



Communications and the Arts Legislation Amendment Act 2001

No. 46, 2001



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**An Act to amend legislation relating to
communications and the arts, and for related
purposes**

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An Act to amend legislation relating to communications and the arts, and for related purposes

[Assented to 5 June 2001]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Communications and the Arts
Legislation Amendment Act 2001*.

2 Commencement

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

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

4 Application provision—Public Lending Right Scheme

The amendments of the *Public Lending Right Act 1985* made by Schedule 1 to this Act apply in relation to claims made after the commencement of this Act.

5 Application provision—immunity of carriers and carriage service providers

The amendments of the *Telecommunications Act 1997* made by Schedule 1 to this Act apply in relation to acts or omissions occurring after the commencement of this Act.

6 Saving of notices

A notice in force under subsection 151AQB(2) of the *Trade Practices Act 1974* immediately before the commencement of this section is taken, after the commencement of this section, to be an advisory notice in force under subsection 151AQB(1) of that Act.

Schedule 1—Amendments

Public Lending Right Act 1985

1 After section 2

Insert:

2A Objects of Act

The objects of this Act are:

- (a) to make payments to Australian creators of books, and to publishers of books in Australia, in recognition of their loss of income from their books being available for loan from, or for use in, public lending libraries in Australia; and
- (b) to support the enrichment of Australian culture by encouraging Australian persons to create books and by encouraging publishers to publish books in Australia.

2 Subsection 5(4)

After “means”, insert “any of the following”.

3 Paragraph 5(4)(b)

Repeal the paragraph.

4 Paragraph 5(4)(c)

Omit “or otherwise contributed to its form or contents”.

5 Paragraph 5(4)(d)

Repeal the paragraph.

Telecommunications Act 1997

6 After subsection 315(3)

Insert:

- (3A) The provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with the request.

- (3B) An officer, employee or agent of the provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the provider as mentioned in subsection (3A).

7 After section 346

Insert:

346A Carrier and carriage service provider immunity

- (1) A carrier or carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in compliance with a designated disaster plan covered by subsection 345(1) or 346(1), as the case may be.
- (2) An officer, employee or agent of a carrier or of a carriage service provider is not liable to an action or other proceeding for damages for or in relation to an act done or omitted in good faith in connection with an act done or omitted by the carrier or provider as mentioned in subsection (1).

Telecommunications (Consumer Protection and Service Standards) Act 1999

8 Subsection 128(3)

Omit “ACN 057 634 787”, substitute “ABN 46 057 634 787”.

Trade Practices Act 1974

9 Subsections 151AQB(1) and (2)

Repeal the subsections, substitute:

- (1) The Commission may:
- (a) at the same time as it issues a Part A competition notice in relation to a carrier or carriage service provider; or
 - (b) at any time after a Part A competition notice has been issued in relation to a carrier or carriage service provider;
- give the carrier or provider a written notice (an *advisory notice*) advising the carrier or provider of the action it should take, or consider taking, in order to ensure that it does not engage, or

continue to engage, in the kind of conduct dealt with in the Part A competition notice.

10 Subsection 151AQB(3)

Omit “A notice under subsection (2)”, substitute “An advisory notice”.

11 Subsection 151AQB(4)

Omit “A notice under subsection (2)”, substitute “An advisory notice”.

12 Subsection 151AQB(5)

Omit “a notice under subsection (2)”, substitute “an advisory notice”.

13 Subsection 151AQB(6)

Omit “a notice under subsection (2)”, substitute “an advisory notice”.

14 Subsection 151AQB(7)

Omit “a notice under subsection (2)”, substitute “an advisory notice”.

15 Subsection 151AQB(7)

Omit “the notice under subsection (2)”, substitute “the advisory notice”.

16 Paragraph 151CM(1)(c)

Omit “Division 5 of Part 7 of the *Telecommunications Act 1997*”, substitute “Division 11 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*”.

17 At the end of subsection 151CM(1)

Add:

- ; and (d) the adequacy of each digital data service provider’s compliance with its obligations under Division 12 of Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (which deals with regulation of digital data service charges).

18 After section 152CW

Insert:

152CWA Exercise of procedural powers by Commission members

Chairperson is part of the arbitration

- (1) If the Chairperson is one of the members (the *sitting members*) of the Commission as constituted under section 152CV in relation to an arbitration, the procedural powers of the Commission in relation to the arbitration may be exercised by either or both of the following:
 - (a) the Chairperson;
 - (b) a sitting member nominated in writing by the Chairperson for the purposes of this paragraph.

Chairperson is not part of the arbitration

- (2) If the Chairperson is not one of the sitting members, the procedural powers of the Commission in relation to the arbitration may be exercised by either or both of the following:
 - (a) the sitting member nominated under subsection 152CW(2) to preside at the arbitration;
 - (b) a sitting member nominated in writing by the Chairperson for the purposes of this paragraph.

Definition

- (3) For the purposes of this section, a *procedural power* of the Commission in relation to an arbitration is a power of the Commission in relation to the arbitration other than:
 - (a) a power conferred by this Division to make, vary or revoke a determination; or
 - (b) a power conferred by this Division to give a draft determination to the parties.

[Minister's second reading speech made in—
House of Representatives on 30 November 2000
Senate on 5 April 2001]

(185/00)
