



Australian Broadcasting Corporation Act 1983

No. 6 of 1983

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Australian Broadcasting Corporation Act 1983

No. 6 of 1983

An Act relating to the Australian Broadcasting Corporation, and for other purposes

[Assented to 1 June 1983]

BE IT ENACTED by the Queen, and the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Australian Broadcasting Corporation Act 1983*.

Commencement

2. (1) Part I, Part II (other than sections 5, 6 and 8), Part III and sections 34, 69 and 83 shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act shall come into operation on a day to be fixed by Proclamation.

Interpretation

3. In this Act, unless the contrary intention appears—

“advisory committee” means an advisory committee established under sub-section 11 (8);

“Advisory Council” means—

- (a) the Australian Broadcasting Corporation Advisory Council established under sub-section 11 (1); or
- (b) an Advisory Council established under sub-section 11 (2) in relation to a State, Territory or region;

“allowance” does not include an allowance in the nature of remuneration;

“appoint” includes re-appoint;

“Australia” includes the external Territories;

“award” means—

- (a) an award or order made under, or an agreement certified under, the *Conciliation and Arbitration Act 1904*; or
- (b) a determination or order made under the *Public Service Arbitration Act 1920*;

“Board” means the Australian Broadcasting Corporation Board referred to in section 7;

“broadcast receiver” means an appliance capable of being used for the reception, by means of wireless telegraphy, of broadcasting programs, and includes a loud speaker or other receiving device that is connected to such an appliance, but does not include an appliance also capable of being used for the transmission, by means of wireless telegraphy, of broadcasting programs or other matter;

“broadcasting program” means matter intended for aural reception by the general public;

“broadcasting station” means a station for the transmission by means of wireless telegraphy of broadcasting programs, and includes the studio, transmitting station and technical equipment used for the purposes of those programs, but does not include a broadcasting translator station;

“broadcasting translator station” means a station of low operating power designed for the reception by wireless telegraphy or telegraph line of the broadcasting programs of a broadcasting station (whether transmitted by that broadcasting station or by another broadcasting translator station) and the immediate re-transmission of those programs to broadcast receivers by wireless telegraphy and, where applicable, to another broadcasting translator station by wireless telegraphy or telegraph line;

“Chairman” means Chairman of the Board;

“cinematograph film” has the same meaning as in the *Copyright Act 1968*;

“commencing day” means the day fixed under sub-section 2 (2);

“Corporation” means the Australian Broadcasting Corporation referred to in section 5;

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- “Deputy Chairman” means Deputy Chairman of the Board;
- “Director” means a member of the Board, and includes the Chairman, the Deputy Chairman and the Managing Director;
- “Disciplinary Appeal Board” means the Australian Broadcasting Corporation Disciplinary Appeal Board referred to in section 66;
- “literary material” includes books, periodicals, newspapers, magazines, pamphlets, circulars, manuscripts, musical scores, maps, plans, pictures, photographs and prints;
- “Managing Director” means the Managing Director of the Corporation;
- “national broadcasting station” means a broadcasting station used by the Corporation for the transmission of its broadcasting programs;
- “national broadcasting translator station licence” means a licence under the *Broadcasting and Television Act 1942* for a broadcasting translator station operated (otherwise than on behalf of the Corporation) for the reception and re-transmission of the programs of one or more national broadcasting stations;
- “national television station” means a television station used by the Corporation for the transmission of its television programs;
- “national television translator station licence” means a licence under the *Broadcasting and Television Act 1942* for a television translator station operated (otherwise than on behalf of the Corporation) for the reception and re-transmission of the programs of one or more national television stations;
- “non-executive Director” means a Director other than the Managing Director;
- “officer of the Corporation” does not include the Managing Director;
- “Promotions Appeal Board” means an Australian Broadcasting Corporation Promotions Appeal Board referred to in section 41;
- “rules” means rules under this Act;
- “Service” means the Australian Broadcasting Corporation Service;
- “sound recording” has the same meaning as in the *Copyright Act 1968*;
- “technical equipment” includes circuits and other means of transmission from point to point;
- “telegraph line” means a line within the meaning of the *Telecommunications Act 1975*;
- “television program” means images and associated sounds intended for reception by the general public;
- “television receiver” means an appliance capable of being used for the reception, by means of wireless telegraphy, of television programs, but does not include an appliance also capable of being used for the transmission, by means of wireless telegraphy, of television programs or other matter;
- “television repeater station” means a station for the transmission by means of wireless telegraphy of television programs, being a station of low

operating power and designed to transmit only programs recorded on magnetic tape;

“television station” means a station for the transmission by means of wireless telegraphy of television programs, and includes the studio, transmitting station and technical equipment used for the purposes of those programs, but does not include a television translator station or a television repeater station;

“television translator station” means a station of low operating power designed for the reception by wireless telegraphy or telegraph line of the television programs of a television station (whether transmitted by that television station, by another television translator station or by a television repeater station) and the immediate re-transmission of those programs to television receivers by wireless telegraphy and, where applicable, to another television translator station by wireless telegraphy or telegraph line;

“Tenure Appeal Board” means the Australian Broadcasting Corporation Tenure Appeal Board referred to in section 57;

“wireless telegraphy” means the emitting or receiving of electromagnetic energy otherwise than by means of a continuous connection between the transmitter and the receiver provided by a substance constructed or arranged for that purpose.

Extension to external Territories

4. This Act extends to all the external Territories.

PART II—ESTABLISHMENT, FUNCTIONS AND MANAGEMENT OF THE CORPORATION

Australian Broadcasting Corporation

5. (1) The body corporate that was, immediately before the commencing day, in existence by virtue of section 30 of the *Broadcasting and Television Act 1942* under the name Australian Broadcasting Commission continues in existence by force of this sub-section as a body corporate, under and subject to the provisions of this Act, under the name Australian Broadcasting Corporation.

(2) The Corporation—

- (a) shall have a seal; and
- (b) may sue and be sued.

(3) All courts, judges and persons acting judicially shall take judicial notice of the imprint of the seal of the Corporation appearing on a document and shall presume that the document was duly sealed.

Charter of the Corporation

6. (1) The functions of the Corporation are—

- (a) to provide within Australia innovative and comprehensive broadcasting and television services of a high standard as part of the Australian broadcasting and television system consisting of national, commercial and public sectors and, without limiting the generality of the foregoing, to provide—
 - (i) broadcasting programs and television programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community; and
 - (ii) broadcasting programs and television programs of an educational nature;
- (b) to transmit to countries outside Australia broadcasting programs and television programs of news, current affairs, entertainment and cultural enrichment that will—
 - (i) encourage awareness of Australia and an international understanding of Australian attitudes on world affairs; and
 - (ii) enable Australian citizens living or travelling outside Australia to obtain information about Australian affairs and Australian attitudes on world affairs; and
- (c) to encourage and promote the musical, dramatic and other performing arts in Australia.

(2) In the provision by the Corporation of its broadcasting and television services within Australia—

- (a) the Corporation shall take account of—
 - (i) the broadcasting and television services provided by the commercial and public sectors of the Australian broadcasting and television system;
 - (ii) the standards from time to time approved by the Australian Broadcasting Tribunal in respect of broadcasting and television services;
 - (iii) the responsibility of the Corporation as the provider of an independent national broadcasting and television service to provide a balance between broadcasting programs and television programs of wide appeal and specialized broadcasting programs and television programs;
 - (iv) the multicultural character of the Australian community; and
 - (v) in connection with the provision of broadcasting programs and television programs of an educational nature—the responsibilities of the States in relation to education; and
- (b) the Corporation shall take all such measures, being measures consistent with the obligations of the Corporation under paragraph (a), as, in the opinion of the Board, will be conducive to the full

development by the Corporation of suitable broadcasting programs and television programs.

(3) The functions of the Corporation under sub-section (1) and the duties imposed on the Corporation under sub-section (2) constitute the Charter of the Corporation.

(4) Nothing in this section shall be taken to impose on the Corporation a duty that is enforceable by proceedings in a court.

Establishment of Australian Broadcasting Corporation Board

7. There shall be a Board of Directors of the Corporation under the name Australian Broadcasting Corporation Board, which shall be constituted as provided by Part III.

Duties of the Board

8. (1) It is the duty of the Board—

- (a) to ensure that the functions of the Corporation are performed efficiently and with the maximum benefit to the people of Australia;
- (b) to maintain the independence and integrity of the Corporation;
- (c) to ensure that the gathering and presentation by the Corporation of news and information is accurate and impartial according to the recognized standards of objective journalism; and
- (d) to ensure that the Corporation does not contravene, or fail to comply with—
 - (i) any of the provisions of this Act or any other Act that are applicable to the Corporation; or
 - (ii) any directions given to, or requirements made in relation to, the Corporation under any of those provisions.

(2) If the Minister at any time furnishes to the Board a statement of the policy of the Commonwealth Government on any matter relating to broadcasting or television, or any matter of administration, that is relevant to the performance of the functions of the Corporation and requests the Board to consider that policy in the performance of its functions, the Board shall ensure that consideration is given to that policy.

(3) Nothing in this section shall be taken to impose on the Board a duty that is enforceable by proceedings in a court.

Managing Director

9. There shall be a Managing Director of the Corporation, who shall be appointed and hold office as provided by Part III.

Duties of the Managing Director

10. (1) The affairs of the Corporation shall, subject to sub-section (2), be managed by the Managing Director.

(2) The Managing Director shall, in managing any of the affairs of the Corporation and in exercising any powers conferred on him by this Act, act in accordance with any policies determined, and any directions given to him, by the Board.

Advisory Councils and committees

11. (1) The Board shall establish an Advisory Council under the name Australian Broadcasting Corporation Advisory Council.

(2) The Board may also establish—

- (a) an Advisory Council in relation to any State;
- (b) an Advisory Council in relation to any Territory; and
- (c) an Advisory Council in relation to any region of Australia.

(3) The functions of the Australian Broadcasting Corporation Advisory Council are—

- (a) either on its own initiative or at the request of the Board, to furnish advice to the Board on matters relating to broadcasting programs and television programs of the Corporation; and
- (b) either on its own initiative or at the request of the Managing Director, to make recommendations to the Managing Director in accordance with sub-section 82 (3).

(4) The functions of an Advisory Council established under sub-section (2) are—

- (a) in the case of an Advisory Council established in relation to a State, Territory or region—either on its own initiative or at the request of the Australian Broadcasting Corporation Advisory Council, to furnish advice to the Australian Broadcasting Corporation Advisory Council on matters relating to broadcasting programs and television programs of the Corporation in that State, Territory or region, as the case may be; and
- (b) in the case of an Advisory Council established in relation to a State or Territory—either on its own initiative or at the request of the Managing Director, to make recommendations to the Managing Director with respect to the appointment of Community Affairs Officers in relation to that State or Territory.

(5) An Advisory Council shall consist of such persons as the Board from time to time appoints.

(6) In making appointments to the Australian Broadcasting Corporation Advisory Council, the Board shall have regard to the desirability of including in the membership of that Advisory Council a broad representation of the Australian community.

(7) In the case of each Advisory Council, the Board shall appoint one of the members of the Advisory Council to be the Chairman of the Advisory Council

and another of the members of the Advisory Council to be the Deputy Chairman of the Advisory Council.

(8) In addition to Advisory Councils, the Board may establish advisory committees, consisting of such persons as the Board appoints, to furnish advice to the Board on particular matters or classes of matters relating to the functions of the Corporation.

(9) The Board may determine—

- (a) the manner in which an Advisory Council or advisory committee is to perform its functions; and
- (b) the procedure to be followed at or in relation to meetings of an Advisory Council or advisory committee, including matters with respect to—
 - (i) the convening of meetings of the Advisory Council or advisory committee;
 - (ii) the number of members of the Advisory Council or advisory committee who are to constitute a quorum;
 - (iii) the selection of a member of the Advisory Council or advisory committee to preside at meetings of the Advisory Council or advisory committee at which the Chairman and the Deputy Chairman of the Advisory Council or advisory committee are not present; and
 - (iv) the manner in which questions arising at a meeting of the Advisory Council or advisory committee are to be decided,

and the Managing Director shall notify each Advisory Council or advisory committee in writing of any determination by the Board under this sub-section in relation to that Advisory Council or advisory committee.

(10) If the Board decides that the members of the Australian Broadcasting Corporation Advisory Council should be remunerated, those members shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(11) Subject to the *Remuneration Tribunals Act 1973*, members of an Advisory Council or advisory committee shall be paid by the Corporation such allowances as are prescribed by the regulations.

(12) Where the Board receives any advice from the Australian Broadcasting Corporation Advisory Council or from an advisory committee, the Board shall have regard to the advice.

PART III—THE BOARD OF DIRECTORS AND THE MANAGING DIRECTOR

Membership of Board

12. (1) The Board shall consist of—

- (a) the Managing Director; and
- (b) not less than 6 nor more than 8 other Directors.

(2) A non-executive Director shall be appointed by the Governor-General and, subject to sections 16 and 18, holds office on a part-time basis for such period, not exceeding 5 years, as is specified in the instrument of his appointment, but is eligible for re-appointment.

(3) The Governor-General shall appoint one of the non-executive Directors to be the Chairman of the Board and another of the non-executive Directors to be the Deputy Chairman of the Board.

(4) The performance of the functions or the exercise of the powers of the Board is not affected by a vacancy in the office of Managing Director, by reason that there is no Chairman or Deputy Chairman or by reason of the number of non-executive Directors falling below 6 for not longer than 6 months.

(5) A person shall not be appointed as a non-executive Director unless he appears to the Governor-General to be suitable for appointment by reason of his having had experience in connection with the provision of broadcasting or television services or in communications or management, by reason of his having expertise in financial or technical matters, or by reason of his having cultural or other interests relevant to the oversight of a public organization engaged in the provision of broadcasting and television services.

Tenure of Managing Director

13. (1) Subject to sub-section (2), the Managing Director shall be appointed by the Board for a period of 5 years, but is eligible for re-appointment.

(2) Where the person holding office as Managing Director is re-appointed, his re-appointment shall be for a period not exceeding 5 years.

(3) The Managing Director holds office, subject to this Part, on such terms and conditions as are determined by the Board.

Remuneration and allowances

14. (1) The Managing Director shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(2) The non-executive Directors shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(3) Subject to the *Remuneration Tribunals Act 1973*—

(a) the Managing Director shall be paid by the Corporation such allowances as are determined by the Board; and

(b) the non-executive Directors shall be paid by the Corporation such allowances as are prescribed by the regulations.

Leave of absence

15. (1) The Minister may grant leave to the Chairman to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Minister thinks fit.

(2) The Chairman may grant leave to any other non-executive Director to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Chairman thinks fit.

(3) References in sub-sections (1) and (2) to the Chairman shall, if a Director is acting as Chairman, be construed as references to the Director so acting.

Resignation of non-executive Directors

16. A non-executive Director may resign his office by writing signed by him delivered to the Governor-General.

Disclosure of interests

17. (1) A Director who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Board shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Board.

(2) A disclosure under sub-section (1) shall be recorded in the minutes of the meeting of the Board and the Director shall not—

- (a) be present during any deliberation of the Board with respect to that matter; or
- (b) take part in any decision of the Board with respect to that matter.

(3) A member of an Advisory Council, or of an advisory committee, who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Advisory Council or by the committee shall, as soon as possible after the relevant facts have come to his knowledge, disclose the nature of his interest at a meeting of the Advisory Council or of the committee.

(4) A disclosure under sub-section (3) shall be recorded in the minutes of the meeting of the Advisory Council or of the committee and the member shall not—

- (a) be present during any deliberation of the Advisory Council or of the committee with respect to that matter; or
- (b) take part in any decision of the Advisory Council or of the committee with respect to that matter.

(5) References in sub-sections (1) and (2) to a Director shall, if a person is acting as a Director, be construed as including a reference to the person so acting.

Termination of appointment of non-executive Directors

18. (1) The Governor-General may terminate the appointment of a non-executive Director for misbehaviour or physical or mental incapacity.

(2) If—

(a) a non-executive Director—

- (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his creditors or makes an assignment of his remuneration for their benefit; or
- (ii) fails, without reasonable excuse, to comply with his obligations under section 17;

(b) the Chairman, or a Director acting as Chairman, is absent, except with the leave of the Minister, from 3 consecutive meetings of the Board; or

(c) a non-executive Director (other than the Chairman or a Director acting as Chairman) is absent, except with the leave of the Chairman or, if a Director is acting as Chairman, with the leave of the Director so acting, from 3 consecutive meetings of the Board,

the Governor-General shall terminate the appointment of the Director concerned.

Acting Chairman

19. (1) Where there is no Chairman or the Chairman is absent from duty or from Australia or is, for any other reason, unable to perform the functions of Chairman—

(a) the Deputy Chairman shall act as Chairman; or

(b) if there is no Deputy Chairman, or the Deputy Chairman is absent from duty or from Australia or is, for any other reason, unable to act as Chairman, the Governor-General may appoint a non-executive Director to act as Chairman, but any such appointment ceases to have effect if—

- (i) where there is no Deputy Chairman—a non-executive Director is appointed as Deputy Chairman; or
- (ii) where the Deputy Chairman is absent from duty or from Australia or is, for any other reason, unable to act as Chairman—the Deputy Chairman ceases to be so absent or becomes able to act as Chairman.

(2) The appointment of a person under paragraph (1) (b) ceases to have effect if he resigns his appointment by writing signed by him delivered to the Governor-General.

(3) While a Director is acting as Chairman he has and may exercise all the powers, and shall perform all the functions and duties, of the Chairman under this Act.

(4) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that the appointment had

ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Acting Managing Director

20. (1) The Board may appoint a person to act as Managing Director—

- (a) during a vacancy in the office of Managing Director, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his office,

but a person appointed to act during a vacancy shall not continue so to act for more than 12 months.

(2) An appointment of a person under sub-section (1) may be expressed to have effect only in such circumstances as are specified in the instrument of appointment.

(3) The Board may—

- (a) determine the terms and conditions of appointment, excluding remuneration and allowances, of a person acting as Managing Director; and
- (b) terminate such an appointment at any time.

(4) An officer of the Corporation who is acting as Managing Director shall continue to be paid the remuneration and allowances payable to him as such an officer but shall also be paid—

- (a) so much of any remuneration payable to the Managing Director as exceeds the remuneration that so continues to be paid to the officer;
- (b) so much of any allowance payable to the Managing Director as exceeds the corresponding allowance that so continues to be paid to the officer; and
- (c) if an allowance is payable to the Managing Director in respect of which there is no corresponding allowance payable to the officer—that allowance.

(5) Where a person is acting as Managing Director in accordance with paragraph (1) (b) and the office of Managing Director becomes vacant while that person is so acting, then, subject to sub-section (2), that person may continue so to act until the Board otherwise directs, the vacancy is filled or a period of 12 months from the date on which the vacancy occurred expires, whichever first happens.

(6) The appointment of a person to act as Managing Director ceases to have effect if he resigns his appointment by writing signed by him delivered to the Chairman or, if a Director is acting as Chairman, to the Director so acting.

(7) While a person is acting as Managing Director, he has and may exercise all the powers, and shall perform all the functions and duties, of the Managing Director under this Act.

(8) A reference in this Act other than this section and section 9 to the Managing Director shall, if a person is acting as Managing Director, be construed as a reference to the person so acting.

(9) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment, that his appointment had ceased to have effect or that the occasion for him to act had not arisen or had ceased.

Acting non-executive Directors

21. (1) If a non-executive Director is, or is expected to be, absent from duty or from Australia or, for any other reason, unable to perform the functions of his office, the Governor-General may appoint a person to act as a non-executive Director during the period of the absence or inability.

(2) The Governor-General may—

- (a) determine the terms and conditions of appointment, excluding remuneration and allowances, of a person acting as a non-executive Director; and
- (b) terminate such an appointment at any time.

(3) A person acting as a non-executive Director shall be paid the same remuneration and allowances as are payable to a non-executive Director.

(4) The appointment of a person to act as a non-executive Director ceases to have effect if he resigns his appointment by writing signed by him delivered to the Governor-General.

(5) While a person is acting as a non-executive Director, he has and may exercise all the powers, and shall perform all the functions and duties, of a non-executive Director under this Act.

(6) The validity of anything done by or in relation to a person purporting to act under sub-section (1) shall not be called in question on the ground that the occasion for his appointment had not arisen, that there was a defect or irregularity in or in connection with his appointment or that the appointment had ceased to have effect.

Meetings of the Board

22. (1) The Chairman—

- (a) shall convene such meetings of the Board as he considers necessary for the efficient performance of its functions; and
- (b) shall convene a meeting of the Board on receipt of a written request signed by—
 - (i) if there are not more than 6 non-executive Directors holding office under section 12—not less than 4 Directors; or
 - (ii) if there are more than 6 non-executive Directors holding office under that section—not less than 5 Directors.

(2) Meetings of the Board shall be held at such places as the Chairman determines.

(3) The Chairman shall preside at all meetings of the Board at which he is present.

(4) In the absence of the Chairman from a meeting of the Board, the Deputy Chairman shall preside at the meeting.

(5) In the absence of both the Chairman and the Deputy Chairman from a meeting of the Board—

- (a) if another Director is acting as Chairman—that Director shall preside at the meeting; or
- (b) in any other case—the Directors present shall elect one of their number other than the Managing Director to preside at the meeting.

(6) The Director presiding at a meeting of the Board may give directions regarding the procedure to be followed at or in connection with the meeting.

(7) At a meeting of the Board—

- (a) a quorum is constituted by—
 - (i) if there are not more than 6 non-executive Directors holding office under section 12—4 Directors; or
 - (ii) if there are more than 6 non-executive Directors holding office under that section—5 Directors;
- (b) all questions shall be decided by a majority of the votes of the Directors present; and
- (c) the Director presiding has a deliberative vote and, in the event of an equality of votes, also has a casting vote.

(8) The Managing Director shall not be present during any deliberation, or take part in any decision, of the Board with respect to the appointment, or any of the terms and conditions of employment, of the Managing Director.

(9) For the purposes of this section—

- (a) a reference to the Chairman (other than a reference in sub-section (3), (4) or (5)) shall, if a Director is acting as Chairman, be construed as a reference to the Director so acting; and
- (b) a reference to a Director (other than a reference to a non-executive Director holding office under section 12) shall, if a person is acting as a Director, be construed as including a reference to the person so acting.

Delegation by Corporation

23. (1) The Corporation may, either generally or as otherwise provided by the instrument of delegation, by writing under its seal, delegate to a Director or to an officer or temporary employee of the Corporation all or any of its powers under this Act, the regulations or the rules, other than this power of delegation.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, the regulations or the rules, be deemed to have been exercised by the Corporation.

(3) A delegation of a power under this section does not prevent the exercise of the power by the Corporation.

(4) A reference in this section to a Director shall, if a person is acting as a Director, be construed as including a reference to a person so acting.

Delegation by Managing Director

24. (1) The Managing Director may, either generally or as otherwise provided by the instrument of delegation, by writing signed by him, delegate to an officer or temporary employee of the Corporation all or any of his powers under this Act, the regulations or the rules, other than this power of delegation.

(2) A power delegated under this section, when exercised by the delegate, shall, for the purposes of this Act, the regulations or the rules, be deemed to have been exercised by the Managing Director.

(3) A delegation under this section does not prevent the exercise of a power by the Managing Director.

PART IV—POWERS AND DUTIES OF THE CORPORATION

General powers of Corporation

25. (1) Subject to this section, the Corporation has power to do all things necessary or convenient to be done for or in connection with the performance of its functions and, in particular, has power—

- (a) to enter into contracts;
- (b) to acquire, hold and dispose of real or personal property;
- (c) to occupy, use and control any land or building owned or held under lease by the Commonwealth and made available for the purposes of the Corporation;
- (d) to erect buildings and structures and carry out works;
- (e) to appoint agents and attorneys, and to act as an agent for other persons;
- (f) to engage persons to perform services for the Corporation;
- (g) to accept gifts, devises and bequests made to the Corporation, whether on trust or otherwise, and to act as trustee of moneys or other property vested in the Corporation on trust; and
- (h) to do anything incidental to any of its powers.

(2) The Corporation does not have power to borrow moneys.

(3) Subject to sub-section (5), the Corporation does not have power to accept any payment or other consideration for the broadcasting or televising of any announcement, program or other matter.

- (4) Subject to sub-section (5), the Corporation does not have power—
- (a) to accept the performance of any service, or the provision of any facility, for the Corporation; or
 - (b) to accept any gift, devise or bequest to the Corporation, whether offered or made unconditionally or subject to conditions,

where it is likely that the independence or integrity of the Corporation would be affected.

- (5) Nothing in sub-section (3) or (4) precludes the Corporation from—
- (a) accepting the performance of services, the provision of facilities or the payment of moneys by or on behalf of the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory; or
 - (b) entering into an agreement or arrangement with—
 - (i) a *bona fide* producer of—
 - (A) broadcasting programs or television programs;
 - (B) cinematograph films or sound recordings; or
 - (C) public concerts or other public entertainments; or
 - (ii) a *bona fide* publisher of any literary material,

in relation to the sharing of any expense or risk associated with the production, distribution, sale or presentation of any such program, film, recording, concert, entertainment or literary material.

(6) The Corporation may provide studios, at such places as the Minister approves, for the performance of its functions.

(7) The Corporation shall provide such offices and other accommodation as are necessary for the performance of its functions.

(8) The powers of the Corporation may be exercised within or outside Australia.

Corporation to have regard to services of Special Broadcasting Service

26. In performing its functions the Corporation shall have regard to the services provided by the Special Broadcasting Service under Part IIIA of the *Broadcasting and Television Act 1942*.

News services

27. (1) The Corporation shall develop and maintain an independent service for the broadcasting and televising of news and information by the Corporation pursuant to this section.

(2) The Corporation shall broadcast and televise daily from all national broadcasting stations and national television stations regular sessions of news and information relating to current events within and outside Australia.

(3) The Managing Director shall ensure that the officers and temporary employees of the Corporation include an adequate number of persons, both

within and outside Australia, for the purpose of collecting the news and information to be broadcast or televised pursuant to this section.

(4) Without affecting the obligations of the Managing Director under sub-section (3), the Corporation may also procure news and information relating to current events from such news agencies and other sources, whether within or outside Australia, as the Board thinks fit.

Orchestras, bands, concerts, &c.

28. For the purposes of the performance of its functions, the Corporation may—

- (a) establish, maintain and utilize, in such manner as the Board thinks desirable, orchestras, bands and other groups of musicians for the performance of music of high quality; and
- (b) make arrangements for the holding of, or organize or subsidize, any public concert or other public entertainment.

Publication of journals, &c., and making, &c., of sound recordings, &c.

29. (1) The Corporation may, in such manner as the Board thinks fit—

- (a) compile, prepare, issue, circulate and distribute such literary material as the Board thinks fit (including the program schedules of national broadcasting stations, national television stations and other broadcasting and television stations); and
- (b) make, promote, circulate and distribute—
 - (i) cinematograph films and sound recordings of, or relating to—
 - (A) programs of the Corporation (whether or not broadcast or televised); and
 - (B) public concerts and other public entertainment referred to in paragraph 28 (b); and
 - (ii) any article or thing bearing a mark that is associated with any program, concert or entertainment referred to in sub-paragraph (i).

(2) The Corporation may, if the Board thinks fit, from time to time determine charges payable in respect of any matter or activity referred to in sub-section (1), with a view to raising as much net revenue as is practicable, having regard to the proper performance of its functions and to the matter or activity concerned.

(3) A program schedule referred to in paragraph (1) (a) shall be made available at an office of the Corporation on equal terms to the publishers of any newspaper, magazine or journal published in Australia before the publication of the program schedule pursuant to sub-section (1).

(4) In this section, “mark” includes a symbol, design, colour, device, brand, heading, label, sign, ticket, name, signature, word, letter, numeral, drawing or picture, or any combination of the foregoing.

Children's television programs

30. The Corporation may, if the Board thinks fit, submit to the Australian Broadcasting Tribunal, for classification by that Tribunal, television programs for children intended for public reception during hours specified by the Tribunal as hours for the presentation of such programs.

Advertisements

31. (1) The Corporation shall not broadcast or televise advertisements.

(2) Sub-section (1) does not prevent the Corporation, if the Board thinks fit, from broadcasting or televising—

- (a)** any announcement relating to any activity or proposed activity of the Corporation;
- (b)** a program supplied by any organization or person engaged in artistic, literary, musical or theatrical production or in educational pursuits; or
- (c)** a program supplied by any organization or person other than a program that is, in the opinion of the Board, being used as an advertisement,

or from broadcasting or televising any matter the broadcasting or televising of which is directed by the Minister pursuant to sub-section 78 (1).

PART V—THE AUSTRALIAN BROADCASTING CORPORATION SERVICE

Division 1—Preliminary

Interpretation

32. (1) In this Part—

“Chairman of Promotions Appeal Boards” means a person holding office as a Chairman of Australian Broadcasting Corporation Promotions Appeal Boards;

“classification” means—

- (a)** in relation to a position—the salary, or the range of salary, applicable to the position; or
- (b)** in relation to an unattached officer—the salary, or the range of salary, applicable to the officer;

“officer” means officer of the Corporation;

“prescribed day”, in relation to a promotion of an officer under section 36, means the later of—

- (a)** a day ascertained in accordance with the rules, being a day occurring not earlier than the day of notification of the promotion in accordance with sub-section 36 (2); and
- (b)** the day on which the position to which the officer is promoted becomes vacant;

“promotion”, in relation to an officer, means a movement of the officer within the Service for the purpose of his occupying a position in respect of which a rate of salary is payable, or a maximum rate of salary is applicable, that is higher than the rate of salary that was payable, or the maximum rate of salary that was applicable, as the case may be, in respect of the position occupied by him, or, in the case of an unattached officer, to or in respect of him, immediately before the movement took place;

“temporary employee” means temporary employee of the Corporation.

(2) In this Part, unless the contrary intention appears, a reference to a vacant position includes a reference to a position that is expected to become vacant and a reference to a vacancy includes a reference to a vacancy that is expected to occur.

(3) In determining, for the purposes of this Part, which of 2 or more officers has the greater or greatest efficiency for the purposes of promotion to, or the performance of duties of, a position, “efficiency”, in relation to each such officer, shall be taken to mean the suitability of the officer for the performance of duties of the kind to be performed in the position concerned, having regard to the following matters:

- (a) the capability of the officer to perform those duties;
- (b) the standard of the work performed by the officer in other positions;
- (c) any experience possessed by the officer relevant to the performance of those duties;
- (d) the training and educational qualifications of the officer; and
- (e) any personal qualities of the officer relevant to the performance of those duties,

and, in the case of an officer who is or has been absent on prescribed defence service, includes such efficiency as, in the opinion of the Managing Director or a Promotions Appeal Board, as the case requires, the officer would have had but for the absence of the officer on prescribed defence service.

(4) The Managing Director may, by writing signed by him, declare that, in assessing the efficiency of officers in relation to positions included in a specified class of positions, greater weight may be given to one or more of the matters referred to in paragraphs (3) (a) to (e) (inclusive), being a matter or matters specified in the declaration, than to the other matter or matters referred to in those paragraphs.

(5) In this section, “prescribed defence service” means—

- (a) service in or in connection with the Defence Force that is declared by the rules to be prescribed defence service for the purposes of this section; and
- (b) any other service that is declared by the rules to be prescribed defence service for those purposes.

Division 2—Appointment, Classification and Promotions

Officers and temporary employees

33. (1) Subject to this Division, the Managing Director may appoint such officers, and engage such temporary employees, as he thinks necessary.

(2) A person appointed as an officer under sub-section (1) shall be appointed to a particular position in the Service.

(3) An unattached officer or a temporary employee—

(a) shall have such designation as the Managing Director determines to be appropriate to his duties; and

(b) shall be paid such salary as the Managing Director determines, being the salary, or a salary within the range of salary, that the Managing Director determines to be appropriate to his duties.

(4) The Managing Director may, with the consent of an officer who holds a position in the Service, declare, by instrument in writing, that the officer shall, on a date specified in the instrument, become an unattached officer and, if the Managing Director does so, the position so held by the officer becomes vacant on the date so specified.

(5) The officers of the Corporation (whether they hold positions created under section 34 or are unattached officers) constitute the Australian Broadcasting Corporation Service.

(6) A person shall not be appointed to the Service unless he possesses such educational qualifications, and such other qualifications (if any), as are determined by the Managing Director.

(7) Except in the case of an appointment of a person to the Service that is an appointment on probation, a person is not eligible for appointment to the Service unless the Managing Director is satisfied, after the person has undergone a medical examination approved by the Managing Director, as to the health and physical fitness of the person.

(8) Unless the Managing Director, in any particular case, directs that the appointment of an officer shall be without probation, the appointment of every officer shall be on probation for a period of 12 months or such shorter period as the Managing Director directs, and the appointment may be terminated by the Managing Director at any time during the period of probation.

(9) As soon as practicable after the expiration of the period of probation of an officer, the Managing Director shall either confirm or annul the appointment of the officer but the Managing Director shall not confirm the appointment unless the Managing Director is satisfied, after the officer has undergone a medical examination approved by the Managing Director, as to the health and physical fitness of the officer.

(10) Subject to this Part, the terms and conditions of employment of officers and temporary employees of the Corporation are such as are determined by the Managing Director.

Creation and abolition of positions

34. (1) The Board may, from time to time, create any position in the Service and determine the classification applicable to that position.

(2) The Board may abolish any position in the Service.

Reclassification

35. (1) The Board may, from time to time, reclassify any position in the Service by raising or lowering the classification applicable to the position.

(2) Whenever any position is reclassified, the position shall be deemed to be vacant.

(3) Where the Board makes the same alteration of the classification of all positions having the same classification, the Board may direct in writing that sub-section (2) is not to apply and, in that case, that sub-section does not apply.

(4) Where—

(a) the Board makes an alteration of the classification of a position in a case where there is no other position having the same classification as that position; and

(b) the Board declares in writing that that alteration is related to an alteration in respect of which a direction is or has been given under sub-section (3),

the Board may direct in writing that sub-section (2) is not to apply in relation to that first-mentioned alteration and, in that case, that sub-section does not apply.

Filling of vacant positions

36. (1) The Managing Director may, subject to this Part, transfer or promote an officer to fill a vacant position in the Service.

(2) The promotion of an officer to a vacant position shall be notified in the manner prescribed by the rules and shall be subject to appeal as provided by section 39.

(3) A promotion of an officer under sub-section (1) does not take effect on the making of the promotion but, if—

(a) no appeal is made under section 39 against the promotion; or

(b) an appeal is, or appeals are, made under section 39 against the promotion, but the appeal, or each of the appeals, is disallowed or becomes inoperative,

the promotion takes effect on a day ascertained in accordance with section 43.

Selection of officers for promotion

37. In the selection of an officer for promotion to a vacant position, consideration shall be given only to the relative efficiency of the officers available for promotion.

Promotion of officers who complete courses of training for special positions

38. (1) The Board may, by notice in writing published as prescribed by the rules, determine that—

- (a) a specified position (in this section referred to as a “training position”) is a position the occupant of which is required to undergo a course of training approved by the Managing Director for the purpose of enabling him to perform duties that require professional, technical or other knowledge; and
- (b) an officer who has completed that course of training to the satisfaction of the Managing Director is entitled to occupy a position (in this section referred to as the “relevant higher position”) having a designation and classification that is specified in the determination.

(2) If an officer is transferred or promoted under section 36 to a training position, another officer—

- (a) who holds a position the classification of which is not higher than the classification of the relevant higher position; or
- (b) who, being an unattached officer, performs duties in respect of which there is payable to him a salary that is, or the maximum rate of which is, not higher than the salary or the maximum rate of salary applicable to the relevant higher position,

may appeal against the transfer or promotion of that first-mentioned officer to the training position.

(3) An appeal referred to in sub-section (2) shall be made under section 39 and, for all purposes of that appeal—

- (a) in a case where the appeal is an appeal against the transfer of an officer to a training position—
 - (i) references in this Part to the promotion of that officer shall be read as references to the transfer of that officer to the training position;
 - (ii) references in this Part to the cancellation of the promotion of that officer shall, in a case where, immediately before that officer was transferred to the training position, he occupied another position, be read as references to the transfer of that officer back to that other position; and
 - (iii) references in this Part to the cancellation of the promotion of that officer shall, in a case where, immediately before that officer was transferred to the training position, he was an unattached officer performing specified duties, be read as a reference to that officer’s being deemed again to have become an unattached officer and to his being required to perform those duties; and
- (b) in a case where the appeal is an appeal by an officer in relation to whom it would constitute a transfer for him to occupy the training position—references in this Part to promotion of that officer shall be read as references to the transfer of that officer to the training position.

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(4) Where there is a vacancy in a position that is, in relation to a training position, a relevant higher position, the Managing Director shall—

- (a) if, at the time when that relevant higher position becomes vacant, an officer who has completed that course of training is, by virtue of the operation of sub-section (7), an unattached officer—transfer that officer to that position under this section;
- (b) if, at the time when the relevant higher position becomes vacant, 2 or more officers who have completed that course of training are, by virtue of the operation of sub-section (7), unattached officers—transfer to that position under this section whichever of those officers was the first so to become an unattached officer; or
- (c) if, at the time when the relevant higher position becomes vacant, no officer who has completed that course of training is, by virtue of the operation of sub-section (7), an unattached officer—subject to sub-section (8), promote to that position under this section the first officer to complete that course of training.

(5) The promotion of an officer to a position under paragraph (4) (c) takes effect on the day on which the promotion is made and salary at the rate applicable to that office is payable to the officer on and from that day.

(6) Where 2 or more officers complete a course of training at the one time or become, by virtue of the operation of sub-section (7), unattached officers at the one time, they shall be treated, for the purposes of sub-section (4), as having completed that course of training, or as having become unattached officers, as the case requires, in a sequence of time corresponding to the order of merit in which, on the assessment of the person or body conducting the course of training, those officers completed the course.

(7) Where an officer who is entitled, upon completion of a particular course of training to the satisfaction of the Managing Director, to occupy a relevant higher position so completes that course of training but there is not, at the time when he completes that course, a vacant relevant higher position, or a vacant relevant higher position to which he is entitled under paragraph (4) (c) to be promoted—

- (a) he becomes forthwith, by force of this sub-section, an unattached officer who is required to perform duties corresponding to the duties of such a position; and
- (b) he shall have the designation appropriate to the occupant of such a position and is entitled to be paid the salary that would, from time to time, be payable to him if he were the occupant of such a position.

(8) Nothing in sub-section (4) shall be taken to prevent the Managing Director from promoting or transferring an officer under section 36 to a position to which that sub-section relates at any time when there is no officer immediately entitled to occupy that position in accordance with a determination under sub-section (1).

(9) A transfer of an officer under section 36 to a vacant training position shall be notified in the manner prescribed by the rules.

(10) Where an officer is transferred under section 36 from a position held by him to a training position, no person shall be appointed or transferred to that first-mentioned position, and no promotion to that first-mentioned position shall take effect, until—

- (a) if paragraph (b) does not apply—the period for appealing against the transfer of that officer to the training office expires without any appeal having been made; or
- (b) if any such appeal is, or 2 or more such appeals are, made within that period—that appeal or each of those appeals has been determined or has become inoperative.

Appeals against promotions

39. (1) An officer who considers that he is more entitled than another officer to promotion to a vacant position to which the other officer has been promoted under section 36 may appeal to a Promotions Appeal Board against the promotion of the other officer to that office.

(2) The only ground of appeal under sub-section (1) shall be the greater efficiency of the officer making the appeal.

(3) The rules may prescribe the manner in which, and the time within which, appeals may be made under this section.

Temporary performance of duties

40. The rules may make provision for or in relation to the temporary performance of the whole or a part of the duties of a position (whether or not vacant) by an officer who occupies another position or is an unattached officer, including provision for or in relation to—

- (a) the selection of an officer to perform temporarily the duties of a position the classification of which is higher than the classification of the position occupied by him or the classification applicable to him; and
- (b) appeals by officers in relation to such a selection of an officer where the period of the temporary performance of the duties is, or is expected to be, longer than such period as is prescribed by the rules.

Promotions Appeal Boards

41. (1) For the purposes of this Division—

- (a) the Managing Director shall, from time to time, arrange for the establishment of such Australian Broadcasting Corporation Promotions Appeal Boards as are required; and
- (b) the Governor-General shall appoint such Chairmen of Australian Broadcasting Corporation Promotions Appeal Boards as are required.

(2) A Promotions Appeal Board, in relation to an appeal against a promotion to a vacant position, or against a selection to perform temporarily the duties of a position, shall be constituted by—

- (a) a person who is a Chairman of Promotions Appeal Boards;
- (b) an officer nominated by the Managing Director; and
- (c) an officer nominated by the organization of which it is appropriate for a person occupying the position concerned to be a member or, failing such a nomination, nominated in such other manner as the rules provide.

(3) Subject to this section, a Chairman of Promotions Appeal Boards—

- (a) holds office for such period as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines; and
- (b) is eligible for re-appointment.

(4) The Governor-General may terminate the appointment of a Chairman of Promotions Appeal Boards by reason of misbehaviour or physical or mental incapacity.

(5) A Chairman of Promotions Appeal Boards may resign his office by writing signed by him delivered to the Governor-General.

(6) A Chairman of Promotions Appeal Boards shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(7) Subject to the *Remuneration Tribunals Act 1973*, a Chairman of Promotions Appeal Boards shall be paid by the Corporation such allowances as are prescribed by the rules.

(8) An officer shall not be appointed or nominated as a member of a Promotions Appeal Board in relation to a particular appeal or appeals if that officer has himself been promoted to, or been selected to perform temporarily the duties of, the position concerned or has himself appealed against the promotion to the position or against the selection to perform temporarily the duties of the position, as the case may be.

(9) Where a Promotions Appeal Board has been constituted for the purposes of an appeal but, before the appeal has been finally determined, a member of the Promotions Appeal Board ceases to be such a member or, for any other reason, ceases to take part in consideration of the claims of the respective parties to the appeal proceedings or in the determination of the appeal, a new Promotions Appeal Board shall be constituted in accordance with sub-section (2) for the purposes of the appeal and, for those purposes, the new Promotions Appeal Board may have regard to the evidence given, the argument adduced, and the reasons for any decision given, during the proceedings before the previous Promotions Appeal Board.

(10) For the purposes of the determination of an appeal or of any matter arising in the course of an appeal, where the members of the Promotions

Appeal Board do not concur in a decision relating to the determination of that appeal or of that matter—

- (a) if a majority of the members concur in a decision --the decision of the majority shall be deemed to be the decision of the Promotions Appeal Board; and
- (b) in any other case—the decision of the member of the Promotions Appeal Board who is a Chairman of Promotions Appeal Boards shall be deemed to be the decision of the Promotions Appeal Board.

(11) Sittings of Promotions Appeal Boards may be held from time to time as required at such places in Australia as are approved by the Managing Director.

(12) In this section, “organization” means an organization registered under the *Conciliation and Arbitration Act 1904*.

Determination of appeals

42. (1) Upon an appeal or appeals being made under section 39 against the promotion of an officer or an appeal or appeals being made under rules made for the purposes of section 40 against the selection of an officer to perform temporarily the duties of a position of a classification higher than the classification of the position occupied by him or the classification applicable to him, a Promotions Appeal Board shall make full inquiries into the claims of each party to the appeal proceedings.

(2) In making inquiries into the claims of each party to the appeal proceedings, the Promotions Appeal Board—

- (a) may follow such procedures as it thinks fit; and
- (b) is not bound by the rules of evidence and may inform itself in such manner as it thinks fit.

(3) On the completion of its inquiries into the claims of each party to the appeal proceedings, a Promotions Appeal Board shall--

- (a) if there is one appellant-- allow or disallow the appeal; or
- (b) if there are 2 or more appellants—allow the appeal of one only of the appellants or disallow the appeals.

(4) Where, in respect of a promotion, an appeal is allowed under sub-section (3), the Managing Director shall cancel that promotion and promote to the vacant position the appellant whose appeal has been allowed.

(5) Where, in respect of the selection of an officer to perform temporarily the duties of a position, an appeal is allowed under sub-section (3), the Managing Director shall cancel that selection and select for the temporary performance of the duties of the position the appellant whose appeal has been allowed.

Day on which promotion takes effect, &c.

43. (1) Where—

- (a) no appeal is made under section 39 against the promotion of an officer under section 36; or
- (b) an appeal is, or appeals are, made under section 39 against the promotion, but the appeal, or each of the appeals, is disallowed or becomes inoperative not later than the prescribed day in respect of the promotion,

the promotion takes effect on the prescribed day in respect of the promotion.

(2) Where—

- (a) an appeal is, or appeals are, made under section 39 against the promotion of an officer under section 36; and
- (b) the appeal, or each of the appeals, is disallowed or becomes inoperative but the day on which the appeal or one of the appeals is disallowed or becomes inoperative is later than the prescribed day in respect of the promotion,

the promotion takes effect on the day on which the appeal is disallowed or becomes inoperative, or the latest day on which any of the appeals is disallowed or becomes inoperative, as the case may be.

(3) A promotion of an officer under sub-section 42 (4) takes effect on the day on which the promotion is made.

(4) Where a promotion under section 36 of an officer to a position takes effect, salary at the rate applicable to that position is payable to the officer on and from the prescribed day in respect of the promotion.

(5) Where, upon the determination of an appeal against the promotion under section 36 of an officer to a position, the promotion under sub-section 42 (4) of another officer to that position takes effect, salary at the rate applicable to that position is payable to that other officer on and from the day that is the prescribed day in respect of the first-mentioned promotion.

(6) Notwithstanding any other provision of this Act, where an officer has been promoted under section 36 or 42 to a position held by another officer, the promotion of the first-mentioned officer does not take effect unless the other officer ceases to hold the position.

Death of officer before appeal determined

44. Where, before an appeal under section 39 against the promotion of an officer has been determined, the officer dies, the appeal shall be deemed to lapse on the date of his death but the promotion shall not take effect unless the death occurred on or after the day that is the prescribed day in respect of the promotion.

Cancellation of promotions

45. (1) Notwithstanding any other provision of this Part, if, after the date of notification of the promotion, under section 36, of an officer to a vacant

position but before the day on which the promotion takes effect, the Managing Director is satisfied that—

- (a) the position should be abolished; or
- (b) notification or further notification of the vacancy is desirable,

the Managing Director may cancel the promotion.

(2) If a promotion of an officer under section 36 that has not taken effect ceases, by reason of a change in rates of salary, to be a promotion of that officer, the Managing Director shall cancel that promotion.

(3) Where a promotion is cancelled under this section, any appeal under section 39 against the promotion shall be deemed to lapse on the date of the cancellation.

Division 3—Redeployment and Retirement

Subdivision A—Preliminary

Interpretation

46. (1) In this Division, unless the contrary intention appears—

“appropriate duties”, in relation to an employee, means—

- (a) in the case of an employee being an officer who occupies a position in the Service—duties appropriate to the classification applicable to that position;
- (b) in the case of an employee being an unattached officer— duties appropriate to the classification applicable to him; or
- (c) in the case of an employee being a temporary employee—duties appropriate to the salary, or range of salary, applicable to him;

“declared employee” means an employee in respect of whom a redeployment declaration is in force;

“employee” means a person to whom, and in relation to whom, this Division applies by virtue of section 47;

“redeployment declaration” means an instrument under section 50 or 51, or a declaration made by the Tenure Appeal Board under paragraph 56 (2) (b) (ii) or sub-section 56 (6), declaring an employee to be eligible for redeployment in accordance with Subdivision B.

(2) For the purposes of this Division, an employee is inefficient in relation to the performance of his duties if he has not attained or sustained a standard of efficiency that an employee can reasonably be expected to attain or sustain in the performance of those duties.

(3) Without limiting the matters that may be taken into account for the purpose of determining whether an employee has not, in the performance of his

duties, attained or sustained a standard of efficiency referred to in sub-section (2), regard—

- (a) shall be had to—
 - (i) any written selection criteria or job specifications applicable to those duties;
 - (ii) any duty statements describing those duties; and
 - (iii) any written work standards and instructions relating to the manner of performance of those duties; and
- (b) may be had to—
 - (i) any written selection criteria or job specifications applicable to similar duties that other employees are required to perform;
 - (ii) any duty statements describing similar duties that other employees are required to perform; and
 - (iii) any written work standards and instructions relating to the manner of performance of similar duties that other employees are required to perform.

(4) For the purposes of this Division, an employee is not qualified to perform his duties if, in relation to those duties—

- (a) the employee has ceased to hold, or has become unable or ineligible to hold or to use and enjoy, an essential qualification; or
- (b) a court, person, authority or body that is competent to do so has suspended, or has cancelled, revoked, rescinded or otherwise withdrawn, an essential qualification of the employee or the right of the employee to hold, or to use and enjoy, an essential qualification.

(5) In sub-section (4), a reference to an essential qualification, in relation to an employee, is a reference to any statutory, professional, academic, commercial, technical, trade, health or other qualification the holding of which is a prerequisite to the practice of a profession, trade or calling, the exercise of a right or the performance of a function or duty, being a profession, trade, calling, right, function or duty that it is necessary for that employee to practise, exercise or perform in the course of his employment by the Corporation.

Persons in relation to whom Division applies

47. (1) Subject to this section, this Division applies to and in relation to—

- (a) a person who is an officer; and
- (b) a person who is a temporary employee, being a person who has, for the immediately preceding period of one year (whether or not the period commenced before the commencing day), been a temporary employee, or an officer and then a temporary employee.

(2) This Division does not apply to or in relation to—

- (a) a person who is remunerated by fees, allowances or commission only;
- (b) a person who is employed in an honorary capacity only;
- (c) an officer who was appointed on probation and whose appointment has not been confirmed; or

- (d) a temporary employee who is employed under a contract of employment for a term of less than one year or for a term of years.

(3) For the purposes of this section, any period in which a person was an officer or temporary employee of the Australian Broadcasting Commission shall be treated as if it had been a period in which the person was an officer or temporary employee of the Corporation.

Subdivision B—Redeployment of Employees

Objects of Subdivision

48. The objects of this Subdivision are—

- (a) first, to ensure, to the greatest extent that is practicable, that the Corporation operates in such a manner as to make efficient and economical use of the services of its employees; and
- (b) secondly, to ensure, to the greatest extent that is practicable, that each employee whose services cannot, consistently with the achievement of the first object of this Subdivision, reasonably be used by the Corporation on appropriate duties—
 - (i) for the reason that he is included in a class of employees employed by the Corporation that comprises a greater number of employees than is necessary for the efficient and economical working of the Corporation;
 - (ii) for the reason that he is, in consequence of physical or mental incapacity, incapable of performing his duties;
 - (iii) for the reason that he is inefficient in relation to the performance of his duties; or
 - (iv) for the reason that he is not qualified to perform his duties, is redeployed in the employment of the Corporation on duties that he can reasonably be required to perform.

Approved criteria and procedures

49. (1) The Managing Director shall, as soon as practicable after the commencement of this Subdivision, publish, as prescribed by the rules, a notice setting out administrative procedures to be followed by the Corporation for the purpose of facilitating the achievement of the objects of this Subdivision.

(2) The Managing Director may, from time to time, publish, as prescribed by the rules—

- (a) a notice varying the administrative procedures referred to in a notice or notices published by him under this section; or
- (b) a notice revoking administrative procedures referred to in a notice or notices published by him under this section and setting out new administrative procedures to be followed by the Corporation for the purpose of facilitating the achievement of the objects of this Subdivision.

(3) Without limiting the generality of sub-sections (1) and (2), the administrative procedures—

- (a) shall specify criteria by reference to which an employee may be identified as an employee whose services cannot, for a reason referred to in sub-paragraph 48 (b) (i), (ii), (iii) or (iv), reasonably be used by the Corporation on appropriate duties consistently with the achievement of the first object of this Subdivision; and
- (b) shall make provision for defining the occasions on which, or circumstances in which, those procedures should be given effect to for the purpose of determining whether the services of any employee cannot, consistently with the achievement of the first object of this Subdivision, reasonably be used by the Corporation on appropriate duties.

Efficient and economical use of staff

50. (1) The Managing Director—

- (a) is responsible for ensuring that the Corporation operates in such a manner as to make as efficient and economical use of the services of its employees as is practicable; and
- (b) without limiting the generality of paragraph (a)—
 - (i) shall give all such directions, and do all such things, as can be given or done by him for ensuring that the procedures set out in a notice in force under section 49 are given effect to in the administration of the affairs of the Corporation; and
 - (ii) shall cause each employee who, in accordance with the procedures set out in a notice in force under section 49, is identified as an employee whose services cannot, for a reason referred to in sub-paragraph 48 (b) (i), (ii), (iii) or (iv), reasonably be used by the Corporation on appropriate duties, to be declared, by instrument in writing, to be, for that reason, eligible for redeployment in accordance with this Subdivision.

(2) Nothing in sub-section (1) requires or authorizes the making of an instrument declaring an employee to be eligible for redeployment in accordance with this Subdivision if the employee was identified, under a relevant notice under section 49, as an employee whose services cannot reasonably be used by the Corporation on appropriate duties for the reason that he is inefficient or incompetent for causes within his own control.

(3) The duties imposed on the Managing Director under sub-paragraph (1) (b) (ii) shall be deemed to be powers to which section 24 applies.

Request for redeployment

51. (1) An employee may, by notice in writing given to the Managing Director, request that, for the reason set out in sub-paragraph 48 (b) (ii), he be declared to be eligible for redeployment in accordance with this Subdivision.

(2) On receiving such a notice from an employee, the Managing Director shall determine whether the services of the employee cannot, consistently with the achievement of the object referred to in paragraph 48 (a), reasonably be used by the Corporation on appropriate duties for the reason set out in sub-paragraph 48 (b) (ii) and—

- (a) if he determines that the services of the employee cannot, consistently with the achievement of that object, reasonably be used by the Corporation on appropriate duties for that reason—shall, by instrument in writing, cause the employee to be declared to be eligible for redeployment in accordance with this Subdivision; or
- (b) in any other case—shall refuse to make an instrument declaring the employee to be eligible for redeployment in accordance with this Subdivision and shall notify the employee in writing of his refusal and of the reason for the refusal.

(3) The duties imposed on the Managing Director under sub-section (2) shall be deemed to be powers to which section 24 applies.

Notification of declaration

52. (1) Where a redeployment declaration is made under section 50 or 51 in respect of an employee, the Managing Director shall furnish a copy of the declaration to the employee.

(2) Where a redeployment declaration is made by the Tenure Appeal Board under sub-paragraph 56 (2) (b) (ii) or sub-section 56 (6) in respect of an employee, the Tenure Appeal Board shall cause copies of the declaration to be furnished to the employee and to the Managing Director.

Managing Director to attempt to redeploy declared employees

53. (1) Where the Managing Director makes, or receives a copy of, a redeployment declaration in respect of an employee, the Managing Director shall take such action as he considers reasonable and practicable for him to take to redeploy the employee in the employment of the Corporation on duties that the Managing Director considers the employee is competent to perform and can reasonably be required to perform.

- (2) The Managing Director—
 - (a) shall, as soon as practicable after the commencement of this Subdivision, publish, as prescribed by the rules, a notice setting out principles in accordance with which he will perform his functions under sub-section (1) with respect to declared employees generally or with respect to employees included in a specified class of declared employees, being principles that he considers it desirable that he should comply with for the purpose of facilitating the achievement of the first object of this Subdivision by the Corporation; and
 - (b) may, from time to time, publish, as prescribed by the rules—
 - (i) a notice varying principles set out in a notice or notices published by him under this sub-section; or

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- (ii) a notice revoking principles set out in a notice or notices published by him under this sub-section and setting out new principles in substitution for the principles so revoked.

(3) In determining what action to take under sub-section (1) in respect of a declared employee, the Managing Director shall give effect to any principles set out in a notice under sub-section (2) that are applicable in the case of the employee.

(4) Subject to sub-section (3), the Managing Director shall, in determining what action to take under sub-section (1) in respect of a declared employee, have regard to—

- (a) matters related to the efficient operation of the Corporation and to the efficient and economical use of its employees;
- (b) the feasibility, having regard to the first object of this Subdivision, of re-training the employee with a view to his becoming employed by the Corporation on work for which he has been re-trained;
- (c) the educational standard attained by, and any professional, technical or other special qualifications possessed by, the employee concerned;
- (d) the interests of the employee concerned; and
- (e) the interests of officers and temporary employees.

(5) The Managing Director shall not take action under sub-section (1) in relation to a redeployment declaration made under section 50 in respect of an employee unless—

- (a) the employee has waived his right to appeal against the declaration or the time within which the employee may appeal against the declaration has expired and no such appeal has been instituted; or
- (b) if such an appeal has been instituted—
 - (i) the appeal has been heard and determined and the declaration has been confirmed; or
 - (ii) the appeal has been withdrawn.

(6) When the Managing Director has complied with sub-section (1) in respect of an employee, the Managing Director shall—

- (a) if he has redeployed the employee—notify the employee, in writing, accordingly and revoke the redeployment declaration in respect of the employee; or
- (b) in any other case—issue a certificate in writing certifying that it has not been practicable to redeploy the employee, and furnish a copy of the certificate to the employee.

(7) A certificate under paragraph (6) (b) in respect of an employee shall state the reason for which the employee was declared to be eligible for redeployment.

Redeployment

54. (1) For the purpose of enabling the Managing Director to perform the functions conferred on him by sub-section 53 (1), the Managing Director may—

- (a) transfer a declared employee who is an officer to a position in the Service for which he is qualified, being a position that has the same classification as, or a lower classification than, the classification of the position held, or last held, by the officer;
- (b) by instrument in writing, declare that a declared employee who holds a position in the Service shall, on a date specified in the instrument, become an unattached officer and direct that he commence, on that date, to perform specified duties, being duties that the Managing Director considers he is competent to perform, and that he have such designation (being a designation corresponding to that of a position in the Service) as the Managing Director determines to be appropriate to those duties;
- (c) by instrument in writing, direct that a declared employee who is an unattached officer commence, on a date specified in the instrument, to perform duties specified in the instrument, being duties that the Managing Director considers he is competent to perform, and that he have such designation (being a designation corresponding to that of a position in the Service) as the Managing Director determines to be appropriate to those duties; and
- (d) direct that a declared employee who is a temporary employee be employed on any duties that the Managing Director considers he is competent to perform.

(2) Where, in pursuance of paragraph (1) (b), the Managing Director, by instrument in writing, declares that a declared employee who holds a position in the Service shall become, on a date specified in that instrument, an unattached officer, that position shall become vacant upon that date.

Invalidity precluding redeployment

55. Where an employee who has been declared to be eligible for redeployment in accordance with this Subdivision for the reason referred to in sub-paragraph 48 (b) (ii) has not been redeployed in accordance with section 53, the Managing Director may, if he is satisfied that the employee should, in consequence of his incapacity, be retired from his employment, state in the certificate issued under paragraph 53 (6) (b) in relation to the employee that he is satisfied that the employee should, for the reason so referred to, be retired from his employment.

Appeals

56. (1) An employee may appeal to the Tenure Appeal Board against—

- (a) the making of a redeployment declaration under section 50 in respect of the employee;

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- (b) a refusal to make a redeployment declaration under section 51 in respect of the employee;
- (c) the issue of a certificate under section 53 in respect of the employee; or
- (d) action taken under this Subdivision by way of the redeployment of the employee in the employment of the Corporation.

(2) Where an employee appeals to the Tenure Appeal Board under sub-section (1), the Tenure Appeal Board shall hear and determine the appeal and may—

- (a) in the case of an appeal against the making of a redeployment declaration under section 50—
 - (i) confirm the declaration;
 - (ii) revoke the declaration; or
 - (iii) revoke the declaration and make a redeployment declaration in respect of another employee under sub-section (6);
- (b) in the case of an appeal against a refusal to make a redeployment declaration under section 51—
 - (i) confirm the refusal to make a redeployment declaration; or
 - (ii) make a declaration declaring the employee to be eligible for redeployment in accordance with this Subdivision;
- (c) in the case of an appeal against the issue of a certificate under section 53—confirm or revoke the certificate; or
- (d) in the case of an appeal against action taken by way of the redeployment of an employee—
 - (i) confirm the taking of the action; or
 - (ii) set aside the taking of the action and remit the matter to the Managing Director for the Managing Director to take such other action by way of the redeployment of the employee as the Managing Director thinks fit.

(3) Where the Tenure Appeal Board hears an appeal against the making of a redeployment declaration made under section 50 in respect of an employee, the Tenure Appeal Board shall, in determining the appeal, apply the criteria set out in a notice under section 49 that were applicable to the decision by the Managing Director to make the declaration.

(4) Where the Tenure Appeal Board hears an appeal against the issue of a certificate under section 53 or against the taking of action by way of the redeployment of an employee, the Tenure Appeal Board shall determine the appeal in accordance with the principles, if any, set out in a notice under sub-section 53 (2) to which the Managing Director was required by sub-section 53 (3) to give effect and shall have regard to the matters to which the Managing Director was required by sub-section 53 (4) to have regard in relation to the issue of the certificate or the taking of the action, as the case may be.

(5) Where a declared employee, being an employee in respect of whom a redeployment declaration has been made by reason that he is included in a class

of employees employed by the Corporation that comprises a greater number of employees than is necessary for the efficient and economical working of the Corporation, appeals to the Tenure Appeal Board against the making, under section 50, of that declaration in relation to him, the Tenure Appeal Board may, at the request of the employee or of the Corporation, join all or any of the employees included in that class as parties to that appeal.

(6) Where the Tenure Appeal Board hears an appeal by a declared employee against the making of a redeployment declaration under section 50 in respect of the employee, the Tenure Appeal Board may, if it is satisfied that a redeployment declaration should have been made in respect of another employee (being an employee who has been joined as a party to the appeal under sub-section (5)) instead of in respect of that declared employee, determine the appeal by revoking the declaration made in respect of that declared employee and making a declaration declaring that other employee to be eligible for redeployment in accordance with this Subdivision.

(7) The Tenure Appeal Board may, upon hearing and determining an appeal under this Subdivision, furnish to the Managing Director any comments that the Tenure Appeal Board deems it desirable to make with respect to the administrative procedures set out in a notice under section 49, or the principles set out in a notice under section 53, that were relevant to the appeal.

(8) Where the Tenure Appeal Board revokes a certificate issued under section 53 in respect of an employee, section 53 applies to and in relation to the employee as if the certificate had not been issued.

(9) Where the Tenure Appeal Board sets aside action taken by way of the redeployment of an employee, section 53 applies to and in relation to the employee as if the action had not been taken.

(10) Where the Tenure Appeal Board makes a decision on an appeal under this section, the decision shall be in writing and shall set out the findings by the Tenure Appeal Board on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the decision.

(11) Where the Tenure Appeal Board sets aside the taking of action by way of the redeployment of an employee, the Managing Director shall take such action as is necessary to restore the situation, in relation to his employment, that existed immediately before he was redeployed.

Tenure Appeal Board

57. (1) For the purposes of this Division, there shall be an Australian Broadcasting Corporation Tenure Appeal Board.

(2) The Tenure Appeal Board shall be constituted by—

- (a) a Chairman, who shall be appointed by the Governor-General;
- (b) one person nominated as provided in the rules to represent the Corporation; and

- (c) one person nominated by the organization of which it is appropriate for the employee who instituted the appeal to be a member or, failing such a nomination, nominated in such other manner as the rules provide.
- (3) Subject to this section, the Chairman of the Tenure Appeal Board—
 - (a) holds office for such period as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines; and
 - (b) is eligible for re-appointment.
- (4) The Governor-General may terminate the appointment of the Chairman of the Tenure Appeal Board by reason of misbehaviour or physical or mental incapacity.
- (5) The Chairman of the Tenure Appeal Board may resign his office by writing signed by him delivered to the Governor-General.
- (6) The Chairman of the Tenure Appeal Board shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.
- (7) Subject to the *Remuneration Tribunals Act 1973*, a member of the Tenure Appeal Board shall be paid by the Corporation such allowances as are prescribed by the regulations.
- (8) For the purposes of hearing and determining an appeal under section 56, the Tenure Appeal Board may take evidence on oath or affirmation and, for those purposes, a member of the Tenure Appeal Board may administer an oath or affirmation.
- (9) In hearing and determining an appeal under section 56—
 - (a) the procedure of the Tenure Appeal Board is, subject to this Division and to the rules, within the discretion of the Tenure Appeal Board;
 - (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Division, and a proper consideration of the matter before the Tenure Appeal Board, permit; and
 - (c) the Tenure Appeal Board is not bound by the rules of evidence.
- (10) Where the hearing of an appeal has been commenced before the Tenure Appeal Board but, before the appeal has been finally determined, a member of the Tenure Appeal Board has ceased to be such a member or, for any other reason, is unable to take any further part in the determination of the appeal, the Tenure Appeal Board shall be reconstituted in accordance with sub-section (2) to hear and determine the appeal and, for that purpose, may have regard to the evidence given, the argument adduced, and the reasons for any decision given, during the previous hearing.
- (11) For the purposes of the determination of an appeal or of any matter arising in the course of an appeal, where the members of the Tenure Appeal

Board do not concur in a decision relating to the determination of the appeal or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Tenure Appeal Board; and
- (b) in any other case—the decision of the Chairman of the Tenure Appeal Board shall be deemed to be the decision of the Tenure Appeal Board.

(12) Sittings of the Tenure Appeal Board may be held from time to time as required at such places in Australia as are approved by the Managing Director.

(13) In this section, “organization” means an organization registered under the *Conciliation and Arbitration Act 1904*.

Subdivision C—Retirement

Retirement of employees upon or after attaining minimum retiring age

58. (1) An employee who has attained his minimum retiring age is entitled to retire from his employment by the Corporation at any time at which he desires to do so.

(2) In sub-section (1), “minimum retiring age” means, in relation to an employee—

- (a) if the employee is included in a class of employees in respect of whom a minimum retiring age is fixed by the rules—the age so fixed; or
- (b) in the case of any other employee—the age of 55 years.

Retirement of employees who cannot be redeployed

59. (1) Subject to sub-section (2), where the Managing Director issues a certificate under section 53 in respect of an employee, the Managing Director shall retire the employee, or cause the employee to be retired, from his employment by the Corporation on a date to be specified by the Managing Director.

(2) Action shall not be taken under sub-section (1) to retire an employee, or cause an employee to be retired, from his employment by the Corporation unless—

- (a) the employee has waived his right to appeal against the issue of the certificate issued under this Division in respect of the employee or the time within which the employee may appeal against the issue of the certificate has expired and no such appeal has been instituted; or
- (b) if such an appeal has been instituted—
 - (i) the appeal has been heard and determined and the certificate has been confirmed; or
 - (ii) the appeal has been withdrawn.

(3) Where an employee is retired under this section on the ground of invalidity, the date as from which he is retired may, with the consent of the

employee, be a date earlier than the date on which the action to retire him was taken.

(4) The duties imposed on the Managing Director under sub-section (1) shall be deemed to be powers to which section 24 applies.

Officers recommended for retirement on medical grounds may be declared unattached

60. (1) At any time after a medical practitioner employed in the Department of Health has recommended, in writing, that an officer who holds a position in the Service, being an officer who has, for the reason referred to in sub-paragraph 48 (b) (ii), been declared to be eligible for redeployment, be retired on the ground that he is, by reason of physical or mental incapacity, incapable of performing his duties, the Managing Director may declare, by instrument in writing, that the officer shall, on a date specified in the instrument, become an unattached officer and, if the Managing Director does so, the position so held by the officer becomes vacant on the date so specified.

(2) As soon as practicable after a declaration is made under sub-section (1) in respect of an officer, a copy of the declaration shall be furnished to the officer.

Retirement on ground of age

61. (1) Subject to sub-section (2), an employee shall, by force of this sub-section, be retired from his employment by the Corporation upon attaining his maximum retiring age.

(2) Where the Managing Director is of the opinion that it is desirable, in the interests of the Corporation, that an employee who has not attained his maximum retiring age should continue, after he has attained that age, in his employment, and the employee is able and willing so to continue, the Managing Director may determine, in writing, that sub-section (1) does not apply to the employee.

(3) The Managing Director may, at the time when he makes, or at any time after he has made, a determination under sub-section (2) in respect of an employee, determine that the employee shall retire from his employment upon attaining a specified age or upon the expiration of a specified period, and may, at any time, vary such a determination.

(4) In this section, "maximum retiring age" means, in relation to an employee—

- (a) if the employee is included in a class of employees in respect of whom a maximum retiring age, being an age less than 65 years, is fixed by the rules—the age so fixed; or
- (b) in the case of any other employee—the age of 65 years.

Subdivision D—Miscellaneous

Benefits

- 62. (1)** The rules may make provision for and in relation to—
- (a) the payment, in such circumstances as are prescribed by the rules, to or in respect of an employee (being an employee who has been declared to be eligible for redeployment for a reason referred to in sub-paragraph 48 (b) (i), (iii) or (iv) and has been retired under section 59) of a benefit, by way of a lump sum, calculated in such manner as is provided for in the rules; or
 - (b) the reimbursement, in such circumstances as are prescribed by the rules, of expenses of a kind prescribed by the rules incurred by a declared employee.
- (2)** The rules—
- (a) may make provision for the purpose of—
 - (i) enabling a person entitled to the payment of a lump sum under rules made pursuant to sub-section (1) to elect to have paid, in lieu of that sum, benefits, calculated in such manner as is provided for in the rules, being pension benefits similar to pension benefits payable under the *Superannuation Act 1976*; and
 - (ii) enabling the payment of such a pension benefit to the person entitled to it in association with any benefit payable to the person under the *Superannuation Act 1976* and as if it were a benefit payable under that Act;
 - (b) may apply the provisions of the *Superannuation Act 1976*, other than the provisions of Part X of that Act, subject to such modifications and adaptations as are prescribed by the rules, to and in relation to such a benefit; and
 - (c) may make such other provision, not inconsistent with this Division, as is necessary or convenient to be made for carrying out or giving effect to the purpose specified in paragraph (a).
- (3)** The provision that may be made by the rules pursuant to sub-section (2)—
- (a) shall not enable an election referred to in that sub-section to be made by a person—
 - (i) who did not become, upon retirement under section 59, entitled to a pension under the *Superannuation Act 1976*; or
 - (ii) who has made an election under that Act by virtue of which he has become entitled to receive, as a lump sum benefit, all the benefits to which, but for the election, he would be entitled under that Act in consequence of his retirement under section 59; and
 - (b) shall include provision for an election referred to in sub-section (2) to become void if the person who made the election subsequently makes

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an election under the *Superannuation Act 1976* by virtue of which he becomes entitled to receive, as a lump sum benefit, all the benefits to which, but for that last-mentioned election, he would be entitled under that Act in consequence of his retirement under section 59.

(4) A payment of benefit, or by way of reimbursement of expenses, under rules made pursuant to this section is payable—

- (a) in the case of a payment of a pension benefit that is payable as if it were a pension benefit payable under the *Superannuation Act 1976*—out of the Consolidated Revenue Fund, in accordance with the appropriation of that Fund made by that Act for the payments of benefits under that Act, as if it were a payment of a pension benefit under that Act; or
- (b) in the case of a payment (not being a payment to which paragraph (a) applies) payable to an employee, or payable to or in respect of a person who has been retired from his employment with the Corporation under section 59—out of moneys of the Corporation.

(5) In sub-section (2), “modification” includes the addition or omission of a provision or the substitution of a provision for another provision.

(6) Where, by virtue of an election referred to in paragraph (2) (a), benefits become payable to or in respect of a person in lieu of the lump sum that would, under the rules, have otherwise been payable to or in respect of that person by the Corporation, the Corporation shall pay to the Commonwealth an amount equal to the amount of the lump sum and the Corporation may apply for that purpose any moneys under its control.

Inconsistency with awards

63. Where a term of an award that applies in relation to an employee is inconsistent with a provision of this Division, the term shall prevail and the provision of this Division shall, to the extent of the inconsistency, be inoperative in relation to the employee.

Division 4—Discipline

Disciplinary action for misconduct

64. (1) Where, after inquiry as directed by the Managing Director, it is found that an officer has been guilty of misconduct, the Managing Director may—

- (a) dismiss him from the Service; or
- (b) do any one or more of the following things:
 - (i) transfer him to some other position in the Service;
 - (ii) reduce his salary;
 - (iii) determine that he be not granted, or be not granted until the expiration of a specified period, the whole, or such part as the Managing Director specifies, of a specified increase in salary (including an increase by way of an increment in a range of salary applicable in relation to his position or, in the case of an

unattached officer, applicable in relation to him) that would otherwise be granted to him.

(2) In an inquiry for the purposes of sub-section (1), a formal hearing is not required but the officer shall be informed of the nature of the alleged misconduct and given an opportunity of furnishing a statement in relation to the matters alleged to constitute the misconduct.

(3) Where—

- (a) an inquiry is being held into alleged misconduct by an officer; or
- (b) an officer has been charged with having committed an offence against the law of the Commonwealth, of a State or of a Territory, punishable either on indictment or on summary conviction, and it appears to the Managing Director that the act or omission alleged to constitute the offence is such as to constitute misconduct by the officer,

the Managing Director may suspend the officer from duty.

(4) Subject to sub-section (5), where the Managing Director suspends an officer from duty under sub-section (3), the officer shall not be paid his salary during the period of the suspension.

(5) The Managing Director may, in his discretion, determine that the officer—

- (a) be paid his salary during the period of the suspension;
- (b) be paid his salary during such part of the period of the suspension as the Managing Director specifies; or
- (c) be paid such part of his salary as the Managing Director specifies during the period of the suspension or during such part of that period as the Managing Director specifies.

(6) Where the Managing Director has suspended an officer from duty under sub-section (3), the Managing Director may at any time remove the suspension.

(7) Where—

- (a) after an inquiry has been held into alleged misconduct by an officer who has been suspended from duty under sub-section (3), the Managing Director is not satisfied that the officer has been guilty of misconduct; or
- (b) upon the hearing by a court of the charge against an officer referred to in paragraph (3) (b) who has been suspended from duty under sub-section (3) the officer does not plead guilty, and is not found guilty, of the offence with which he was charged or of another offence that appears to the Managing Director to be such as to constitute misconduct by the officer, or the charge against such an officer is not proceeded with,

the Managing Director shall, if he has not already done so, remove the suspension.

(8) Where—

- (a) an officer has been suspended from duty under sub-section (3);
- (b) an amount of salary that would otherwise have been paid to the officer during the period of the suspension was not paid to him; and
- (c) the Managing Director removes the suspension,

the officer shall, subject to sub-section (9), be paid that amount of salary.

(9) Where the Managing Director is satisfied that an officer to whom sub-section (8) applies has engaged in paid employment or work during the period of his suspension, the amount payable to him under that sub-section shall be reduced by an amount equal to the total amount of the earnings that the Managing Director is satisfied were received or are receivable by him in respect of that employment or work.

(10) For the purposes of this section, an officer shall be taken to have been guilty of misconduct if, and only if—

- (a) he wilfully disobeys, or wilfully disregards, a direction given by a person having authority to give the direction, being a direction with which it is his duty as an officer to comply;
- (b) he is inefficient or incompetent for reasons or causes within his own control;
- (c) he is negligent or careless in the discharge of his duties;
- (d) he engages in improper conduct as an officer;
- (e) he engages in improper conduct otherwise than as an officer, being conduct that affects adversely the performance of his duties or brings the Service into disrepute;
- (f) he contravenes or fails to comply with—
 - (i) a provision of this Act, of the regulations or of the rules, being a provision that is applicable to him; or
 - (ii) the terms and conditions upon which he is employed; or
- (g) he has, whether before or after becoming an officer, wilfully supplied to the Corporation, to the Managing Director, to an officer or to another person acting on behalf of the Corporation incorrect or misleading information in connection with his appointment to the Service.

Appeals

65. (1) Where, under sub-section 64 (1)—

- (a) an officer is dismissed;
- (b) an officer is transferred or has his salary reduced; or
- (c) the Managing Director determines that an officer be not granted, or be not granted until the expiration of a specified period, the whole or a part of an increase in salary,

the officer or former officer, as the case requires, may appeal to the Disciplinary Appeal Board against the action taken in relation to him.

(2) The Disciplinary Appeal Board shall hear each appeal made to it under this section and may confirm, vary or set aside the decision of the Managing Director.

(3) Where the Disciplinary Appeal Board makes a decision on an appeal under this section, the decision shall be in writing and shall set out the findings by the Disciplinary Appeal Board on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for the decision.

(4) The decision of the Disciplinary Appeal Board is final and the Managing Director shall take such action as is necessary to give effect to the decision.

Disciplinary Appeal Board

66. (1) For the purposes of this Division, there shall be an Australian Broadcasting Corporation Disciplinary Appeal Board.

(2) The Disciplinary Appeal Board shall be constituted by—

- (a) a Chairman, who shall be appointed by the Governor-General;
- (b) one person nominated as provided in the rules to represent the Corporation; and
- (c) one person nominated by the organization of which it is appropriate for the employee who instituted the appeal to be a member or, failing such a nomination, nominated in such other manner as the rules provide.

(3) The Chairman of the Disciplinary Appeal Board shall be a person who is or has been a Magistrate of a State or Territory.

(4) Subject to this section, the Chairman of the Disciplinary Appeal Board—

- (a) holds office for such period as is specified in the instrument of his appointment and on such terms and conditions as the Governor-General determines; and
- (b) is eligible for re-appointment.

(5) The Governor-General may terminate the appointment of the Chairman of the Disciplinary Appeal Board by reason of misbehaviour or physical or mental incapacity.

(6) The Chairman of the Disciplinary Appeal Board may resign his office by writing signed by him delivered to the Governor-General.

(7) The Chairman of the Disciplinary Appeal Board shall be paid by the Corporation such remuneration as is determined by the Remuneration Tribunal.

(8) Subject to the *Remuneration Tribunals Act 1973*, a member of the Disciplinary Appeal Board shall be paid by the Corporation such allowances as are prescribed by the regulations.

(9) For the purposes of hearing and determining an appeal under section 65, the Disciplinary Appeal Board may take evidence on oath or affirmation and, for those purposes, a member of the Disciplinary Appeal Board may administer an oath or affirmation.

(10) In hearing and determining an appeal under section 65—

- (a) the procedure of the Disciplinary Appeal Board is, subject to this Division and to the rules, within the discretion of the Disciplinary Appeal Board;
- (b) the proceedings shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Division, and a proper consideration of the matter before the Disciplinary Appeal Board, permit; and
- (c) the Disciplinary Appeal Board is not bound by the rules of evidence.

(11) Where the hearing of an appeal has been commenced before the Disciplinary Appeal Board but, before the appeal has been finally determined, a member of the Disciplinary Appeal Board has ceased to be such a member or, for any other reason, is unable to take any further part in the determination of the appeal, the Disciplinary Appeal Board shall be reconstituted in accordance with sub-section (2) to hear and determine the appeal and, for that purpose, may have regard to the evidence given, the argument adduced, and the reasons for any decision given, during the previous hearing.

(12) For the purposes of the determination of an appeal or of any matter arising in the course of an appeal, where the members of the Disciplinary Appeal Board do not concur in a decision relating to the determination of the appeal or of that matter—

- (a) if a majority of the members concur in a decision—the decision of the majority shall be deemed to be the decision of the Disciplinary Appeal Board; and
- (b) in any other case—the decision of the Chairman of the Disciplinary Appeal Board shall be deemed to be the decision of the Disciplinary Appeal Board.

(13) Sittings of the Disciplinary Appeal Board may be held from time to time as required at such places in Australia as are approved by the Managing Director.

(14) In this section, “organization” means an organization registered under the *Conciliation and Arbitration Act 1904*.

PART VI—FINANCE

Moneys of the Corporation

67. (1) There are payable to the Corporation such moneys as are appropriated by the Parliament for the purposes of the Corporation.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, moneys referred to in sub-section (1) are to be paid to the Corporation.

Application of moneys

68. The moneys of the Corporation shall be applied only—

- (a) in payment or discharge of the expenses, charges, obligations or liabilities incurred or undertaken by the Corporation in or in connection with the performance of its functions or the exercise of its powers;
- (b) in payment of any remuneration or allowances payable under this Act; and
- (c) in making any other payments that are required by this Act to be made out of the moneys of the Corporation.

Estimates

69. (1) The Board shall prepare estimates, in such form as the Minister directs, of the receipts and expenditure of the Corporation for each financial year and, if the Minister so directs, for any other period specified by the Minister, and the Board shall submit estimates so prepared to the Minister not later than such date as the Minister directs.

(2) The moneys of the Corporation shall not be expended otherwise than in accordance with the estimates of expenditure approved by the Minister.

Limitation on contracts and lease-back arrangements

70. (1) The Corporation shall not, without the approval of the Minister—

- (a) enter into a contract under which the Corporation is to pay or receive an amount exceeding \$500,000 or, if a higher amount is prescribed by the regulations, that higher amount; or
- (b) enter into a contract or arrangement with another person under which the other person agrees to acquire real or personal property to be leased, or let on hire, to the Corporation.

(2) Paragraph (1) (a) does not apply in relation to the receipt by the Corporation of an amount for the sale or other disposition of broadcasting programs or television programs.

Taxation

71. (1) The Corporation is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

(2) Sub-section (1) does not apply in relation to any fee payable under section 6 of the *Radiocommunications Licence Fees Act 1982*.

Application to Corporation of Division 3 of Part XI of Audit Act

72. It is hereby declared that the Corporation is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

PART VII—TECHNICAL SERVICES

Interpretation

73. In this Part—

“electric line” includes—

- (a) any substance used for the purpose of conveying, transmitting, transforming or distributing electricity;
- (b) any material being a casing, coating, covering, tube, tunnel, pipe, pillar, pole, post, frame, bracket or insulator enclosing, surrounding or supporting the substance or any part of the substance; and
- (c) any apparatus connected with any substance referred to in paragraph (a) or with any material referred to in paragraph (b);

“satellite earth station” means a device for the transmission of signals from the earth to a satellite transponder or for the reception on the earth of signals transmitted from a satellite transponder;

“satellite transponder” means a device in a space satellite that is capable of receiving signals from a satellite earth station and immediately retransmitting those signals for reception by a satellite earth station;

“signals” means sounds, or images and associated sounds;

“transmission” means transmission by wireless telegraphy;

“transmitter” means a device used for the transmission of signals, but does not include transmission towers, masts, multiplex equipment, aerials, electric lines or other equipment or facilities associated with the operation of such a device;

“transmitting station” means—

- (a) a broadcasting or television transmitting station;
- (b) a broadcasting translator station other than such a station that is operated, or to be operated, by virtue of a national broadcasting translator station licence;
- (c) a television translator station other than such a station that is operated, or to be operated, by virtue of a national television translator station licence; or
- (d) a television repeater station.

Provision of transmitting stations and technical equipment

74. (1) Where, immediately before the commencing day, a transmitting station was provided by the Commonwealth for use in connection with the performance of the functions of the Australian Broadcasting Commission, that transmitting station shall be provided by the Commonwealth on and after that day for use in connection with the performance of the functions of the Corporation.

(2) Where a new transmitting station is to be provided on or after the commencing day for use in connection with the performance of the functions of

the Corporation, that transmitting station shall be provided by the Commonwealth.

(3) Sub-sections (1) and (2) have effect subject to section 75.

(4) The Corporation shall provide, operate and maintain all technical equipment necessary to connect a studio of the Corporation to the local broadcasting or television transmitting station.

(5) Where a transmitting station used in connection with the performance of the functions of the Corporation is situated on land owned or controlled by the Commonwealth or an authority of the Commonwealth, the Corporation or any servant or agent of the Corporation is entitled to reasonable access to the land for the purpose of operating or maintaining the relevant transmitter.

Transfer of assets

75. (1) The Minister may, by notice published in the *Gazette*, declare that a specified estate or interest in land owned by the Commonwealth specified in the notice, being land on which is situated a transmitting station that is used, or is to be used, in connection with the performance of the functions of the Corporation, shall, on and from such date as is specified in the notice, be vested in the Corporation and, upon that date, that estate or interest vests in the Corporation without any conveyance, transfer or assignment.

(2) Where—

- (a) an estate or interest in land vests in the Corporation by force of sub-section (1); and
- (b) a copy of the relevant notice under sub-section (1), certified under the hand of the Crown Solicitor or of an officer of the Attorney-General's Department authorized by the Crown Solicitor to certify such copies, is lodged with the Registrar-General, Registrar of Titles or other proper officer of the State or Territory in which the land is situated,

the officer with whom the copy is lodged may register the vesting in the manner as nearly as may be in which dealings with land are registered, and may deal with and give effect to the copy of the notice as if it were a grant, conveyance, memorandum or instrument of transfer of the estate or interest to the Corporation duly executed under the laws in force in that State or Territory.

(3) The Minister shall cause all transmitters that are provided by the Commonwealth for use in connection with the performance of the functions of the Corporation to be transferred, without charge to the Corporation, to the ownership of the Corporation.

(4) The Minister may cause to be transferred to the ownership of the Corporation any other technical equipment that is provided by the Commonwealth in relation to a transmitting station that is, or is to be, used in connection with the performance of the functions of the Corporation.

(5) Where—

- (a) an estate or interest in land on which a transmitting station is situated vests in the Corporation in accordance with sub-section (1);
- (b) a transmitter is transferred to the ownership of the Corporation in accordance with sub-section (3); or
- (c) any other technical equipment is transferred to the ownership of the Corporation in accordance with sub-section (4),

the Minister may, by notice in writing to the Managing Director, require the Corporation to comply with such conditions in relation to the use of the land or transmitting station, the use or operation of the transmitter or the use or operation of the equipment, as the case may be, as are specified in the notice, and the Corporation shall comply with the conditions specified in any such notice.

Use by Corporation of satellite systems

76. (1) For the purposes of the performance of the functions of the Corporation, the Corporation may—

- (a) enter into contracts for the use by the Corporation of satellite transponders; and
- (b) with the consent of the Minister, arrange for the provision of satellite earth stations.

(2) The Minister may, if he thinks fit, arrange for the provision by the Commonwealth, on land owned or controlled by the Commonwealth or by an authority of the Commonwealth on which a transmitter is operated by the Corporation, of a satellite earth station for use in connection with the operation of that transmitter.

Lines for conveyance of electric current to transmitting stations

77. (1) For the purpose of providing and operating a transmitting station, a person acting under the authority of the Minister may—

- (a) erect, place and maintain any electric line that is necessary for conveying electric current to, or for the operation of, the transmitting station; and
- (b) arrange for and obtain from any person the supply of any electric current that is necessary or advisable for the operation of the transmitting station.

(2) In respect of the erection, placing and maintenance of an electric line by a person pursuant to paragraph (1) (a), that person has the same powers, and is subject to the same obligations, as are conferred or imposed on the Australian Telecommunications Commission under Part III of the *Telecommunications Act 1975* in relation to the erection, placing and maintenance of lines within the meaning of that Act.

PART VIII—MISCELLANEOUS

Power of Minister to give directions to Corporation in the national interest

78. (1) Where the Minister is of the opinion that the broadcasting or televising of particular matter by the Corporation would be in the national interest, he may direct the Corporation to broadcast or televise that matter from all the national broadcasting stations or national television stations or from such of them as he specifies and, where such a direction is given, the Corporation shall broadcast or televise that matter, free of charge, in accordance with the direction.

(2) Where the Minister is of the opinion that the broadcasting or televising by the Corporation of particular matter, or of matter of a particular class or character, would not be in the national interest, he may direct the Corporation not to broadcast or televise that matter or matter of that class or character and, where such a direction is given, the Corporation shall not broadcast or televise that matter or matter of that class or character.

(3) Sub-sections (1) and (2) have effect subject to section 116 of the *Broadcasting and Television Act 1942*.

(4) A direction under this section shall be sent by telegraph, or by notice in writing, to the Managing Director.

(5) Where the Minister gives a direction to the Corporation under this section, he shall cause a statement setting out particulars of, and the reasons for, the direction to be laid before each House of the Parliament within 7 sitting days of that House after the direction was given.

(6) Except as provided by this section, or as expressly provided by a provision of another Act, the Corporation is not subject to direction by or on behalf of the Government of the Commonwealth.

Application of Broadcasting and Television Act

79. Except where the *Broadcasting and Television Act 1942* otherwise expressly provides, that Act does not apply in relation to the broadcasting or television services provided by the Corporation.

Matters to be included in annual report

80. The Board shall include in each report prepared under section 63M of the *Audit Act 1901*, as that section applies to the Corporation by virtue of section 72 of this Act—

- (a) particulars of each broadcast or telecast by the Corporation during the year to which the report relates pursuant to a direction by the Minister under sub-section 78 (1);
- (b) particulars of each direction that was given to the Corporation during that year by the Minister under sub-section 78 (2);
- (c) particulars of any broadcast or telecast by the Corporation during that year pursuant to a direction by the Minister otherwise than under this Act;

- (d) particulars of any direction not to broadcast or televise matter that was given to the Corporation during that year by the Minister otherwise than under this Act;
- (e) particulars of any request made to the Board by the Minister during that year under sub-section 8 (2) and the action (if any) taken by the Board in respect of the request;
- (f) particulars of any gift, devise or bequest accepted by the Corporation during that year;
- (g) particulars of any advice received by the Board during that year from the Australian Broadcasting Corporation Advisory Council; and
- (h) the summary of the activities of Community Affairs Officers that was furnished to the Managing Director under sub-section 82 (6) in relation to that year and a summary of the action taken by the Corporation in relation to complaints found in accordance with sub-section 82 (5) during that year to have been justified.

Joint Consultative Committee

81. (1) There is hereby established a Joint Consultative Committee comprising—

- (a) representatives of the Corporation; and
- (b) either or both of the following:
 - (i) representatives of organizations of officers and full-time employees of the Corporation;
 - (ii) representatives of officers and full-time employees of the Corporation.

(2) The rules shall make provision for and in relation to the manner in which the Joint Consultative Committee is to be constituted, the functions of that Committee and the manner in which that Committee is to carry out its functions.

Community Affairs Officers

82. (1) Where a written complaint is made to the Corporation alleging—

- (a) that an error of fact has occurred in a program, announcement or other matter broadcast or televised by the Corporation; or
- (b) that an invasion of privacy has occurred in, or in connection with the preparation of, a program, announcement or other matter broadcast or televised by the Corporation,

the complaint shall be referred as soon as practicable to a Community Affairs Officer appointed in accordance with this section.

(2) A Community Affairs Officer is not required to investigate a complaint if, in his opinion—

- (a) the complaint is frivolous or vexatious, or was not made in good faith; or

(b) the complainant does not have a sufficient interest in the subject matter of the complaint.

(3) The Managing Director shall—

(a) on the recommendation of—

(i) the Advisory Council established in relation to the State or Territory concerned; or

(ii) if no such Advisory Council has been established—the Australian Broadcasting Corporation Advisory Council,

appoint, in each State, in the Northern Territory and in the Australian Capital Territory, a person or persons, to be known as Community Affairs Officers, to consider complaints mentioned in sub-section (1); and

(b) on the recommendation of the Australian Broadcasting Corporation Advisory Council, appoint an officer of the Corporation, to be known as the Principal Community Affairs Officer, whose duties will consist of or include the co-ordination of the activities of the Community Affairs Officers.

(4) Where a complaint is referred to a Community Affairs Officer in accordance with sub-section (1), he shall, as soon as practicable after the complaint is referred to him, inquire whether the complaint is justified and report his findings to the Principal Community Affairs Officer.

(5) If, after receiving a report under sub-section (4), the Principal Community Affairs Officer decides that a complaint is justified, he shall inform the Managing Director, who shall ensure that the Corporation broadcasts or televises, as the case requires, a prompt retraction or apology in appropriate terms.

(6) As soon as practicable after 30 June in each year, the Principal Community Affairs Officer shall prepare and furnish to the Managing Director for inclusion in the annual report of the Corporation a summary of the activities of the Community Affairs Officers during the year ending on that 30 June.

Regulations and rules

83. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing matters—

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

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

(2) The Board may make rules, not inconsistent with this Act or with any regulations in force under sub-section (1), prescribing matters—

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

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

(3) Without limiting the generality of sub-section (2), the rules may make provision, not inconsistent with this Act or any regulations in force under sub-section (1)—

(a) for regulating the manner in which, and the time within which, appeals may be made to the Tenure Appeal Board or the Disciplinary Appeal Board;

(b) for regulating the procedure of the Tenure Appeal Board or the Disciplinary Appeal Board, including, without limiting the generality of the foregoing—

(i) in the case of the Tenure Appeal Board—

(A) the manner by which, and the circumstances in which, 2 appeals may be consolidated and heard together; and

(B) the manner in which officers or temporary employees may be joined as parties to an appeal under sub-section 56 (5); and

(ii) in the case of the Tenure Appeal Board or the Disciplinary Appeal Board—

(A) the procedure for summoning witnesses and requiring the production of documents; and

(B) the procedure for the service of documents upon persons; and

(c) prescribing the circumstances in which, and the procedure by which, the evidence of a person appealing to the Tenure Appeal Board or the Disciplinary Appeal Board or of a witness concerned in an appeal to the Tenure Appeal Board or the Disciplinary Appeal Board may be taken by a member of the Board concerned, or by a person other than a member of the Board concerned, who is authorized by the Board concerned to take that evidence.

(4) Sections 48, 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to rules as if references in those sections of that Act to regulations were references to rules.

(5) Rules shall not be deemed to be statutory rules within the meaning of the *Statutory Rules Publication Act 1903*, but sub-sections 5 (3) to (3C) (inclusive) of that Act apply in relation to rules in like manner as they apply in relation to statutory rules.

(6) For the purposes of the application of sub-section 5 (3B) of the *Statutory Rules Publication Act 1903* in accordance with sub-section (5) of this section, the reference in that first-mentioned sub-section to the Minister of State for Administrative Services shall be construed as a reference to the Minister of State administering this Act.