



Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

No. 105 of 1992

**An Act to make transitional arrangements and
consequential amendments as a result of the enactment of
the *Broadcasting Services Act 1992***

[Assented to 9 July 1992]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

- 5 **1.** This Act may be cited as the *Broadcasting Services (Transitional
Provisions and Consequential Amendments) Act 1992*.

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Commencement

2. This Act commences on the day fixed under subsection 2(2) of the *Broadcasting Services Act 1992* or on the day applicable under subsection 2(3) of that Act, as the case requires.

Interpretation—expressions used in the Broadcasting Services Act 5

3. In this Act, unless the contrary intention appears, expressions that are defined in section 6 of the *Broadcasting Services Act 1992* have the same meaning when used in this Act.

PART 2—TRANSITIONAL PROVISIONS

Division 1—Preliminary 10

Interpretation

4. In this Part, unless the contrary intention appears:

“**Broadcasting Act**” means the *Broadcasting Act 1942*;

“**former commercial radio licence**” means a licence that was granted as a commercial radio licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 15

“**former commercial television licence**” means a licence that was granted as a commercial television licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 20

“**former limited licence**” means a licence that was granted as a limited licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act;

“**former public radio licence**” means a licence that was granted as a public radio licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 25

“**former remote radio licence**” means a licence that was granted as a remote radio licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 30

“**former remote television licence**” means a licence that was granted as a remote television licence under section 81 of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 35

“**former retransmission permit**” means a permit that was granted as a retransmission permit under section 89DA of the *Broadcasting Act* and that was in force under that Act immediately before the commencement of this Act; 40

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- 5 “former supplementary radio licence” means a licence that was granted as a supplementary radio licence under section 81 of the Broadcasting Act following an application under section 82A of that Act and that was in force under that Act immediately before the commencement of this Act;
- “former term”, in relation to a licence or permit granted under the Broadcasting Act and in force immediately before the commencement of this Act, means the period for which the licence or permit was granted under the Broadcasting Act;
- 10 “new Act” means the *Broadcasting Services Act 1992*;
- “Radcom Act” means the *Radiocommunications Act 1983*;
- “Tribunal” means the Australian Broadcasting Tribunal formerly constituted under the *Broadcasting Act 1942*.

Division 2—Licences

15 **Preservation of certain licences**

- 5.1) On the commencement of this Act:
- (a) each former commercial radio licence continues in force as a commercial radio broadcasting licence as if such a licence had been allocated to the holder under Part 4 of the new Act; and
- 20 (b) each former commercial television licence continues in force as a commercial television broadcasting licence as if such a licence had been allocated to the holder under Part 4 of the new Act; and
- (c) each former public radio licence continues in force as a community broadcasting licence as if such a licence had been allocated to the holder under Part 6 of the new Act; and
- 25 (d) each former remote radio licence continues in force as a commercial radio broadcasting licence as if such a licence had been allocated to the holder under Part 4 of the new Act; and
- 30 (e) each former remote television licence continues in force as a commercial television broadcasting licence as if such a licence had been allocated to the holder under Part 4 of the new Act; and
- (f) each former supplementary radio licence continues in force as a commercial radio broadcasting licence as if such a licence had been allocated to the holder under Part 4 of the new Act.
- 35
- (2) A broadcasting service provided immediately before the commencement of this Act under a former limited licence is, for the purposes of the new Act, taken to be an open narrowcasting service for
- 40 the remainder of the former term of the licence.
- (3) A radio broadcasting service that was, immediately before the commencement of this Act, being provided under the *Broadcasting and*

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Television Act 1942 as in force immediately before the day fixed by Proclamation under subsection 2(1) of the *Broadcasting and Television Amendment Act 1985* is, for the purposes of paragraph (1)(a), taken to be provided under a former commercial radio licence.

Remote Aboriginal community services 5

6.(1) Notwithstanding anything contained in the new Act, a broadcasting service provided, immediately before the commencement of this Act, for remote Aboriginal community purposes referred to in subsection 81B(7) of the Broadcasting Act in relation to a community declared, under subsection 81B(9) of the Broadcasting Act, to be a remote Aboriginal community is taken to be a service provided under a community broadcasting licence. 10

(2) A community broadcasting licence is taken to have been granted, on that commencement, in respect of each service to which subsection (1) applies, to: 15

- (a) the incorporated media association representing the Aboriginal community for which that service is provided; or
- (b) if there is no such association—the incorporated community council, however described, representing that community.

Terms of preserved licences 20

7. Subject to any action taken under the new Act, the term of a licence to which subsection 5(1) applies is that part of its former term which remained at the commencement of this Act, but the licence may be renewed under the new Act.

Licence areas of preserved licences 25

8.(1) Subject to any action taken under the new Act and to section 15, a licence to which subsection 5(1) applies has as its licence area the area that was the service area of the former licence under the Broadcasting Act immediately before the commencement of this Act.

(2) The ABA must take the licence areas referred to in subsection (1) into account in preparing a licence area plan under section 26 of the new Act. 30

(3) The licence area of a licence to which subsection 5(1) applies by virtue of subsection 5(3) is such area as the ABA, in its absolute discretion, determines. 35

Conditions of licences

9.(1) The conditions applicable to a licence to which subsection 5(1) applies are:

- (a) the conditions applicable to the licence under Schedule 2 of the new Act and any additional conditions imposed by the ABA under the new Act; and 40

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- 5 (b) in the case of a former public radio licence to which a matter referred to in paragraph (a) of the definition of “service specification” in subsection 4 (1) of the Broadcasting Act applied immediately before the commencement of this Act—a condition that the licensee will comply with that matter; and
- (c) if:
- 10 (i) the Tribunal had, under section 81 or 85 of the Broadcasting Act, imposed or varied a condition on the former licence; and
 - (ii) that condition applied to the former licence immediately before the commencement of this Act; and
 - (iii) that condition is not inconsistent with the new Act or with an additional condition imposed by the ABA under the new Act;
- 15 a condition that the licensee will comply with that condition; and
- (d) if the Minister had approved an implementation plan in relation to the licence under section 94N or 94P of the Broadcasting Act and that plan was in force immediately before the commencement of this Act—a condition that the licensee will comply with the plan as in force at that time.
- 20

(2) A condition referred to in paragraph (1)(b) or (c) is, for the purposes of the new Act, taken to be a condition determined in writing by the ABA under that Act.

- 25 (3) The Minister may vary the condition referred to in paragraph (1)(d) in the same manner as the Minister could have varied the implementation plan under section 94Q of the Broadcasting Act.

Authority to operate radiocommunications transmitters

30 **10.(1)** A licence warrant granted under the Broadcasting Act in relation to a former licence continued in force under subsection 5(1) (“the related licence”) continues in force as a transmitter licence under section 24B of the Radcom Act as if such a licence had been granted under that section to the licensee of the related licence.

35 (2) A transmitter licence to which subsection (1) applies is a licence to operate and to possess a radiocommunications transmitter or transmitters for the purpose of transmitting a broadcasting service in accordance with the related licence.

40 (3) A licence warrant granted under the Broadcasting Act in relation to a former limited licence to which subsection 5(2) applies continues in force as a transmitter licence under section 24 of the Radcom Act as if such a licence had been granted under that section to the licensee of the former limited licence.

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- (4) A transmitter licence to which subsection (3) applies is a licence to operate and to possess a radiocommunications transmitter or transmitters for the purpose of transmitting the open narrowcasting service referred to in subsection 5(2).
- (5) A former retransmission permit that related to the retransmission of programs continues in force as a transmitter licence under section 24 of the Radcom Act as if such a licence had been granted under that section to the holder of the former retransmission permit. 5
- (6) A transmitter licence to which subsection (5) applies is a licence to operate and to possess a radiocommunications transmitter or transmitters for the purpose of transmitting the same service as was provided immediately before the commencement of this Act under the former retransmission permit. 10
- (7) Subject to subsection (10), the conditions of a transmitter licence referred to in subsection (1) or (3) are: 15
- (a) the conditions that applied to the former licence warrant under the Broadcasting Act; and
 - (b) a condition that the holder of the licence must comply with the provisions of the Radcom Act.
- (8) Notwithstanding anything contained in the Radcom Act but subject to subsection (10), the conditions of a transmitter licence referred to in subsection (5) are: 20
- (a) the conditions of the former retransmission permit; and
 - (b) a condition that the holder of the licence must comply with the provisions of the Radcom Act. 25
- (9) A transmitter licence to operate and to possess a radiocommunications transmitter or transmitters for the purpose of transmitting a broadcasting service in accordance with a community broadcasting licence referred to in subsection 6(2) is taken to have been granted, on the commencement of this Act, under section 24B of the Radcom Act to the incorporated body referred to in that subsection. 30
- (10) The Minister may, by notice in writing given to the holder of a transmitter licence referred to in subsection (1), (3) or (5):
- (a) impose one or more further conditions to which the licence is subject; or 35
 - (b) revoke or vary any condition of the licence, other than the condition specified in paragraph 7(b) or 8(b).
- (11) The Minister must not impose a condition which is inconsistent with the new Act or with a condition of the relevant licence or class licence under that Act. 40
- (12) A transmitter licence referred to in subsection (1) or (9):

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- 5 (a) subject to paragraph (b), continues in force while the related licence remains in force; and
(b) does not have effect while the related licence is suspended; and
(c) upon the transfer of the related licence, is taken to be granted to the person to whom the related licence is transferred.

(13) Subject to any action taken under the Radcom Act:

- 10 (a) a transmitter licence referred to in subsection (3) remains in force for the remainder of the former term of the former limited licence; and
(b) a transmitter licence referred to in subsection (5) remains in force for the remainder of the former term of the former retransmission permit.

- 15 **(14)** For the purposes of the application of this section to a licence referred to in subsection 5(3), any specifications in force in relation to that licence under the Broadcasting Act are taken to be a licence warrant granted under that Act.

Applications for renewal not dealt with under the Broadcasting Act

11. If:

- 20 (a) before the commencement of this Act, the holder of a former licence to which subsection 5(1) applies had made an application for renewal of the former licence in accordance with the Broadcasting Act; and
(b) the application had not been finally dealt with before that commencement;
25 the licence is taken to have been renewed under the Broadcasting Act immediately before that commencement.

Pending applications for grant of licences under the Broadcasting Act

12.(1) If:

- 30 (a) before the commencement of this Act, the Minister had published a notice in accordance with subsection 82(1) of the Broadcasting Act inviting applications for the grant of commercial radio licence, a public radio licence or a remote licence; and
35 (b) a person had applied, in accordance with the Broadcasting Act, for the grant of a licence referred to in the notice; and
(c) the application was pending immediately before that commencement;

the application may proceed as if:

- 40 (d) the repeal effected by section 28 had not been made; and
(e) references in the Broadcasting Act to the Tribunal were references to the ABA.

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- (2) If:
- (a) before the commencement of this Act, a person had applied, in accordance with section 82A of the Broadcasting Act, for the grant of a supplementary radio licence; and
 - (b) the application was pending immediately before that commencement; 5
- the application may proceed as if:
- (c) the repeal effected by section 28 had not been made; and
 - (d) references in the Broadcasting Act to the Tribunal were references to the ABA. 10
- (3) For the purposes of an application referred to in subsection (1) or (2):
- (a) all proceedings which had taken place before the Tribunal before the commencement of this Act in respect of the application are to be regarded as having taken place before the ABA; and 15
 - (b) a document lodged with or information provided to the Tribunal in respect of the application is taken to have been lodged with or provided to the ABA; and
 - (c) unless the ABA otherwise orders, all evidence given before the Tribunal at an inquiry in respect of the application is taken to have been given before the ABA. 20
- (4) If a commercial radio licence, a public radio licence, a supplementary radio licence or a remote licence is granted in respect of an application referred to in subsection (1), subsection 5(1) applies in relation to that licence as if the licence had been granted under section 81 of the Broadcasting Act and was in force immediately before the commencement of this Act. 25
- (5) The ABA must not allocate a licence under section 39 of the new Act in respect of a licence area (the “**base licence area**”) until it has, under subsection (1) of this section, finally dealt with any application for the grant of a commercial radio licence in respect of a service area that would, if the application had been made under the new Act, be a licence area that is the same as the base licence area because of subsection 39(4) of the new Act. 30 35
- (6) For the purposes of subsection (5), an application is taken to be finally dealt with if:
- (a) a licence has been granted in respect of the application; or
 - (b) the ABA has refused to grant a licence in respect of the application and: 40
 - (i) no appeal is made against that decision before the end of the period within which an appeal could be made; or
 - (ii) an appeal has been made within that period and the

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appeal, and any subsequent appeal, has been dismissed;
or

(iii) the applicant has withdrawn the application.

5 (7) In this section, “commercial radio licence”, “inquiry”, “public
radio licence”, “remote licence” and “supplementary radio licence” have
the same meanings as in the Broadcasting Act.

**Pending applications for grant of licences under the Broadcasting Act
for services not requiring licences under the Broadcasting Services Act**

13. If:

- 10 (a) before the commencement of this Act, a person had applied, in
accordance with the Broadcasting Act, for the grant of a licence
under the Broadcasting Act; and
- (b) the application was pending immediately before that
commencement; and
- 15 (c) the service that was proposed to be provided under the licence
is a service referred to in paragraph 11(d), (e) or (f) of the new
Act;

20 the person is taken to have lodged, on that commencement, an
application under the Radcom Act for a transmitter licence that relates
to the proposed service.

AM/FM conversion arrangements

14. If, before the commencement of this Act:

- (a) the Minister had published a notice under section 89DAB of
the Broadcasting Act; and
- 25 (b) either:
- (i) the period specified under paragraph 89DAB(2)(c) of that
Act or any extension or further extension of that period
had not expired at that commencement; or
- 30 (ii) action under Division 1A of Part IIIB of that Act in
relation to an application under section 89DAE of that
Act had not been completed at that commencement;

Division 1A of Part IIIB of the Broadcasting Act continues to apply in
relation to that notice, or to that application, as the case may be, as if
the repeal effected by section 28 had not been made.

35 **Regional radio AM/FM conversion**

40 **15.(1)** If a commercial radio licence is granted under section 12 in
respect of a non-metropolitan service area, any person who, immediately
before the commencement of this Act, held an AM commercial radio
licence having the same service area may apply to the Minister to
convert that licence to an FM licence.

(2) The application may proceed as if:

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- (a) the repeal effected by section 28 had not been made; and
- (b) references in the Broadcasting Act to the Tribunal were references to the ABA; and
- (c) the *Radio Licence Fees Act 1964* had not been amended by this Act; and 5
- (d) references in the Broadcasting Act to the Minister converting to FM a non-metropolitan AM commercial licence were references to the Minister changing the conditions of the licence taken to be granted to the licensee under section 24B of the Radcom Act. 10

(3) In this section, expressions that are defined in section 4 or 80 of the Broadcasting Act have the same meaning when used in this section.

Aggregation of licence areas of existing licences in Tasmania

16.(1) Upon application by a licensee who holds a former commercial television licence in Tasmania that is continued in force under subsection 5(1), the Minister, in his or her discretion, may, by notice in writing, direct that the licence area of the licence is an area that includes the combined licence areas of the former commercial television licences in Tasmania that are continued in force under subsection 5(1). 15 20

(2) If the licence area of a licence has been extended in accordance with subsection (1), the Minister may take action under subsection 10(10) to make any consequential changes to the conditions of the transmitter licence relating to that licence. 25

(3) An application by a licensee under subsection (1) must be accompanied by an implementation plan covering details of the stages and timetable proposed by the licensee for the extension of services in the licence area.

(4) The Minister must not give a direction under subsection (1) in relation to a licensee unless the Minister has approved the implementation plan submitted by the licensee. 30

(5) The Minister may, with the agreement of the licensee, vary the implementation plan submitted by the licensee.

(6) The conditions of the licence include a condition that the licensee will comply with the implementation plan as amended from time to time. 35

Division 3—Directorships and control

Special provision for certain directorships

17. If: 40
- (a) immediately before the commencement of this Act, a person was a director of a company; and

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- (b) the holding by the person of that directorship was not a contravention of the Broadcasting Act; and
- (c) apart from this section, the holding by the person of that directorship would, immediately after the commencement of this Act, be a contravention of the new Act;
- 5 the holding by the person of that directorship (including a holding on re-election) is not a contravention of the new Act.

Periods of grace for compliance with ownership and control provisions

10 **18.(1)** This section applies in relation to a person who was, immediately before the commencement of this Act, in contravention of a provision of Part IIIBA of the Broadcasting Act and who is, by reason of the circumstances which gave rise to that contravention, also in contravention of a provision of Part 5 of the new Act.

15 **(2)** If, in relation to the person, a period of grace had not expired before the commencement of this Act, the person is taken not to be in contravention of a provision of Part 5 of the new Act by reason of the circumstances referred to in subsection (1) until the end of that period of grace.

20 **(3)** If an application had been made by the person to the Tribunal under a provision of Part IIIBA of the Broadcasting Act for an extension of a period of grace and the application had not been determined by the Tribunal before the commencement of this Act, the application may be determined by the ABA.

25 **(4)** If:

(a) the person would have been entitled to apply to the Tribunal under Part IIIBA of the Broadcasting Act for an extension of a period of grace; and

(b) the time for making that application had not expired before the commencement of this Act; and

30 (c) an application had not been made before that commencement; the person may apply to the ABA for such an extension before the end of the time within which such an application could have been made.

35 **(5)** The ABA has the same powers as were possessed by the Tribunal under the Broadcasting Act to grant or to refuse an application for extension of a period of grace.

(6) In this section, a reference to a period of grace is a reference to:

40 (a) a period of time specified, either directly or by reference to another provision of the Broadcasting Act, in subsection 90(1E), paragraph 90C(5B)(c), (d), (e) or (f), subsection 90FA(2), subsection 90G(7), paragraph 90JA(11)(c), subsection 92(4AA), paragraph 92(4B)(c), (d), (e) or (f), paragraph 92CA(2)(b),

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subsection 92D(7), paragraph 92FAA(11)(c), subsection 92JB(6) or (9) or subparagraph 92JB(13)(b)(i) or (ii) of the Broadcasting Act; or

- (b) an extension of that period granted by the Tribunal before the commencement of this Act. 5

Grandfathering of existing interests relevant to control

19.(1) If:

- (a) a person was not, immediately before the commencement of this Act, in contravention of a provision of Part IIIBA of the Broadcasting Act because the person was taken not to be, by reason of the application of the provisions of that Part, in a position to exercise control of a former commercial radio licence, a former commercial television licence, a newspaper or a company; and 10
- (b) the person would, but for this section, be in contravention of a provision of Part 5 of the new Act on that commencement because the person would be taken to be in a position to exercise control of the corresponding commercial radio broadcasting licence or commercial television broadcasting licence, or that newspaper or company, as the case may be; 15

the person is not taken to be in a position to exercise control of the licence, newspaper or company, as the case may be, for the purposes of the new Act while the circumstances of that person relevant to deciding under the new Act whether that person is in a position to exercise control of that licence, newspaper or company remain unchanged. 20 25

(2) In this section:

“corresponding commercial radio broadcasting licence”, in relation to a former commercial radio licence, means the commercial radio broadcasting licence to which paragraph 5(1)(a) refers in relation to that former licence; 30

“corresponding commercial television broadcasting licence”, in relation to a former commercial television licence, means the commercial television broadcasting licence to which paragraph 5(1)(b) refers in relation to that former licence; 35

“newspaper” has the same meaning as in Part IIIBA of the Broadcasting Act.

Protection for persons having interests in former supplementary radio licences

20. If: 40

- (a) a person was, immediately before the commencement of this Act:
- (i) in a position to exercise control of a former

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- supplementary radio licence and the related commercial licence; or
- 5 (ii) a director of a company that held a former supplementary radio licence or a director of a company that held the related commercial licence; and
- (b) the person retains that position or directorship after that commencement; and
- (c) subsection 5(1) applies to the former supplementary radio licence and to the related commercial licence; and
- 10 (d) apart from this section, being in that position, or holding that directorship, would, on the commencement of this Act, be a contravention of Division 2 or 3 of Part 5 of the new Act;
- Divisions 2 and 3 of Part 5 of the new Act do not apply to the person in relation to the person being in that position or holding that
- 15 directorship during the period of 11 years that commenced when the former supplementary radio licence was granted.

Division 4—Program standards

Program standards

20 **21.(1)** In subsection (2), a reference to a program standard is a reference to a program standard that was in force immediately before the commencement of this Act under paragraph 16(1)(d) of the Broadcasting Act.

25 **(2)** A program standard or a part of a program standard that related to programs for children or the level of Australian content of programs is taken, after that commencement, to be a standard determined by the ABA under paragraph 122(1)(a) of the new Act.

30 **(3)** For the purposes of subsection (2), the provisions of section 114 of the Broadcasting Act are taken to be program standards in force under the Broadcasting Act relating to the level of Australian content of programs.

35 **(4)** The ABA may, by notice in the *Gazette*, determine that any other program standards that were in force immediately before the commencement of this Act as the result of a determination by the Tribunal under paragraph 16(1)(d) of the Broadcasting Act have effect as program standards applicable to:

- (a) commercial television broadcasting licences; or
- (b) commercial radio broadcasting licences; or
- (c) community broadcasting licences; or
- (d) services provided under class licences;
- 40 under Part 9 of the new Act.

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- (5) Determinations under subsection (4) are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) Subject to subsections (7), (8) and (9), a program standard referred to in subsection (4) ceases to be in force at the end of 2 years after the commencement of this Act. 5
- (7) A program standard continued in force by subsection (4) may be varied or revoked by the ABA as if it were a program standard determined by the ABA under section 125 of the new Act.
- (8) A program standard relating to a matter referred to in subsection (2) ceases to be in force upon the determination by the ABA under paragraph 122(1)(a) of the new Act of a program standard relating to that matter. 10
- (9) If a code of practice relating to a matter to which a program standard referred to in subsection (4) relates is registered under subsection 123(4) of the new Act in relation to a section of the broadcasting industry, the program standard ceases to be in force in relation to that matter in relation to that section of the industry. 15

Division 5—Licence fees

- Application of provisions of the Broadcasting Act in relation to keeping accounts and unpaid licence fees** 20
- 22.(1) Notwithstanding the repeal of sections 123 and 123A of the Broadcasting Act effected by section 28, those sections continue to apply in relation to:
- (a) a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f); and 25
 - (b) a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e);
- as if that repeal had not been made.
- (2) In the application of sections 123 and 123A of the Broadcasting Act under subsection (1): 30
- (a) a reference to the Tribunal is to be read as a reference to the ABA; and
 - (b) a reference in subsection 123(1AA) to a related supplementary radio licence in relation to a commercial radio licence is to be read as a reference to a commercial radio broadcasting licence to which paragraph 5(1)(f) applies in relation to a commercial radio broadcasting licence to which paragraph 5(1)(a) applies; and 35
 - (c) a direction, requirement, approval or leave given by the Tribunal or a request made by the Tribunal and in force immediately 40

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before the commencement of this Act is to be taken to have been given or made by the ABA.

Division 6—Miscellaneous

**Vesting of property, rights and liabilities of the Australian Broadcasting
5 Tribunal**

23. On the commencement of this Act:

- (a) all property and rights of the Tribunal vest in the ABA; and
- (b) all liabilities of the Tribunal become liabilities of the ABA.

**10 Effect of directions and orders under Division 4 of Part IIIBA of the
Broadcasting Act**

24.(1) Any directions given by the Tribunal under Division 4 of Part IIIBA of the Broadcasting Act (“**the Part**”), and any orders by the Federal Court of Australia under that Division, in force immediately before the commencement of this Act are, to the extent to which the
15 directions or orders are necessary to ensure compliance with the new Act, enforceable as if the Part had remained in force.

(2) The ABA has the same power to amend or revoke a direction referred to in subsection (1) as the Tribunal would have had if the Part had remained in force.

20 (3) The ABA has the same power to grant an extension of time under subsection 92N(2B) of the Broadcasting Act as the Tribunal would have had if the Part had remained in force.

25 (4) The ABA has the same power to apply to the Federal Court of Australia for an order in respect of a direction referred to in subsection (1) as the Tribunal would have had, and the Court has the same jurisdiction to make such an order as the Court would have had, if the Part had remained in force.

30 (5) Subsection (4) applies in like manner in relation to a direction amended by the ABA under subsection (2) as it applies in relation to a direction referred to in subsection (1).

(6) A person who contravenes or fails to comply with a direction referred to in subsection (1) is guilty of an offence and is punishable on conviction as if the Part had not been repealed.

35 (7) A person who contravenes or fails to comply with a direction referred to in subsection (1) as amended by the ABA under subsection (2) is guilty of an offence and is punishable on conviction as if the Part had not been repealed and the contravention or failure to comply was a contravention or failure to comply with a direction referred to in subsection (1).

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(8) Charges against the same person for any number of offences against subsection (6) or (7) may be joined in the same summons if those offences relate to doing or failing to do the same act or thing.

(9) If a person is convicted of 2 or more offences referred to in subsection (6) or (7), being offences related to doing or failing to do the same act or thing, the court may impose one penalty in respect of both or all of those offences but that penalty must not exceed the sum of the maximum penalties that could be imposed if a penalty were imposed in respect of each offence separately. 5

(10) An offence under this section may be prosecuted at any time. 10

(11) A prosecution for such an offence may be brought only in the Federal Court of Australia.

(12) Jurisdiction is conferred on the Federal Court of Australia to hear and determine prosecutions so brought.

Continuation of secrecy provision 15

25.(1) The ABA is entitled to possession of documents in the possession of the Tribunal immediately before the commencement of this Act.

(2) Notwithstanding the repeal of section 125 of the Broadcasting Act, that section continues to apply to: 20

- (a) former members, acting members, associate members and acting associate members of the Tribunal; and
- (b) former members of the staff of the Tribunal; and
- (c) members, acting members, associate members, acting associate members and members of the staff of the ABA in relation to documents referred to in subsection (1). 25

(3) Section 38 of the *Freedom of Information Act 1982* applies to a document, or information contained in a document, to which subsection (2) relates by the application of paragraph 125(2)(a) of the Broadcasting Act. 30

Obligations to provide information or produce documents under the Broadcasting Act

26.(1) If:

- (a) a person had, before the commencement of this Act, been required under section 89X of the Broadcasting Act to supply information or to produce documents to the Tribunal; and 35
- (b) the person had not, at the commencement of this Act, complied with the requirement; and
- (c) the person has not been informed by the ABA that the ABA does not require the information to be supplied or the documents to be produced; 40

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5 the person is required to supply the information or to produce the documents, but the supply or the production must be made to the ABA and, if the person does not comply with the requirement, the person is to be subject to the same penalty as the penalty to which the person would have been subject if section 89X of the Broadcasting Act had not been repealed and the person had been in breach of that section.

10 (2) An order of the Federal Court of Australia under subsection 89X(3B) of the Broadcasting Act in force at the commencement of this Act continues in force notwithstanding the repeal of the Broadcasting Act.

Technical standards relating to broadcasting equipment

15 27. Standards and practices referred to in paragraph 125D(1)(b) of the Broadcasting Act that were in force immediately before the commencement of this Act are taken to be, on that commencement, standards made by the Minister under subsection 9(1) of the Radcom Act.

PART 3—REPEALS AND CONSEQUENTIAL AMENDMENTS

Repeal of the Broadcasting Act

20 28.(1) The *Broadcasting Act 1942* is repealed except for the following provisions:

- (a) section 1;
- (b) subsection 4(1) so far as it relates to the definitions of the following terms:
 - 25 “Australia”
 - “election”
 - “election period”
 - “exempt matter”
 - “government authority”
 - “legislature of a Territory”
 - 30 “ordinary election”
 - “Parliament”
 - “policy launch”
 - “political party”
 - “political reference”
 - 35 “program”
 - “referendum”
 - “SBS”
 - “Senate election”
 - “the Corporation”;

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- (c) subsection 4(4);
 - (d) section 6;
 - (e) Part IIID;
 - (f) section 134, in relation to the making of regulations for the purposes of Part IIID. 5
- (2) The provisions of the *Broadcasting Act 1942* referred to in subsection (1) have effect from the commencement of this Act as if:
- (a) a reference to a broadcaster, other than a reference in Division 3 of Part IIID, were a reference to a national broadcaster, the holder of a licence, the holder of a subscription television broadcasting licence or a person who provides a broadcasting service under a class licence; and 10
 - (b) a reference to a broadcaster in Division 3 of Part IIID were a reference to a national broadcaster, the holder of a commercial radio broadcasting licence, a commercial television broadcasting licence or a community broadcasting licence; and 15
 - (c) a reference to a broadcast were a reference to a program delivered by a broadcasting service; and
 - (d) a reference to a broadcasting service were a reference to a broadcasting service specified in section 11 of the new Act, other than a broadcasting service specified in paragraph 13(1)(c) of the new Act; and 20
 - (e) a reference to a licensee, except in relation to Division 3 of Part IIID, were a reference to the holder of a licence under the new Act or a licence continued in force under subsection 5(1) of this Act or a person who provides a service under a class licence; and 25
 - (f) a reference to a licensee in relation to Division 3 of Part IIID were a reference to the holder of a licence under the new Act or a licence continued in force under subsection 5(1) of this Act; and 30
 - (g) a reference to a service area in relation to a broadcasting service were a reference to the licence area of the licence under which that broadcasting service is provided; and
 - (h) a reference to the Tribunal were a reference to the ABA; and 35
 - (i) a reference to section 117 of the *Broadcasting Act* were a reference:
 - (i) in relation to a broadcaster referred to in subclause 4(1) of Part 2 of Schedule 2 of the new Act—to clause 4 of that Part; and 40
 - (ii) in relation to the Australian Broadcasting Corporation, to section 79A of the *Australian Broadcasting Corporation Act 1983*; and

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- (iii) in relation to the SBS, to section 70A of the *Special Broadcasting Service Act 1991*; and
- (j) subsection 95A(2) were omitted and the following subsection substituted:

5 “(2) Nothing in this Part prevents the holder of a community radio broadcasting licence under the *Broadcasting Services Act 1992* who provides a service for visually handicapped persons from broadcasting any material which is permitted to be broadcast under the conditions to which that licence is subject.”.

10 (3) Unless the contrary intention appears, a reference in subsection (2) to the new Act is a reference to the *Broadcasting Services Act 1992*.

Other repeals

29. The Acts specified in Schedule 1 are repealed.

Consequential amendments

15 30. The Acts specified in Schedule 2 are amended as set out in that Schedule.

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SCHEDULE 1

Section 29

REPEALED ACTS

Broadcasting (Limited Licences) Fees Act 1988

*Broadcasting (Retransmission Permits and Temporary Transmission
Permits) Fees Act 1988*

SCHEDULE 2

Section 30

CONSEQUENTIAL AMENDMENTS

*Affirmative Action (Equal Employment Opportunity for Women) Act
1986*

Subsection 3(1) (definition of “voluntary body”):

Omit paragraph (e), substitute:

“(e) the holder of a licence or a person providing a broadcasting
service under a class licence under the *Broadcasting Services
Act 1992*.”.

Subsection 5(3):

Omit “broadcasting or televising within the meaning of the
Broadcasting Act 1942”, substitute “the provision of a broadcasting
service specified in section 11 of the *Broadcasting Services Act 1992*”.

Australian Broadcasting Corporation Act 1983

Section 6:

Omit “public sector” (wherever occurring), substitute “community
sector”.

Subsection 8(1):

Add at the end:

“; and (e) to develop codes of practice relating to programming matters
and to notify those codes to the Australian Broadcasting
Authority.”.

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SCHEDULE 2—continued

Subsection 25(5):

Add at the end:

- “; or (c) providing, or entering into an agreement or arrangement with another person for providing, subscription television broadcasting services under Part 7 of the *Broadcasting Services Act 1992*; or
- (d) providing, or entering into an agreement with another person for providing:
- (i) subscription radio broadcasting services; or
 - (ii) subscription radio narrowcasting services; or
 - (iii) subscription television narrowcasting services; or
 - (iv) open narrowcasting radio services; or
 - (v) open narrowcasting television services;
- under Part 8 of the *Broadcasting Services Act 1992*.”.

Section 29A:

Repeal the section, substitute:

Broadcasting facilities may be made available

“29A. The Corporation may make broadcasting facilities and staff available to a person for the purpose of providing a broadcasting service under the *Broadcasting Services Act 1992*.”.

Section 30:

Repeal the section.

Section 73 (definition of “transmitting station”):

Omit paragraphs (b), (c) and (d).

Section 79:

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

After section 79:

Insert:

Broadcasting of political or controversial matter

“79A.(1) Subject to this Act, the Corporation may determine to what extent and in what manner political matter or controversial matter will be broadcast by the Corporation.

“(2) If the Corporation broadcasts political matter at the request of another person, the Corporation must, immediately afterwards:

SCHEDULE 2—continued

- (a) if the matter was broadcast by radio—cause the required particulars in relation to the matter to be announced; or
- (b) if the matter was televised:
 - (i) cause the required particulars in relation to the matter (other than the particulars referred to in paragraph (c) of the definition of ‘required particulars’ in subsection (5)) to be announced; and
 - (ii) cause all the required particulars in relation to the matter to be transmitted in the form of images of words.

“(3) The Corporation must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person, for the required period and must give to the ABA any particulars of the record that the ABA, by written notice, requires.

“(4) For the purposes of this section, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

“(5) In this section:

‘**election**’ means an election to a Parliament or a local government authority of a State or Territory;

‘**election period**’ means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (b) in relation to any other election to a Parliament—the period that starts on:
 - (i) the day on which the proposed polling day for the election is publicly announced; or
 - (ii) the day on which the writs for the election are issued; whichever happens first, and ends at the close of the poll on the polling day for the election; and
- (c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and

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SCHEDULE 2—continued

- (e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day;

‘Parliament’ means:

- (a) the Parliament of the Commonwealth; or
- (b) a State Parliament; or
- (c) the legislature of a Territory;

‘person’ includes a political party, a corporation and any other association (whether incorporated or unincorporated);

‘political matter’ means any political matter, including the policy launch of a political party;

‘referendum’ means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced;

‘required particulars’, in relation to a political matter that is broadcast, means:

- (a) if the broadcasting was authorised by a political party:
 - (i) the name of the political party; and
 - (ii) the town, city or suburb in which the principal office of the political party is situated; and
 - (iii) the name of the natural person responsible for giving effect to the authorisation; and
- (b) if the broadcasting of the political matter was authorised by a person other than a political party:
 - (i) the name of the person who authorised the broadcasting of the political matter; and
 - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter;

‘required period’, in relation to the keeping of a record in relation to political matter, means the period of 2 years commencing on the day on which the matter was broadcast:

Records of matter broadcast

“79B.(1) If the Corporation broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the Corporation must cause a record of the matter to be made:

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SCHEDULE 2—continued

- (a) in the case of a radio broadcast—by using a device for recording sound; or
- (b) in the case of a television broadcast—by using a device for recording images and associated sound.

“(2) Subject to this section, the Corporation must retain in its custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about the matter—for 70 days from the date on which the complaint was made.

“(3) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subsection (2), the person may give to the Corporation a notice in writing informing the Corporation that the record may be required for the purposes of the proceedings.

“(4) If such a notice is given to the Corporation in respect of a record, the Corporation must, subject to this section, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.

“(5) If the proceedings are not instituted within a period of 3 months after the notice is given to the Corporation, subsection (4) ceases to apply to the record at the end of that period.

“(6) The obligation imposed by this section on the Corporation to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.

“(7) Subsection (1) does not apply to or in relation to proceedings of the Senate or of the House of Representatives broadcast or re-broadcast by the Corporation pursuant to the *Parliamentary Proceedings Broadcasting Act 1946*.”.

Section 80:

Insert after paragraph (d) the following paragraph:

“(da) codes of practice developed under subsection 8(1);”.

Commonwealth Electoral Act 1918

Subsection 287(1) (definition of “broadcaster”):

Omit paragraph (c), substitute:

“(c) the holder of a licence under the *Broadcasting Services Act 1992*; or

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SCHEDULE 2—continued

- (d) the provider of a broadcasting service under a class licence under that Act;”.

Subsection 310(3):

Omit the subsection.

Subsection 310(4):

Omit the subsection, substitute:

“(4) A broadcaster who is required to make a return under this section in respect of an advertisement must retain the record made for the purpose of the relevant provision until the end of the period of one month commencing on the day on which the return is furnished to the Electoral Commission.

“(5) The requirement of subsection (4) is in addition to the requirements of the relevant provision for the retention of such a record.

“(6) In subsections (4) and (5), ‘**the relevant provision**’ means:

- (a) in relation to the Australian Broadcasting Corporation—section 79B of the *Australian Broadcasting Corporation Act 1983*; or
- (b) in relation to the Special Broadcasting Service—section 70B of the *Special Broadcasting Service Act 1991*; or
- (c) in any other case—clause 5 of Schedule 2 to the *Broadcasting Services Act 1992*.”.

Copyright Act 1968

Subsection 10(1) (definition of “the Special Broadcasting Service”):

Omit “established by the *Broadcasting Act 1942*”, substitute “referred to in section 5 of the *Special Broadcasting Service Act 1991*”.

Paragraph 47A(11)(b) (definition of “print-handicapped radio licence”):

Omit “the *Broadcasting Act 1942*, the *Radiocommunications Act 1983* or the *Wireless Telegraphy Act 1905*”, substitute “the *Broadcasting Services Act 1992* or the *Radiocommunications Act 1983*”.

Parliamentary Proceedings Broadcasting Act 1946

Subsection 3(1) (definition of “national broadcasting station”):

Omit the definition, substitute:

“‘**national broadcasting station**’ means a national broadcasting station within the meaning of the *Australian Broadcasting Corporation Act 1983*;”.

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SCHEDULE 2—continued

Section 16:

Omit “The provisions of section 117 of the *Broadcasting Act 1942*”, substitute “The provisions of sections 79A and 79B of the *Australian Broadcasting Corporation Act 1983*, clauses 3, 4 and 5 of Part 2 of Schedule 2 to the *Broadcasting Services Act 1992* and sections 70A and 70B of the *Special Broadcasting Services Act 1991*”.

Radio Licence Fees Act 1964

Section 3:

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

Subsection 4(1) (definition of “Broadcasting Act”):

Omit the definition.

Subsection 4(1) (definition of “gross earnings”):

Omit the definition, substitute:

“‘**gross earnings**’, in respect of a licence in respect of a period, means the gross earnings of the licensee during that period from the broadcasting, pursuant to the licence, of advertisements or other material;”.

Subsection 4(1) (definition of “licence”):

Omit the definition, substitute:

“‘**licence**’ means a commercial radio broadcasting licence referred to in paragraph 5(1)(b), (d) or (f) of the Transitional Provisions Act;”.

Subsection 4(1):

Insert the following definition:

“‘**Transitional Provisions Act**’ means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.”.

Subsection 6(3):

Omit “Where a licensee has, in accordance with sub-section 123(2) of the *Broadcasting Act 1942*, adopted an accounting period ending on a day other than 30 June,”, substitute:

“If a licensee:

- (a) had, before the commencement of the Transitional Provisions Act, in accordance with the *Broadcasting Act 1942*; or
- (b) has, in accordance with subsection 123(2) of the *Broadcasting Act 1942* as applied by section 22 of the Transitional Provisions Act;

adopted an accounting period ending on a day other than 30 June,”.

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SCHEDULE 2—continued
Radiocommunications Act 1983

Subsection 3(1) (definition of “broadcasting station”):

Omit the definition, substitute:

“‘**broadcasting station**’ means a transmitter that is operating for the purposes of a broadcasting services bands licence;”.

Subsection 3(1) (definition of “television station”):

Omit the definition.

Subsection 3(1) (definition of “transmitter licence”):

After “section 24” insert “or section 24B”.

Subsection 3(1):

Insert the following definitions:

“‘**ABA**’ means the Australian Broadcasting Authority established under the *Broadcasting Services Act 1992*;

‘**broadcasting service**’ has the same meaning as in the *Broadcasting Services Act 1992*;

‘**broadcasting services bands**’ has the same meaning as in the *Broadcasting Services Act 1992*;”.

Section 18:

Add at the end:

“(3) The Minister may, after consultation with the ABA and in accordance with the spectrum plan, assign by instrument in writing a part of the spectrum designated as being primarily for broadcasting purposes to the ABA for planning in accordance with Part 3 of the *Broadcasting Services Act 1992*.”.

After subsection 19(1):

Insert:

“(1A) Subsection (1) does not apply in relation to a frequency band within a part of the spectrum assigned to the ABA under subsection 18(3).”.

After section 20:

Insert:

Advice by ABA

“20A. In preparing a spectrum plan or a frequency band plan the Minister must have regard to advice provided by the ABA in accordance with its function under paragraph 158(a) of the *Broadcasting Services Act 1992*.”.

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SCHEDULE 2—continued

After subsection 21(1):

Insert:

“(1A) The Minister must not grant a certificate under subsection (1) in respect of a frequency within the broadcasting services bands.”.

Subsection 21(8):

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

Section 22 (definition of “operate”):

Omit the definition.

Subsection 24(1):

Omit “section 24A”, substitute “sections 24A and 24B”.

After subsection 24(1):

Insert:

“(1A) The Minister may not grant a licence under subsection (1) to operate a radiocommunications transmitter that uses a frequency within a part of the spectrum assigned to the ABA under subsection 18(3) except in accordance with a decision of the ABA under subsection 34(1) of the *Broadcasting Services Act 1992*.”.

After section 24A:

Insert:

Broadcasting service transmitter licence

“24B.(1) If a licence (“**the related licence**”) is allocated to a person:

- (a) under Part 4 or 6 of the *Broadcasting Services Act 1992*; or
- (b) under Part 7 of the *Broadcasting Services Act 1992*, being a licence in respect of a service that uses radiocommunication;

the Minister must grant to that person a transmitter licence, in writing, to operate and to possess a specified radiocommunications transmitter or transmitters for the purpose of transmitting a broadcasting service in accordance with the related licence.

“(2) A licence under this section comes into force on the day on which it is granted.

“(3) A licence under this section:

- (a) subject to paragraph (b), continues in force while the related licence remains in force; and
- (b) does not have effect while the related licence is suspended; and
- (c) upon the transfer of the related licence, is taken to be granted to the person to whom the related licence is transferred.

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SCHEDULE 2—continued

“(4) A licence under this section is subject to the following conditions:

- (a) the condition that the holder of the licence must not operate, or permit the operation of, the transmitter except for a purpose specified in the licence; and
- (b) the condition that the holder of the licence must comply with the provisions of this Act; and
- (c) the condition that the holder of the licence must not operate, or permit the operation of, the transmitter, otherwise than in accordance with any relevant technical specifications determined by the ABA under subsection 26(1) of the *Broadcasting Services Act 1992*; and
- (d) the condition that the holder of the licence must comply with guidelines developed by the ABA under section 33 of the *Broadcasting Services Act 1992*; and
- (e) such other conditions as are specified in the licence.

“(5) The Minister may, by notice in writing:

- (a) impose further conditions to which the licence is subject; or
- (b) revoke or vary a condition referred to in paragraph (a) or in paragraph 4(e).

“(6) A condition specified in the licence or a further condition imposed by the Minister must not be inconsistent with the related licence.

“(7) Sections 25, 28 and 29 do not apply in relation to a transmitter licence granted under subsection (1).”.

After section 25:

Insert the following section:

Conditions relating to interference

“25A. The conditions that may be specified in a licence under paragraph 24B(4)(e) or 25(1)(k) include:

- (a) a condition requiring the holder of the licence to place advertisements, in a manner specified in the condition, asking members of the public to contact the holder if they believe that the operation of the transmitter is causing interference to other services; and
- (b) if the operation of the transmitter is causing interference to other services—a condition requiring the holder, at the holder’s own expense, to adjust, or fit devices to, receivers in order to eliminate or minimise that interference.”.

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SCHEDULE 2—continued

After subsection 25(8):

Insert:

“(8A) The conditions that may be specified in a licence under paragraph (1)(k) include:

- (a) a condition requiring the holder of the licence to place advertisements, in a manner specified in the condition, asking members of the public to contact the holder if they believe that the operation of the transmitter is causing interference to other services; and
- (b) if the operation of the transmitter is causing interference to other services—a condition requiring the holder, at the holder’s own expense, to adjust, or fit devices to, receivers in order to eliminate or minimise that interference.”.

Subsection 28(1):

Omit “The Minister”, substitute “Subject to section 24B, the Minister”.

Subsection 29(1):

Omit “The Minister”, substitute “Subject to section 24B, the Minister”.

Section 36 (definition of “operate”):

Omit “for the purpose of radio or television reception”, substitute “for the purpose only of reception of programs delivered by a broadcasting service”.

Section 36 (definition of “radio or television reception”):

Omit the definition.

Section 36 (definition of “receiver”):

Omit “radio or television reception”, substitute “reception of programs delivered by a broadcasting service”.

Subsection 41(3):

Omit “or a television station” and “or television station”.

Subsection 55(2):

- (a) Omit “or a television station” (wherever occurring).
- (b) Omit “(including a matter relating to the grant, renewal, suspension or revocation of a licence or permit under the *Broadcasting Act 1942*)”.
- (c) Omit “intended for reception by the general public” (wherever occurring), substitute “delivered by a broadcasting service”.

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SCHEDULE 2—continued

Section 89:

Repeal the section, substitute:

Operation of this Act in relation to Broadcasting Services Act

“89. Regulations under this Act have effect notwithstanding any regulation made under the *Broadcasting Services Act 1992* but this Act is not intended to limit or exclude the operation of any regulation made under the *Broadcasting Services Act 1992* to the extent that the regulation is capable of operating concurrently with this Act and with regulations under this Act.”.

After section 92:

Insert:

Minister may determine allocation system

“92A.(1) The Minister may determine in writing a price-based allocation system for granting licences of a kind identified in the regulations.

“(2) The system so determined:

- (a) subject to paragraph (b), may apply generally or in respect of a particular area or frequency; and
- (b) does not apply to a frequency within a part of the spectrum assigned to the ABA under subsection 18(3) except in accordance with a decision of the ABA under subsection 34(1) of the *Broadcasting Services Act 1992*; and
- (c) may require an application fee.

“(3) If a licence is granted in accordance with a system so determined, the Minister must publish in the *Gazette* the name of the successful applicant and the amount that the applicant agreed to pay to the Commonwealth for the grant of the licence.”.

Referendum (Machinery Provisions) Act 1984

Section 110 (paragraph (c) of the definition of “broadcaster”):

Omit the paragraph, substitute:

- “(c) the holder of a licence under the *Broadcasting Services Act 1992*; or
- (d) the provider of a broadcasting service under a class licence under that Act;”.

Subsection 111(3):

Omit the subsection.

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SCHEDULE 2—continued

Subsection 111(4):

Omit the subsection, substitute:

“(4) A broadcaster who is required to make a return under this section in respect of an advertisement must retain the record made for the purpose of the relevant provision until the end of the period of one month commencing on the day on which the return is furnished to the Electoral Commission.

“(5) The requirement of subsection (4) is in addition to the requirements of the relevant provision for the retention of such a record.

“(6) In subsections (4) and (5), ‘the relevant provision’ means:

- (a) in relation to the Australian Broadcasting Corporation, section 79B of the *Australian Broadcasting Corporation Act 1983*; or
- (b) in relation to the Special Broadcasting Service, section 70B of the *Special Broadcasting Service Act 1991*; or
- (c) in any other case—clause 5 of Schedule 2 to the *Broadcasting Services Act 1992*.”.

Sea Installations Act 1987

Schedule:

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

Special Broadcasting Service Act 1991

Paragraph 6(2)(g):

Omit “public”, substitute “community”.

Subsection 10(1):

Add at the end:

“; and (j) to develop codes of practice relating to programming matters and to notify those codes to the Australian Broadcasting Authority.”.

Subsection 45(7):

Omit the subsection.

Section 70:

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

SCHEDULE 2—continued

After section 70:

Insert:

Broadcasting of political or controversial matter

“70A.(1) Subject to this Act, the SBS may determine to what extent and in what manner political matter or controversial matter will be broadcast by the SBS.

“(2) If the SBS broadcasts political matter at the request of another person, the SBS must, immediately afterwards:

- (a) if the matter was broadcast by radio—cause the required particulars in relation to the matter to be announced; or
- (b) if the matter was televised:
 - (i) cause the required particulars in relation to the matter (other than the particulars referred to in paragraph (c) of the definition of ‘required particulars’ in subsection (5)) to be announced; and
 - (ii) cause all the required particulars in relation to the matter to be transmitted in the form of images of words.

“(3) The SBS must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person, for the required period and must give to the ABA any particulars of the record that the ABA, by written notice, requires.

“(4) For the purposes of this section, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

“(5) In this section:

‘**election**’ means an election to a Parliament or a local government authority of a State or Territory;

‘**election period**’ means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (b) in relation to any other election to a Parliament—the period that starts on:
 - (i) the day on which the proposed polling day for the election is publicly announced; or

SCHEDULE 2—continued

- (ii) the day on which the writs for the election are issued; whichever happens first, and ends at the close of the poll on the polling day for the election; and
- (c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and
- (e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day;

‘Parliament’ means:

- (a) the Parliament of the Commonwealth; or
- (b) a State Parliament; or
- (c) the legislature of a Territory;

‘person’ includes a political party, a corporation and any other association (whether incorporated or unincorporated);

‘political matter’ means any political matter, including the policy launch of a political party;

‘referendum’ means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced;

‘required particulars’, in relation to a political matter that is broadcast, means:

- (a) if the broadcasting was authorised by a political party:
 - (i) the name of the political party; and
 - (ii) the town, city or suburb in which the principal office of the political party is situated; and
 - (iii) the name of the natural person responsible for giving effect to the authorisation; and
- (b) if the broadcasting of the political matter was authorised by a person other than a political party:
 - (i) the name of the person who authorised the broadcasting of the political matter; and
 - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means

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of a sound recording device, delivers an address or makes a statement that forms part of that matter;

‘required period’, in relation to the keeping of a record in relation to political matter, means the period of 2 years commencing on the day on which the matter was broadcast.

Records of matter broadcast

“70B.(1) If the SBS broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the SBS must cause a record of the matter to be made:

- (a) in the case of a radio broadcast—by using a device for recording sound; or
- (b) in the case of a television broadcast—by using a device for recording images and associated sound.

“(2) Subject to this section, the SBS must retain in its custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about the matter—for 70 days from the date on which the complaint was made.

“(3) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subsection (2), the person may give to the SBS a notice in writing informing the SBS that the record may be required for the purposes of the proceedings.

“(4) If such a notice is given to the SBS in respect of a record, the SBS must, subject to this section, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.

“(5) If the proceedings are not instituted within a period of 3 months after the notice is given to the SBS, subsection (4) ceases to apply to the record at the end of that period.

“(6) The obligation imposed by this section on the SBS to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.”.

Telecommunications Act 1991

Subsection 99(2) (definition of “broadcaster”):

Omit “or the holder of a licence or permit under the *Broadcasting Act 1942*”, substitute “or the holder of a licence under the *Broadcasting Services Act 1992*, the provider of a broadcasting service under a class

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licence under that Act or a person providing a service referred to in section 212 of that Act”.

Television Licence Fees Act 1964

Section 3:

Omit “*Broadcasting Act 1942*”, substitute “*Broadcasting Services Act 1992*”.

Subsection 4(1) (definition of “gross earnings”):

Omit the definition, substitute:

“‘**gross earnings**’, in respect of a licence in respect of a period, means the gross earnings of the licensee during that period from the televising, pursuant to the licence, of advertisements or other matter;”.

Subsection 4(1) (definition of “licence”):

Omit the definition, substitute:

“‘**licence**’ means a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*;”.

Subsection 4(1):

Insert the following definition:

“‘**Transitional Provisions Act**’ means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.”.

Subsection 6(3):

Omit “Where a licensee has, in accordance with sub-section 123(2) of the *Broadcasting Act 1942*, adopted an accounting period ending on a day other than 30 June,”, substitute:

“If a licensee:

- (a) had, before the commencement of the Transitional Provisions Act, in accordance with the *Broadcasting Act 1942*; or
- (b) has, in accordance with subsection 123(2) of the *Broadcasting Act 1942* as applied by section 22 of the Transitional Provisions Act;

adopted an accounting period ending on a day other than 30 June,”.

Trade Practices Act 1974

Subsection 65A(3) (definition of “consortium”):

Omit the definition.

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Subsection 65A(3) (paragraph (a) of the definition of “prescribed information provider”):

Omit the paragraph, substitute:

- “(a) the holder of a licence granted under the *Broadcasting Services Act 1992*; and
 - (aa) a person who is the provider of a broadcasting service under a class licence under that Act; and
 - (ab) the holder of a licence continued in force by subsection 5(1) of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*; and”.
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[*Minister's second reading speech made in—
Senate on 4 June 1992
House of Representatives on 25 June 1992*]