendments

1 Section 5

Insert:

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

2 Section 5

Insert:

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

3 Section 5 (definition of *datacasting service*)

Omit “Schedule 4 to”.

4 Section 5

Insert:

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.

5 Section 5 (paragraph (b) of the definition of *licensee*)

Omit “the person to whom the licence was issued”, substitute “the person who holds the licence”.

6 Section 5

Insert:

qualified company means a company that:

- (a) is formed in Australia; and

(b) has a share capital.

7 Section 5

Insert:

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

8 Subsection 96(7)

Omit “Division 6 is”, substitute “Divisions 6 and 6A are”.

9 Subsection 100(1)

Omit “and 102A”, substitute “, 102A and 102B”.

10 Subsections 100A(1A), (1B) and (1C)

Repeal the subsections, substitute:

- (1A) Subsection (1) has effect subject to subsections (1B) and (1C).
- (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.
- (1C) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service (other than a test transmission) in digital mode in a particular coverage area using those channels does not take effect until whichever of the following first happens:
 - (a) the end of 12 months after the national broadcaster concerned was required, under a scheme in force under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992*, to commence transmitting the broadcasting service concerned in SDTV digital mode in the coverage area;
 - (b) the first occasion on which a datacasting service (other than a test transmission in accordance with a determination under paragraph 34(1)(fa) of the *Broadcasting Services Act 1992*) was:
 - (i) provided by another person under, and in accordance with the conditions of, a BSA datacasting licence; and
 - (ii) transmitted under a datacasting transmitter licence;

in the coverage area.

11 Subsection 100A(2)

Insert:

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

12 Subsections 100B(2A), (2B) and (2C)

Repeal the subsections, substitute:

- (2A) Subsection (2) has effect subject to subsections (2B) and (2C).
- (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.
- (2C) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service (other than a test transmission) in digital mode in a particular coverage area using the channel or channels concerned does not take effect until whichever of the following first happens:
- (a) the end of 12 months after the national broadcaster concerned was required, under a scheme in force under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992*, to commence transmitting the broadcasting service concerned in SDTV digital mode in the coverage area;
 - (b) the first occasion on which a datacasting service (other than a test transmission in accordance with a determination under paragraph 34(1)(fa) of the *Broadcasting Services Act 1992*) was:
 - (i) provided by another person under, and in accordance with the conditions of, a BSA datacasting licence; and
 - (ii) transmitted under a datacasting transmitter licence;in the coverage area.

13 Subsection 100B(3)

Insert:

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

13A After section 100B

Insert:

100C NBS transmitter licences—authorisation of radio broadcasting services

(1) If:

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

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

(2) In this section:

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

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

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

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

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

13B Before section 101

Insert:

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 1992*.

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

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

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

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

14 After subsection 102(2)

Insert:

(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.

15 Subsections 102(3A), (3B) and (3C)

Repeal the subsections, substitute:

- (4) Subsection (3) has effect subject to subsections (5) and (6).
- (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 the licensee holds a BSA datacasting licence authorising the provision of that service.

- (6) The authorisation of the operation of the transmitter or transmitters concerned for transmitting a datacasting service in digital mode using those channels (other than a test transmission) does not take effect until whichever of the following first happens:
- (a) the end of 12 months after the holder of the related licence was required, under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, to commence transmitting the broadcasting service concerned in SDTV digital mode in the licence area for the related licence;
 - (b) the first occasion on which a datacasting service (other than a test transmission in accordance with a determination under paragraph 34(1)(fa) of the *Broadcasting Services Act 1992*) was:
 - (i) provided by another person under, and in accordance with the conditions of, a BSA datacasting licence; and
 - (ii) transmitted under a datacasting transmitter licence; in the licence area for the related licence.
- (7) In this section, unless the contrary intention appears:

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

16 After subsection 102A(2)

Insert:

(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*;
- 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.

17 Subsections 102A(4), (5) and (6)

Repeal the subsections, substitute:

- (4) Subsection (3) has effect subject to subsections (5) and (6).
- (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 the licensee holds a BSA datacasting licence authorising the provision of that service.
- (6) 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 (other than a test transmission) does not take effect until whichever of the following first happens:
 - (a) the end of 12 months after the holder of the related licence was required, under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, to commence transmitting the broadcasting service concerned in SDTV digital mode in the licence area for the related licence;
 - (b) the first occasion on which a datacasting service (other than a test transmission in accordance with a determination under paragraph 34(1)(fa) of the *Broadcasting Services Act 1992*) was:
 - (i) provided by another person under, and in accordance with the conditions of, a BSA datacasting licence; and
 - (ii) transmitted under a datacasting transmitter licence;

in the licence area for the related licence.

(7) In this section, unless the contrary intention appears:

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

18 After section 102A

Insert:

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*.

19 Subsection 103(2)

After “102A”, insert “or a datacasting transmitter licence”.

20 At the end of section 103

Add:

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

21 After subsection 106(6)

Insert:

- (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.

22 Subsection 106(7)

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

23 At the end of subsection 107(3)

Add “or to datacasting transmitter licences”.

24 At the end of subsection 108(5)

Add “or to datacasting transmitter licences”.

25 After section 109

Insert:

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 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.

26 Section 110

Omit “or 109(1)(f)”, substitute “, 109(1)(f) or 109A(1)(k)”.

27 Paragraph 111(1)(c)

Omit “or 109(1)(f)”, substitute “, 109(1)(f) or 109A(1)(k)”.

28 Paragraph 111(1)(d)

After “102A”, insert “or a datacasting transmitter licence”.

29 Subsection 114(1)

Omit “and (3)”, substitute “, (3), (3A), (3B), (3D) and (3F)”.

30 After subsection 114(3)

Insert:

- (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.

31 At the end of section 114

Add:

(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*.

32 Paragraph 118(1)(c)

After “126(1)”, insert “or 128C(2)”.

33 Paragraph 118(1)(d)

Before “cancelling”, insert “or 128D(2)”.

34 Division 6 of Part 3.3 (heading)

Repeal the heading, substitute:

**Division 6—Suspending and cancelling apparatus licences:
general**

35 Paragraph 125(1)(a)

After “condition of the licence”, insert “(other than a condition set out in paragraph 109A(1)(g), (ga), (h), (i) or (j) or subsection 109A(2) or (3))”.

36 After Division 6 of Part 3.3

Insert:

**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.
- (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
- (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.

37 After subsection 130(2A)

Insert:

- (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.

38 At the end of section 131

Add:

- (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.

39 Subsection 131AB(1)

Omit “section 131AC”, substitute “sections 131AC and 131ACA”.

40 Paragraph 131AB(3)(a)

Omit “Division 6”, substitute “Divisions 6 and 6A”.

41 After section 131AC

Insert:

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*.

42 Division 9 of Part 3.3

Repeal the Division.

43 Paragraph 148(b)

After “126”, insert “or 128C”.

44 Paragraph 148(c)

Before “, or any”, insert “or 128D”.

45 Paragraph 238(3)(c)

Omit “or 109(1)(f)”, substitute “, 109(1)(f) or 109A(1)(k)”.

46 Before section 285

Insert:

Division 1—Review of ACA decisions

47 After paragraph 285(ea)

Insert:

- (eb) refusal to issue a datacasting transmitter licence under section 102B otherwise than because of a direction under subsection 102B(3);

48 Paragraph 285(f)

Omit “or 109(1)(f)”, substitute “, 109(1)(f) or 109A(1)(k)”.

49 At the end of paragraph 285(ma)

Add “otherwise than because of a direction under subsection 131ACA(3)”.

50 After section 292

Insert:

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.

Part 2—Transitional provisions

51 Transitional—regulations

- (1) The regulations may make provision for matters of a transitional nature arising from the amendments made by Part 1 of this Schedule.
- (2) The Governor-General may make regulations for the purposes of subitem (1).

Schedule 3—Amendment of other Acts

Australian Security Intelligence Organisation Act 1979

1 Subsection 92(2)

After “broadcasting”, insert “, datacasting”.

Freedom of Information Act 1982

2 Division 1 of Part II of Schedule 2

After “its program material” (wherever occurring), insert “and its datacasting content”.

Retirement Savings Accounts Act 1997

3 Paragraph 70(d)

Omit “or broadcasting”, substitute “, broadcasting or datacasting”.

4 Paragraph 71(a)

Omit “or broadcasting”, substitute “, broadcasting or datacasting”.

Superannuation Industry (Supervision) Act 1993

5 Paragraph 144(e)

Omit “or broadcasting”, substitute “, broadcasting or datacasting”.

6 Paragraph 145(a)

Omit “or broadcasting”, substitute “, broadcasting or datacasting”.

Tobacco Advertising Prohibition Act 1992

7 Section 8 (at the end of the definition of *broadcast*)

Add:

; or (c) a datacasting service within the meaning of the *Broadcasting Services Act 1992*.

*[Minister's second reading speech made in—
House of Representatives on 9 May 2000
Senate on 19 June 2000]*

(82/00)