



Broadcasting Legislation Amendment Act (No. 2) 2002

No. 120, 2002

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

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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

[Assented to 2 December 2002]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Legislation Amendment Act (No. 2) 2002*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent	2 December 2002
2. Schedules 1 and 2	The 28th day after the day on which this Act receives the Royal Assent	30 December 2002
3. Schedule 3	The day on which this Act receives the Royal Assent	2 December 2002

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—CTV licences

Part 1—Amendments

Broadcasting Services Act 1992

1 Subsection 6(1)

Insert:

CTV licence means a community broadcasting licence under Part 6 to provide a service that provides television programs but is not targeted, to a significant extent, to one or more remote Indigenous communities.

2 Subsection 6(1)

Insert:

remote Indigenous community has the meaning given by section 8B.

3 After section 8A

Insert:

8B Remote Indigenous community

- (1) An Indigenous community is a *remote Indigenous community* for the purposes of this Act if the ABA so determines in writing.
- (2) A determination under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

4 Subsection 81(1)

Repeal the subsection, substitute:

- (1) A licence is not to be allocated to an applicant if:
 - (a) in the case of an applicant for a CTV licence—the applicant is not a company limited by guarantee within the meaning of the *Corporations Act 2001*; or
 - (b) the ABA decides that subsection 83(2) applies to the applicant.

5 Subsection 81(2)

Omit “Subsection (1)”, substitute “Paragraph (1)(b)”.

6 At the end of section 86

Add:

- (2) In addition, CTV licences are subject to such other conditions as are imposed by or under section 87A.

7 At the end of subsection 87(5)

Add:

- ; or (c) if the licence is a CTV licence—any conditions imposed on the licence by or under section 87A.

8 After section 87

Insert:

87A Additional conditions on CTV licences

Policy underlying additional conditions

- (1) It is the intention of the Parliament that services provided under CTV licences be regulated in a manner that causes them not to operate in the same way as commercial television broadcasting services.

Conditions relating to sale of access to air-time

- (2) Each CTV licence is subject to the condition that the licensee must not sell access to more than 2 hours of air-time in any day to a particular person who operates a business for profit or as part of a profit-making enterprise, unless the person is a company that has a sole or dominant purpose of assisting a person in education or learning.
- (3) Each CTV licence is subject to the condition that the licensee must not sell access to a combined total of more than 8 hours of air-time in any day to people who operate businesses for profit or as part of profit-making enterprises.

- (4) Each CTV licence is subject to the condition that the licensee must not sell access to more than 8 hours of air-time in any day to a particular person.
- (5) For the purposes of the conditions imposed by subsections (2), (3) and (4), the sale of access to air-time to any of the following is taken to be the sale of access to air-time to a company:
 - (a) the sale of access to air-time to any person in a position to exercise control of the company;
 - (b) the sale of access to air-time to any related body corporate (within the meaning of the *Corporations Act 2001*) of the company.
- (6) The ABA may, by written determination, impose other conditions on all CTV licences relating to sale of access to air-time.

Conditions relating to other matters

- (7) The ABA may, by written determination, impose other conditions on all CTV licences, including, but not limited to, conditions relating to:
 - (a) community access to air-time; or
 - (b) the governance of CTV licensees (including conditions relating to provisions that the constitution of the licensee must at all times contain); or
 - (c) the provision of annual reports to the ABA and the form in which they are to be provided.

Changes to conditions

- (8) The ABA may, by written determination, vary or revoke any condition imposed by or under this section.
- (9) The ABA must, before imposing, varying or revoking a condition under this section, seek public comment on the proposed condition or the proposed variation or revocation.
- (10) Action taken under this section must not be inconsistent with:
 - (a) determinations and clarifications under section 19; or
 - (b) conditions set out in Part 5 of Schedule 2.

Determinations are disallowable instruments

- (11) A determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Definitions

- (12) In this section:

access, in relation to air-time, means the right to select or provide programs to be broadcast during the air-time.

air-time means time available for broadcasting programs on a community broadcasting service.

sell, in relation to access to air-time, means enter into any arrangement under which a person receives any consideration in cash or in kind in relation to provision of the access to air-time.

9 Subsection 122(1)

Repeal the subsection, substitute:

- (1) The ABA must, by notice in writing, determine standards that are to be observed by commercial television broadcasting licensees.

10 Subsection 122(3)

Repeal the subsection.

11 Paragraph 9(1)(b) of Schedule 2

Omit “subclause (3)”, substitute “this clause”.

12 Subclause 9(3) of Schedule 2

Repeal the subclause, substitute:

- (3) A community broadcasting licensee may broadcast sponsorship announcements. However, they must not run in total for more than:
- (a) if the licensee is a community television broadcasting licensee—7 minutes in any hour of broadcasting; or
 - (b) in any other case—5 minutes in any hour of broadcasting.

13 Subclause 9(6) of Schedule 2

Omit “provided for remote Aboriginal community purposes”, substitute “targeted, to a significant extent, to one or more remote Indigenous communities”.

Radiocommunications Act 1992

14 Subsection 103(4)

Omit “, 102”.

15 After subsection 103(4)

Insert:

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

Part 2—Saving provision

16 Saving provision relating to item 9

- (1) This item applies to standards if the standards were:
 - (a) determined under paragraph 122(1)(a) of the *Broadcasting Services Act 1992*; and
 - (b) in force immediately before the commencement of item 9.
- (2) The standards have effect, after the commencement of item 9, as if they had been made under subsection 122(1) of the *Broadcasting Services Act 1992* as substituted by that item.

Schedule 2—Community broadcasting licences

Part 1—Amendments

Broadcasting Services Act 1992

1 Subsection 83(3)

Omit “only”.

2 Subsection 90(1)

Omit all the words after “in writing”, substitute “by the ABA”.

3 After subsection 90(1)

Insert:

(1A) An application for renewal must be made no earlier than one year before the licence is due to expire, but no later than the earlier of the following times:

- (a) 26 weeks before the licence is due to expire;
- (b) a time that is notified in writing to the licensee by the ABA.

(1B) A time that is notified under paragraph (1A)(b) must be at least 4 weeks after the day on which it is notified to the licensee.

4 Subsection 91(1)

Omit “must”, substitute “may”.

Note: The heading to section 91 is replaced by the heading “**ABA may renew community broadcasting licences**”.

5 After subsection 91(2)

Insert:

(2A) The ABA may refuse to renew a community broadcasting licence that is a broadcasting services bands licence if, having regard to the matters in paragraphs 84(2)(a) to (f), it considers that it would not allocate such a licence if it were deciding whether to allocate the licence to the licensee.

6 Paragraph 123(1)(b)

After “licensees”, insert “other than providers of services targeted, to a significant extent, to one or more remote Indigenous communities”.

7 After paragraph 123(1)(b)

Insert:

- (ba) community broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities; and

8 Paragraph 2(2)(b) of Schedule 2

After “licensee”, insert “or of a program broadcast on the service provided under the licence”.

9 Paragraph 9(2)(b) of Schedule 2

After “allocated”, insert “or was last renewed”.

10 At the end of subclause 9(2) of Schedule 2

Add:

- ; (d) the licensee will provide the service for community purposes;
- (e) the licensee will not operate the service for profit or as part of a profit-making enterprise.

Part 2—Application and transitional provisions

11 Application of items 2 and 3

Despite the amendments made by items 2 and 3, section 90 of the *Broadcasting Services Act 1992* continues to apply, in relation to licences that, at the time those items commence, are due to expire in less than 30 weeks, as if those amendments had not been made.

12 Transitional provision relating to items 6 and 7

- (1) After the commencement of this Act, the code of practice (the *existing code*) that was, immediately before the commencement of this Act:
 - (a) applicable to the broadcasting operations of all community radio broadcasting licensees; and
 - (b) included in the Register of codes of practice under section 123 of the *Broadcasting Services Act 1992*;continues to be applicable to the broadcasting operations of each community radio broadcasting licensee until it ceases to be applicable to that licensee under subitem (2) or (3).
- (2) The existing code ceases to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are not targeted, to a significant extent, to one or more remote Indigenous communities when the earlier of the following occurs:
 - (a) a code of practice applicable only to those licensees is first included in the Register of codes of practice;
 - (b) a replacement code of practice (see subitem (7)) is first included in the Register of codes of practice.
- (3) The existing code ceases to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities when the earlier of the following occurs:
 - (a) a code of practice applicable only to those licensees is first included in the Register of codes of practice;
 - (b) a replacement code of practice (see subitem (7)) is first included in the Register of codes of practice.
- (4) If a replacement code of practice is included in the Register of codes of practice, the replacement code of practice is applicable to all

community radio broadcasting licensees as if the amendments made by items 6 and 7 had not been made.

- (5) The replacement code of practice continues to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are not targeted, to a significant extent, to one or more remote Indigenous communities until a code of practice applicable only to those licensees is first included in the Register of codes of practice.
- (6) The replacement code of practice continues to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities until a code of practice applicable only to those licensees is first included in the Register of codes of practice.
- (7) In this item:
replacement code of practice, means a code of practice:
 - (a) developed under section 123 of the *Broadcasting Services Act 1992*, either before or after the commencement of this Act, which is applicable to the broadcasting operations of all community radio broadcasting licensees; and
 - (b) included in the Register of codes of practice under that section within 3 months after the commencement of this Act.

Schedule 3—Political advertisements

Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

1 Subsection 28(1)

Omit all the words after “repealed”.

2 Subsections 28(2) and (3)

Repeal the subsections.

*[Minister’s second reading speech made in—
House of Representatives on 23 October 2002
Senate on 14 November 2002]*

(227/02)
