

# **Broadcasting Services Act 1992**

## **Act No. 110 of 1992 as amended**

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## **Schedule 4—Digital television broadcasting**

Note: See section 216A.

### **Part 1—Introduction**

#### **1 Simplified outline**

The following is a simplified outline of this Schedule:

- The ACMA is to formulate schemes for the conversion, over time, of the transmission of television broadcasting services from analog mode to digital mode.
- There is to be a simulcast period throughout which broadcasters are to transmit their television programs in both analog mode and SDTV digital mode.
- At the end of the simulcast period, analog transmissions are to cease.
- Broadcasters must meet standards relating to quotas for the transmission of programs in HDTV digital mode.
- Broadcasters must meet standards relating to captioning of television programs for the deaf and hearing impaired.
- Broadcasters will be allowed to use spare transmission capacity on digital transmission channels to provide datacasting services.
- Owners and operators of broadcasting transmission towers must give digital broadcasters and datacasters access to the towers for the purposes of installing or maintaining digital transmitters.

Clause 2

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- There are to be reviews before specified dates of certain elements of the digital television regulatory regime.

## 2 Definitions

In this Schedule, unless the contrary intention appears:

**AAT** means the Administrative Appeals Tribunal.

**broadcasting transmission tower** means:

- (a) a tower; or
- (b) a pole; or
- (c) a mast; or
- (d) a similar structure;

used to supply:

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

**commercial television broadcasting service** means a commercial broadcasting service that provides television programs.

**commercial television conversion scheme** means a scheme under clause 6.

**coverage area** means:

- (a) a metropolitan coverage area; or
- (b) a regional coverage area.

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

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

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

**licence area** means a licence area for a commercial television broadcasting licence.

**metropolitan coverage area** means an area that corresponds to a metropolitan licence area.

**metropolitan licence area** means a licence area in which is situated the General Post Office of the capital city of:

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia.

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

**national broadcasting service** does not include a broadcasting service provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

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

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

**national television conversion scheme** means a scheme under clause 19.

**radiocommunication** has the same meaning as in the *Radiocommunications Act 1992*.

**regional coverage area** means an area that corresponds to a regional licence area.

**regional licence area** means a licence area that is not a metropolitan licence area.

**remote coverage area** means an area that corresponds to a remote licence area.

**remote licence area** has the meaning given by clause 5.

Clause 3

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

***simulcast period:***

- (a) in relation to a commercial television broadcasting service where the licence area concerned is not a remote licence area—has the meaning given by paragraph 6(3)(c) of this Schedule; and
- (b) in relation to a commercial television broadcasting service where the licence area concerned is a remote licence area—has the meaning given by subclause 6(7) of this Schedule; and
- (c) in relation to a national television broadcasting service where the coverage area concerned is not a remote coverage area—has the meaning given by paragraph 19(3)(c) of this Schedule; and
- (d) in relation to a national television broadcasting service where the coverage area concerned is a remote coverage area—has the meaning given by subclause 19(7) of this Schedule.

***television broadcasting service*** means:

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

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

### 3 Analog mode

For the purposes of this Schedule, a program or service is broadcast or transmitted in ***analog mode*** if the program or service is broadcast or transmitted using an analog modulation technique.

### 4 Digital mode

For the purposes of this Schedule, a program or service is broadcast or transmitted in ***digital mode*** if the program or service is broadcast or transmitted using a digital modulation technique.



#### **4A HDTV digital mode**

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

#### **4B SDTV digital mode**

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

#### **5 Remote licence area**

- (1) The ACMA may, by writing, determine that a specified licence area is a ***remote licence area*** for the purposes of this Schedule.
- (2) A determination under this clause has effect accordingly.
- (3) A determination under this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

#### **5A Multi-channelled national television broadcasting service**

- (1) For the purposes of this Schedule, a broadcasting service is a ***multi-channelled national television broadcasting service*** if:
  - (a) the service provides television programs; and
  - (b) either:
    - (i) the service is provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
    - (ii) the service is provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; and
  - (c) the service is transmitted in digital mode using multi-channelling transmission capacity; and
  - (d) the only programs delivered by the service are programs to which subclause (2) applies; and

Clause 5A

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- (e) the service is promoted as a service that is distinct from any other broadcasting service provided by the Corporation concerned; and
  - (f) the service is neither a subscription broadcasting service nor a subscription narrowcasting service; and
  - (g) the Corporation concerned has given the Minister a written notice electing that this subclause apply to the service; and
  - (h) if the Corporation concerned transmits the service in a particular coverage area:
    - (i) the Corporation transmits another broadcasting service in that coverage area; and
    - (ii) the other service is a national television broadcasting service; and
    - (iii) clause 19 applies to the other service during the simulcast period for that coverage area.
- (2) This subclause applies to the following television programs:
- (a) a program (including a news bulletin or a current affairs program) that deals wholly or principally with regional matters;
  - (b) an educational program;
  - (c) a science program;
  - (d) a religious program;
  - (e) a health program;
  - (f) an arts-related program;
  - (g) a culture-related program;
  - (h) a financial, market or business information bulletin;
  - (i) a program that consists of:
    - (i) the proceedings of, or the proceedings of a committee of, a Parliament; or
    - (ii) the proceedings of a court or tribunal in Australia; or
    - (iii) the proceedings of an official inquiry or Royal Commission in Australia; or
    - (iv) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory;
  - (j) a public policy program;
  - (k) a foreign-language news bulletin;

- (l) a program about community-based multicultural or indigenous activities;
  - (m) a children's program;
  - (n) a history program;
  - (o) a program that:
    - (i) is produced by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation; and
    - (ii) deals with international news (including analysis of items of international news);
  - (p) a national program about rural affairs;
  - (q) an information-only program;
  - (r) a stand-alone international social documentary;
  - (s) a stand-alone social documentary that is produced by the Special Broadcasting Service Corporation;
  - (t) a subtitled foreign-language program;
  - (u) an occasional stand-alone drama program;
  - (v) incidental matter.
- (3) In this clause:

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

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

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

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

***incidental matter*** means:

- (a) advertising or sponsorship matter (whether or not of a commercial kind); or
- (b) a program promotion; or
- (c) an announcement; or
- (d) a hosting; or
- (e) any other interstitial program.

Clause 5A

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

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

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

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

## Part 2—Commercial television

### 6 Commercial television conversion scheme

- (1) As soon as practicable after the commencement of this clause, the ACMA must, by writing, formulate a scheme (the *commercial television conversion scheme*) for the conversion, over time, of the transmission of commercial television broadcasting services from analog mode to digital mode.
- (2) The commercial television conversion scheme is to be divided into the following Parts:
  - (a) Part A, which is to deal with licence areas that are not remote licence areas;
  - (b) Part B, which is to deal with remote licence areas.

#### *Policy objectives*

- (3) Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the following policy objectives:
  - (a) the objective that each holder of a commercial television broadcasting licence for a metropolitan licence area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area on 1 January 2001;
  - (b) the objective that each holder of a commercial television broadcasting licence for a regional licence area is required to commence transmitting the commercial television broadcasting service concerned in SDTV digital mode in that area by such date during the period:
    - (i) beginning on 1 January 2001; and
    - (ii) ending immediately before 1 January 2004;as the ACMA determines under the scheme;
  - (c) the objective that there should be a transitional period for a licence area, that is:
    - (i) to be known as the *simulcast period*; and

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- (ii) to run for 8 years or for such longer period as is prescribed in relation to that area; and
- (iii) in the case of a metropolitan licence area—to begin on 1 January 2001; and
- (iv) in the case of a regional licence area—to begin on the date determined in relation to that area in accordance with paragraph (b);  
throughout which the holder of a commercial television broadcasting licence for that area is required to transmit simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode in that area;
- (d) the objective that, throughout the simulcast period for a licence area, the holder of a commercial television broadcasting licence for that area should be authorised, under one or more transmitter licences, to use one or more additional channels to transmit the commercial television broadcasting service concerned in digital mode in that area;
- (e) the objective that each additional channel should occupy 7 MHz of bandwidth;
- (f) the objective that, as soon as is practicable after the start of the simulcast period for a licence area, and throughout the remainder of that period, the transmission of a commercial television broadcasting service in SDTV digital mode in that area should achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode in that area;
- (g) the objective that, during the simulcast period for a licence area, there should, as far as is practicable, be co-location of:
  - (i) transmitters used by the holder of a commercial television broadcasting licence for that area to transmit the commercial television broadcasting service concerned in digital mode in that area; and
  - (ii) transmitters used by the holder to transmit that service in analog mode in that area;
- (h) the objective that, at the end of the simulcast period for a licence area, all transmissions of commercial television broadcasting services in analog mode in that area are to cease;

- (ha) the objective that, after the end of the simulcast period for a licence area, each holder of a commercial television broadcasting licence for that area is to transmit the commercial television broadcasting service concerned in digital mode in that area using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:
    - (i) the need to plan the most efficient use of the spectrum;  
and
    - (ii) the other relevant policy objectives of the scheme;
  - (j) the objective that, after the end of the simulcast period for a licence area, the transmission of a commercial television broadcasting service in SDTV digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the transmission of that service in analog mode in that area immediately before the end of that period;
  - (k) the objective that holders of commercial television broadcasting licences be permitted to use any spare transmission capacity that is available on the digital transmission channels for the purpose of the transmission of either or both of the following:
    - (i) datacasting services provided under, and in accordance with the conditions of, datacasting licences;
    - (ii) designated teletext services;
  - (l) the objective that the ACMA is to consult holders of commercial television broadcasting licences about the implementation of the scheme;
  - (m) the objective that, if the implementation of the scheme affects particular broadcasting transmission towers, the ACMA is to consult the owners and operators of those towers;
  - (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ACMA must have regard to:
    - (i) the need to plan the most efficient use of the spectrum;  
and
    - (ii) the other relevant policy objectives of the scheme.
- (4) Subclause (3) does not prevent the commercial television conversion scheme from allowing the holder of a commercial

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television broadcasting licence for a regional licence area to transmit the commercial television broadcasting service concerned in digital mode in that area during the whole or a part of the period:

- (a) beginning on 1 January 2001; and
- (b) ending immediately before the start of the simulcast period for that area;

so long as that transmission complies with such requirements as are ascertained in accordance with the scheme.

- (5) Subclause (3) does not prevent Part A of the commercial television conversion scheme from allowing the holder of a commercial television broadcasting licence for a licence area to transmit, on a test basis, the commercial television broadcasting service concerned in digital mode in that area before the start of the simulcast period for that area, so long as that transmission:
  - (a) complies with such requirements as are ascertained in accordance with that Part of the scheme; and
  - (b) occurs during a period ascertained in accordance with that Part of the scheme.

(5A) If:

- (a) the holder of a commercial television broadcasting licence holds another commercial television broadcasting licence; and
- (b) the other licence was allocated under section 38A or 38B; and
- (c) the licences relate to the same licence area (within the meaning of whichever of those sections is applicable); and
- (d) at or about the time when the other licence was allocated, the holder gave the ACMA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned;

then:

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

(5AA) If:



- (a) the holder of a commercial television broadcasting licence holds another commercial television broadcasting licence; and
- (b) the other licence was allocated under section 38A before 1 January 2001; and
- (c) the licences relate to the same licence area (within the meaning of that section); and
- (d) within 90 days after the commencement of this subclause, the holder gives the ACMA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned;

then:

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

(5B) The objectives mentioned in paragraphs (5A)(f) and (5AA)(f) are as follows:

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

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

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

- (5D) For the purposes of paragraphs (3)(ha) and (n) and (5B)(c), in determining the most efficient use of the spectrum, the ACMA is to have regard to:
- (a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and
  - (b) such other matters as the ACMA considers relevant.
- (6) The objective mentioned in paragraph (3)(g) (which deals with co-location of transmitters) does not prevent Part A of the commercial television conversion scheme from making provision for the location of digital transmitters otherwise than as mentioned in that paragraph, where the ACMA is satisfied that an alternative location is appropriate having regard to:
- (a) the remaining objectives set out in subclause (3); and
  - (b) the costs that are likely to be incurred by the licensee concerned; and
  - (c) such other matters (if any) as the ACMA considers relevant.

*Remote licence areas—start-up of digital transmission*

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

*Remote licence areas—simulcast period*

- (7) Part B of the commercial television conversion scheme may make provision for a transitional period for a specified remote licence area, that is to be known as the *simulcast period*, throughout which

the holder of a commercial television broadcasting licence for that area is required to transmit simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode in that area.

- (7A) The simulcast period for a particular remote licence area:
- (a) is to begin on the date determined in relation to that area in accordance with subclause (6A); and
  - (b) is to run for such period as the ACMA determines under the scheme.

*Simulcasting*

- (8) In determining, for the purposes of paragraph (3)(c) and subclause (7), whether the holder of a commercial television broadcasting licence transmits simultaneously the commercial television broadcasting service concerned in both analog mode and SDTV digital mode:
- (a) if a relevant determination is in force under subclause (9)—ignore any advertising or sponsorship matter covered by the determination, so long as the licensee complies with such conditions (if any) as are specified in the determination; and
  - (b) if a relevant determination is in force under subclause (10)—ignore any television programs covered by the determination, so long as the licensee complies with such conditions (if any) as are specified in the determination; and
  - (c) ignore any digital program-enhancement content (as defined by subclause (14)); and
  - (d) ignore a particular television program transmitted using multi-channelling transmission capacity, where:
    - (i) the program is a scheduled program that provides live coverage of a designated event (as defined by subclause (20)); and
    - (ii) the other television program broadcast using that multi-channelling transmission capacity is a regularly scheduled news program; and
    - (iii) the end of the designated event is delayed for reasons that are not within the control of the licensee or of the person (if any) who supplied the first-mentioned

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- program to the licensee (either directly or indirectly through one or more interposed persons); and
- (iv) the sole purpose of the use of the multi-channelling transmission capacity is to allow viewers of the SDTV version of the commercial television broadcasting service to choose between viewing the regularly scheduled news program and viewing so much of the designated event as overlaps the other television program; and
- (e) ignore an electronic program guide (as defined by subclause (24)).
- (8A) For the purposes of this Act (other than paragraph (3)(c) or subclauses (7), (8) and (11) of this clause or Division 2 of Part 4 of this Schedule) and any other law of the Commonwealth, if the holder of a commercial television broadcasting licence transmits matter that is required to be ignored by paragraph (8)(c), (d) or (e) of this clause, that matter is taken to be part of the commercial television broadcasting service concerned.
- (9) The ACMA may, by writing, determine that paragraph (8)(a) applies to specified advertising or sponsorship matter transmitted by a specified commercial television broadcasting licensee during a specified period. The specified advertising or sponsorship matter may consist of all advertising or sponsorship matter transmitted by the licensee concerned. The specified period may consist of the simulcast period for the licence area concerned.
- Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.
- (10) The ACMA may, by writing, determine that paragraph (8)(b) applies to specified television programs transmitted by a specified commercial television broadcasting licensee during a specified period.
- Note: For specification by class, see subsection 46(2) of the *Acts Interpretation Act 1901*.
- (11) The ACMA must not make a determination under subclause (9) or (10) unless the ACMA is satisfied that, if it were assumed that the determination were made, the version of the commercial television broadcasting service transmitted in SDTV digital mode will be

substantially the same as the version of the service transmitted in analog mode.

- (12) A determination under subclause (9) or (10) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (13) A reference in this clause to **advertising or sponsorship matter** is a reference to advertising or sponsorship matter (whether or not of a commercial kind).

*Digital program-enhancement content*

- (14) For the purposes of this clause, **digital program-enhancement content** is content:
- (a) whether in the form of text; or
  - (b) whether in the form of data; or
  - (c) whether in the form of speech, music or other sounds; or
  - (d) whether in the form of visual images (animated or otherwise); or
  - (e) whether in any other form; or
  - (f) whether in any combination of forms;
- where:
- (g) the content is transmitted using a digital modulation technique; and
  - (h) the sole purpose of the transmission of the content is to enhance a television program (the **primary program**); and
  - (i) the subject matter of the content is closely and directly linked to the subject matter of the primary program; and
  - (j) the licensee transmits simultaneously the content and the primary program; and
  - (k) either:
    - (i) the licensee transmits simultaneously the primary program in both analog mode and SDTV digital mode; or
    - (ii) the primary program is covered by a determination under subclause (9) or (10).

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

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

*Designated event*

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

*Electronic program guide*

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

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

### **7 Scheme may confer administrative powers on the ACMA**

The commercial television conversion scheme may make provision with respect to a matter by conferring on the ACMA a power to make a decision of an administrative character.

#### **7A Scheme may confer power to make digital channel plans**

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

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**8 Transmitter licences**

*Grant of additional spectrum for digital transmission*

- (1) The commercial television conversion scheme must make provision for the issue of transmitter licences authorising transmissions of commercial television broadcasting services in digital mode.

*Return of spectrum if digital transmission does not begin*

- (2) Part A of the commercial television conversion scheme must make provision for requiring the holder of a commercial television broadcasting licence to surrender one or more transmitter licences authorising digital transmission if:
  - (a) the holder does not commence digital transmission as mentioned in paragraph 6(3)(a) or (b) of this Schedule; and
  - (b) the holder does not satisfy the ACMA that there are exceptional circumstances.

*Return of spectrum if digital transmission does not continue throughout the simulcast period*

- (3) Part A of the commercial television conversion scheme must make provision for requiring the holder of a commercial television broadcasting licence to surrender one or more transmitter licences authorising digital transmission if:
  - (a) the holder commences digital transmission as mentioned in paragraph 6(3)(a) or (b) of this Schedule; and
  - (b) the holder ceases digital transmission during the simulcast period for the licence area concerned; and
  - (c) under the scheme, the ACMA gives the holder a written direction to:
    - (i) resume digital transmission in that area within the period specified in the direction (being a period that is not longer than one month); and
    - (ii) continue digital transmission throughout the simulcast period for that area; and
  - (d) the holder does not comply with a direction referred to in paragraph (c); and



- (e) the holder does not satisfy the ACMA that there are exceptional circumstances.

*Return of spectrum at end of simulcast period*

- (4) If, at the end of the simulcast period for a licence area, the holder of a commercial television broadcasting licence for the area holds one or more transmitter licences that authorised the transmission of the commercial television broadcasting service concerned in that area, Part A of the commercial television conversion scheme must make provision for:
  - (a) requiring the holder to surrender the transmitter licence or licences, with effect from the end of the simulcast period; and
  - (b) the issue, with effect from the end of the simulcast period, of one or more transmitter licences that authorise the transmission of the commercial television broadcasting service concerned using the channel or channels mentioned in whichever of the following provisions is applicable:
    - (i) paragraph 6(3)(ha) of this Schedule;
    - (ii) paragraph 6(5B)(c) of this Schedule.

*Return of spectrum if format and HDTV standards contravened*

- (7) Part A of the commercial television conversion scheme must make provision for requiring the holder of a commercial television broadcasting licence for a licence area to surrender the transmitter licence or licences that authorised the transmission of the commercial television broadcasting service concerned in digital mode in that area if:
  - (a) the holder contravenes a standard under subclause 37(1) or 37A(1) or 37E(1) or (3); and
  - (b) under the scheme, the ACMA gives the holder a written direction to comply with that standard within the period specified in the direction (being a period that is not longer than one month); and
  - (c) the holder does not comply with a direction referred to in paragraph (b); and
  - (d) the holder does not satisfy the ACMA that there are exceptional circumstances.

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- (8) Subclause (7) does not prevent the commercial television conversion scheme from making provision for the issue of a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37A(1) or 37E(1) or (3). However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

*Remote licence areas*

- (10) Part B of the commercial television conversion scheme may make provision for requiring the holder of a commercial television broadcasting licence to surrender one or more transmitter licences authorising analog transmission or authorising digital transmission if the holder does not comply with:
- (a) a specified requirement of that Part of the scheme; or
  - (b) a standard applicable to the holder under subclause 37B(1) or 37C(1) or 37G(1) or (2).
- (10A) Subclause (10) does not prevent the commercial television conversion scheme from making provision for the issue of a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37C(1) or 37G(1) or (2). However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.
- (11) Part B of the commercial television conversion scheme may make provision for the variation of the conditions of a transmitter licence that authorised analog transmission of a commercial television broadcasting service in a remote licence area so as to ensure that the licence authorises digital transmission of that service in that area.

**9 Submission of implementation plans to the ACMA**

- (1) The commercial television conversion scheme must make provision for requiring holders of commercial television broadcasting licences to prepare, and submit to the ACMA, one or more implementation plans relating to digital transmission, where the implementation plans are in accordance with the scheme.

- (2) The commercial television conversion scheme may provide for variation of implementation plans submitted to the ACMA by holders of commercial television broadcasting licences.

### **10 Amendment of certain plans and guidelines**

- (1) The commercial television conversion scheme may amend the frequency allotment plan or a licence area plan.
- (2) The commercial television conversion scheme may amend technical planning guidelines in force under section 33.
- (3) Subclauses (1) and (2) do not limit the ACMA's powers under sections 25, 26 and 33.

### **11 Reviews and reports**

The commercial television conversion scheme may provide for the ACMA to conduct reviews, and report to the Minister, on specified matters.

### **12 Ancillary or incidental provisions**

The commercial television conversion scheme may contain such ancillary or incidental provisions as the ACMA considers appropriate.

### **13 ACMA to have regard to datacasting allocation power**

- (1) In formulating or varying the commercial television conversion scheme, the ACMA must have regard to its power under subsection 34(3) (which deals with datacasting allocation).
- (2) Subclause (1) does not limit the matters to which the ACMA may have regard.

### **14 ACMA to have regard to special circumstances that apply in remote licence areas**

- (1) In formulating or varying Part B of the commercial television conversion scheme, the ACMA must have regard to the special

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circumstances that apply to the transmission of commercial television broadcasting services in remote licence areas.

- (2) Subclause (1) does not limit the matters to which the ACMA may have regard.

**15 Minister may give directions to the ACMA**

- (1) In formulating or varying the commercial television conversion scheme, the ACMA must comply with any written directions given to it by the Minister under this subclause.
- (2) A direction under subclause (1) may be of a general or specific nature.
- (3) The Minister must arrange for a copy of a direction under subclause (1) to be published in the *Gazette* within 14 days after the direction is given.

**16 Variation of scheme**

- (1) The commercial television conversion scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subclause (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

**17 Scheme to be a disallowable instrument**

An instrument under subclause 6(1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**18 Processes to be public**

In formulating or varying the commercial television conversion scheme, the ACMA must make provision for:

- (a) public consultation; and
- (b) consultation with holders of commercial television broadcasting licences; and

- (c) consultation with national broadcasters; and
- (e) consultation with owners and operators of broadcasting transmission towers.

## Part 3—ABC/SBS television

### 19 National television conversion scheme

- (1) As soon as practicable after the commencement of this clause, the ACMA must, by writing, formulate a scheme (the ***national television conversion scheme***) for the conversion, over time, of the transmission of national television broadcasting services from analog mode to digital mode.

Note: Under clause 32, the scheme does not take effect until approved by the Minister.

- (2) The national television conversion scheme is to be divided into the following Parts:
  - (a) Part A, which is to deal with coverage areas that are not remote coverage areas;
  - (b) Part B, which is to deal with remote coverage areas.

#### *Policy objectives*

- (3) Part A of the national television conversion scheme must be directed towards ensuring the achievement of the following policy objectives:
  - (a) the objective that each national broadcaster is required to commence transmitting the national television broadcasting service concerned in SDTV digital mode in a metropolitan coverage area by such date as is ascertained in accordance with an implementation plan that was given by the broadcaster, and is in force, under clause 20;
  - (b) the objective that each national broadcaster is required to commence transmitting the national television broadcasting service concerned in SDTV digital mode in a regional coverage area by such date as is ascertained in relation to that area in accordance with an implementation plan that was given by the broadcaster, and is in force, under clause 20;
  - (c) the objective that there should be a transitional period for a coverage area, that is:
    - (i) to be known as the ***simulcast period***; and

- (ii) to begin on the date mentioned in whichever of paragraphs (a) and (b) is applicable; and
- (iii) to end at the end of the simulcast period (within the meaning of paragraph 6(3)(c) of this Schedule) for the licence area that corresponds to that coverage area; throughout which a national broadcaster is required to transmit simultaneously the national television broadcasting service concerned in both analog mode and SDTV digital mode in that coverage area;
- (d) the objective that, throughout the simulcast period for a coverage area, each national broadcaster should be authorised, under one or more transmitter licences, to use one or more channels to transmit the national television broadcasting service concerned in digital mode in that area;
- (e) the objective that each additional channel should occupy 7 MHz of bandwidth;
- (f) the objective that, as soon as is practicable after the start of the simulcast period for a coverage area, and throughout the remainder of that period, the transmission of a national television broadcasting service in SDTV digital mode in that area should achieve the same level of coverage and potential reception quality as is achieved by the transmission of that service in analog mode in that area;
- (g) the objective that, during the simulcast period for a coverage area, there should, as far as is practicable, be co-location of:
  - (i) transmitters used by a national broadcaster to transmit the national television broadcasting service concerned in digital mode in that area; and
  - (ii) transmitters used by the national broadcaster to transmit that service in analog mode in that area;
- (h) the objective that, at the end of the simulcast period for a coverage area, all transmissions of national television broadcasting services in analog mode in that area are to cease;
- (ha) the objective that, after the end of the simulcast period for a coverage area, each national broadcaster is to transmit the national broadcasting service concerned in digital mode in that area using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:

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- (i) the need to plan the most efficient use of the spectrum;  
and
  - (ii) the other policy objectives of the scheme;
  - (j) the objective that, after the end of the simulcast period for a coverage area, the transmission of a national television broadcasting service in SDTV digital mode in that area should achieve the same level of coverage and potential reception quality as was achieved by the transmission of that service in analog mode in that area immediately before the end of that period;
  - (k) the objective that national broadcasters be permitted to use any spare transmission capacity that is available on the digital transmission channels for the purpose of the transmission of datacasting services provided under, and in accordance with the conditions of, datacasting licences or for the purpose of the transmission of national radio broadcasting services;
  - (l) the objective that the ACMA is to consult with national broadcasters about the implementation of the scheme;
  - (m) the objective that, if the implementation of the scheme affects particular broadcasting transmission towers, the ACMA is to consult the owners and operators of those towers;
  - (n) the objective that, in allotting channels under the scheme or a digital channel plan, the ACMA must have regard to:
    - (i) the need to plan the most efficient use of the spectrum;  
and
    - (ii) the other relevant policy objectives of the scheme.
- (3A) The ACMA must consult with national broadcasters about the implementation of the scheme.
- (4) Subclause (3) does not prevent the national television conversion scheme from allowing a national broadcaster to transmit the national television broadcasting service concerned in digital mode in a regional coverage area during the whole or a part of the period:
  - (a) beginning on 1 January 2001; and
  - (b) ending immediately before the start of the simulcast period for that area;so long as that transmission complies with such requirements as are ascertained in accordance with the scheme.



- (5) Subclause (3) does not prevent Part A of the national television conversion scheme from allowing a national broadcaster to transmit, on a test basis, the national television broadcasting service concerned in digital mode in a coverage area before the start of the simulcast period for that area, so long as that transmission:
- (a) complies with such requirements as are ascertained in accordance with that Part of the scheme; and
  - (b) occurs during a period ascertained in accordance with that Part of the scheme.
- (5A) For the purposes of paragraphs (3)(ha) and (n), in determining the most efficient use of the spectrum, the ACMA is to have regard to:
- (a) the need for spectrum to be made available for allocation for the purposes of the transmission of datacasting services under, and in accordance with the conditions of, datacasting licences; and
  - (b) such other matters as the ACMA considers relevant.
- (6) The objective mentioned in paragraph (3)(g) (which deals with co-location of transmitters) does not prevent Part A of the national television conversion scheme from making provision for the location of digital transmitters otherwise than as mentioned in that paragraph, where the ACMA is satisfied that an alternative location is appropriate having regard to:
- (a) the remaining objectives set out in subclause (3); and
  - (b) the costs that are likely to be incurred by the national broadcaster concerned; and
  - (c) such other matters (if any) as the ACMA considers relevant.

*Remote coverage areas—start-up of digital transmission*

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

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*Remote coverage areas—simulcast period*

- (7) Part B of the national television conversion scheme may make provision for a transitional period for a specified remote coverage area, that is to be known as the *simulcast period*, throughout which a national broadcaster is required to transmit simultaneously the national television broadcasting service concerned in both analog mode and SDTV digital mode in that area.
- (7A) The simulcast period for a particular remote coverage area:
- (a) is to begin on the date mentioned in subclause (6A); and
  - (b) is to end at the end of the simulcast period (within the meaning of subclause 6(7)) for the licence area that corresponds to that coverage area.

*Multi-channelled national television broadcasting services*

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

*Simulcasting*

- (8) In determining, for the purposes of paragraph (3)(c) and subclause (7), whether a national broadcaster transmits simultaneously the national television broadcasting service concerned in both analog mode and SDTV digital mode:
- (a) in the case of the Special Broadcasting Service Corporation where a relevant determination is in force under subclause (9)—ignore any advertising or sponsorship matter covered by the determination, so long as the Special Broadcasting Service Corporation complies with such conditions (if any) as are specified in the determination; and
  - (b) if a relevant determination is in force under subclause (10)—ignore any television programs covered by the determination, so long as the national broadcaster complies with such conditions (if any) as are specified in the determination; and
  - (c) ignore any digital program-enhancement content (as defined by subclause (14)); and
  - (d) ignore a particular television program transmitted using multi-channelling transmission capacity, where:

- (i) the program is a scheduled program that provides live coverage of a designated event (as defined by subclause (20)); and
  - (ii) the other television program broadcast using that multi-channelling transmission capacity is a regularly scheduled news program; and
  - (iii) the end of the designated event is delayed for reasons that are not within the control of the national broadcaster or of the person (if any) who supplied the first-mentioned program to the national broadcaster (either directly or indirectly through one or more interposed persons); and
  - (iv) the sole purpose of the use of the multi-channelling transmission capacity is to allow viewers of the SDTV version of the national television broadcasting service to choose between viewing the regularly scheduled news program and viewing so much of the designated event as overlaps the other television program; and
- (e) ignore an electronic program guide (as defined by subclause (24)).
- (8A) For the purposes of this Act (other than paragraph (3)(c) or subclauses (7), (8) and (11) of this clause or Division 2 of Part 4 of this Schedule) and any other law of the Commonwealth, if a national broadcaster transmits matter that is required to be ignored by paragraph (8)(c), (d) or (e) of this clause, that matter is taken to be part of the national television broadcasting service concerned.
- (9) The ACMA may, by writing, determine that paragraph (8)(a) applies to specified advertising or sponsorship matter transmitted by the Special Broadcasting Service Corporation during a specified period. The specified advertising or sponsorship matter may consist of all advertising or sponsorship matter transmitted by the Special Broadcasting Service Corporation. The specified period may consist of the simulcast period for the coverage area concerned.

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

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- (10) The ACMA may, by writing, determine that paragraph (8)(b) applies to specified television programs transmitted by a specified national broadcaster during a specified period.

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

- (11) The ACMA must not make a determination under subclause (9) or (10) unless the ACMA is satisfied that, if it were assumed that the determination were made, the version of the national television broadcasting service transmitted in SDTV digital mode will be substantially the same as the version of the service transmitted in analog mode.
- (12) A determination under subclause (9) or (10) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (13) A reference in this clause to ***advertising or sponsorship matter*** is a reference to advertising or sponsorship matter (whether or not of a commercial kind).

*Digital program-enhancement content*

- (14) For the purposes of this clause, ***digital program-enhancement content*** is content:
- (a) whether in the form of text; or
  - (b) whether in the form of data; or
  - (c) whether in the form of speech, music or other sounds; or
  - (d) whether in the form of visual images (animated or otherwise); or
  - (e) whether in any other form; or
  - (f) whether in any combination of forms;
- where:
- (g) the content is transmitted using a digital modulation technique; and
  - (h) the sole purpose of the transmission of the content is to enhance a television program (the ***primary program***); and
  - (i) the subject matter of the content is closely and directly linked to the subject matter of the primary program; and

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

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

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

*Designated event*

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

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

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

*Electronic program guide*

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

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

**20 National broadcasters to give implementation plans to the Minister**

- (1) As soon as practicable after the formulation of the national television conversion scheme, a national broadcaster must give the Minister one or more implementation plans relating to the conversion, over time, of the transmission of the national television broadcasting service concerned from analog mode to digital mode.
- (1A) Subclause (1) does not apply to a multi-channelled national television broadcasting service.
- (2) In preparing an implementation plan, a national broadcaster must have regard to the following matters:
  - (a) in the case of an implementation plan that relates to a coverage area that is not a remote coverage area—whether the implementation plan is directed towards ensuring the achievement of the following policy objectives:

- (i) the objective that each national broadcaster should be required to commence transmitting the national broadcasting service concerned in digital mode in each metropolitan coverage area on 1 January 2001;
    - (ii) the objective that each national broadcaster should be required to commence transmitting the national television broadcasting service concerned in digital mode to regional coverage areas (other than remote coverage areas) on or after 1 January 2001 so that all regional coverage areas (other than remote coverage areas) have digital transmission of the service by 1 January 2004;
  - (b) in the case of an implementation plan that relates to a coverage area that is not a remote coverage area—the objectives mentioned in subclause 19(3);
  - (c) in the case of an implementation plan that relates to a remote coverage area—the special circumstances that apply to the transmission of national television broadcasting services in that area;
  - (d) such other matters (if any) as the national broadcaster considers relevant.
- (3) If an implementation plan is given to the Minister under this clause, the Minister must:
- (a) approve the implementation plan; or
  - (b) refuse to approve the implementation plan.
- (4) In deciding whether to approve an implementation plan under this clause, the Minister must have regard to the following matters:
- (a) in the case of an implementation plan that relates to a coverage area that is not a remote coverage area—whether the implementation plan is directed towards ensuring the achievement of the following policy objectives:
    - (i) the objective that each national broadcaster should be required to commence transmitting the national broadcasting service concerned in digital mode in each metropolitan coverage area on 1 January 2001;
    - (ii) the objective that each national broadcaster should be required to commence transmitting the national television broadcasting service concerned in digital

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mode to regional coverage areas (other than remote coverage areas) on or after 1 January 2001 so that all regional coverage areas (other than remote coverage areas) have digital transmission of the service by 1 January 2004;

- (b) in the case of an implementation plan that relates to a coverage area that is not a remote coverage area—the objectives mentioned in subclause 19(3);
  - (c) in the case of an implementation plan that relates to a remote coverage area—the special circumstances that apply to the transmission of national television broadcasting services in that area;
  - (d) such other matters (if any) as the Minister considers relevant.
- (5) Before deciding whether to approve an implementation plan under this clause, the Minister may direct the ACMA to give the Minister a report about the matter.
- (6) If the Minister approves an implementation plan under this clause, the implementation plan comes into force on approval.
- (7) If the Minister refuses to approve an implementation plan under this clause, the Minister may, by written notice given to the national broadcaster concerned:
- (a) require the national broadcaster to give a fresh implementation plan under subclause (1); and
  - (b) advise the national broadcaster that, if specified changes were incorporated in the fresh plan, the Minister would be disposed to approve the fresh plan.
- The notice must also set out the reasons for the refusal.
- (8) The Minister must cause copies of a notice under subclause (7) to be laid before each House of the Parliament within 7 sitting days of that House after the giving of the notice.
- (9) A national broadcaster may give the Minister a variation of an approved implementation plan that relates to the national broadcaster. Subclauses (2) to (8) (inclusive) apply to the variation of an implementation plan in a corresponding way to the way in which they apply to an implementation plan.
- (10) The Minister may, by writing, delegate to:
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- (a) the Secretary of the Department; or
  - (b) an SES employee or acting SES employee in the Department;
- the Minister's power to approve, or to refuse to approve, variations to approved implementation plans.

## **21 Compliance with implementation plans**

If an implementation plan given by a national broadcaster under clause 20 is in force, the national broadcaster must comply with the implementation plan.

## **22 Scheme may confer administrative powers on the ACMA**

The national television conversion scheme may make provision with respect to a matter by conferring on the ACMA a power to make a decision of an administrative character.

### **22A Scheme may confer power to make digital channel plans**

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

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**23 Transmitter licences**

*Grant of additional spectrum for digital transmission*

- (1) The national television conversion scheme must make provision for the issue of transmitter licences authorising transmissions of national television broadcasting services in digital mode.

*Return of spectrum if digital transmission does not begin*

- (2) Part A of the national television conversion scheme must make provision for requiring a national broadcaster to surrender one or more transmitter licences authorising digital transmission if:
  - (a) the national broadcaster does not commence digital transmission as mentioned in paragraph 19(3)(a) or (b) of this Schedule; and
  - (b) the national broadcaster does not satisfy the ACMA that there are exceptional circumstances.

*Return of spectrum if digital transmission does not continue throughout the simulcast period*

- (3) Part A of the national television conversion scheme must make provision for requiring a national broadcaster to surrender one or more transmitter licences authorising digital transmission if:
  - (a) the national broadcaster commences digital transmission as mentioned in paragraph 19(3)(a) or (b) of this Schedule; and
  - (b) the national broadcaster ceases digital transmission during the simulcast period for the coverage area concerned; and
  - (c) under the scheme, the ACMA gives the national broadcaster a written direction to:
    - (i) resume digital transmission in that area within the period specified in the direction (being a period that is not longer than one month); and
    - (ii) continue digital transmission throughout the simulcast period for that area; and
  - (d) the national broadcaster does not comply with a direction referred to in paragraph (c); and
  - (e) the national broadcaster does not satisfy the ACMA that there are exceptional circumstances.

*Return of spectrum at end of simulcast period*

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

*Return of spectrum if format and HDTV standards contravened*

- (7) Part A of the national television conversion scheme must make provision for requiring a national broadcaster to surrender the transmitter licence or licences that authorised the transmission of the national television broadcasting service concerned in digital mode in the coverage area concerned if:
- (a) the national broadcaster contravenes a standard under subclause 37(1) or 37A(1) or 37F(1) or (3); and
  - (b) under the scheme, the ACMA gives the national broadcaster a written direction to comply with the standard within the period specified in the direction (being a period that is not longer than one month); and
  - (c) the national broadcaster does not comply with a direction referred to in paragraph (b); and
  - (d) the national broadcaster does not satisfy the ACMA that there are exceptional circumstances.
- (8) Subclause (7) does not prevent the national television conversion scheme from making provision for the issue of a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37A(1) or 37F(1) or (3). However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.

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*Remote coverage areas*

- (10) Part B of the national television conversion scheme may make provision for requiring a national broadcaster to surrender one or more transmitter licences authorising analog transmission or authorising digital transmission if the national broadcaster does not comply with:
- (a) a specified requirement of that Part of the scheme; or
  - (b) a standard applicable to the national broadcaster under subclause 37B(1) or 37C(1) or 37H(1) or (2).
- (10A) Subclause (10) does not prevent the national television conversion scheme from making provision for the issue of a transmitter licence to replace a licence that was surrendered on the grounds of a contravention of a standard under subclause 37C(1) or 37H(1) or (2). However, the amount of transmission capacity covered by the replacement licence must be less than the amount of transmission capacity covered by the surrendered licence.
- (11) Part B of the national television conversion scheme may make provision for the variation of the conditions of a transmitter licence that authorised analog transmission of a national television broadcasting service in a remote coverage area so as to ensure that the licence authorises digital transmission of that service in that area.

**24 Amendment of certain plans and guidelines**

- (1) The national television conversion scheme may amend the frequency allotment plan or a licence area plan.
- (2) The national television conversion scheme may amend technical planning guidelines in force under section 33.
- (3) Subclauses (1) and (2) do not limit the ACMA's powers under sections 25, 26 and 33.

**25 Reviews and reports**

The national television conversion scheme may provide for the ACMA to conduct reviews, and report to the Minister, on specified matters.

## **26 Ancillary or incidental provisions**

The national television conversion scheme may contain such ancillary or incidental provisions as the ACMA considers appropriate.

## **27 ACMA to have regard to datacasting allocation power**

- (1) In formulating or varying the national television conversion scheme, the ACMA must have regard to its power under subsection 34(3) (which deals with datacasting allocation).
- (2) Subclause (1) does not limit the matters to which the ACMA may have regard.

## **28 ACMA to have regard to special circumstances that apply in remote coverage areas**

- (1) In formulating or varying Part B of the national television conversion scheme, the ACMA must have regard to the special circumstances that apply to the transmission of national television broadcasting services in remote coverage areas.
- (2) Subclause (1) does not limit the matters to which the ACMA may have regard.

## **29 Minister may give directions to the ACMA**

- (1) In formulating or varying the national television conversion scheme, the ACMA must comply with any written directions given to it by the Minister under this subclause.
- (2) A direction under subclause (1) may be of a general or specific nature.
- (3) The Minister must arrange for a copy of a direction under subclause (1) to be published in the *Gazette* within 14 days after the direction is given.

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**30 Variation of scheme**

- (1) The national television conversion scheme may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (2) Subclause (1) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

**31 Scheme to be a disallowable instrument**

An instrument under subclause 19(1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**32 Scheme does not take effect until approved by the Minister**

The national television conversion scheme, or a variation of the scheme, does not take effect unless and until it is approved, in writing, by the Minister.

**33 Processes to be public**

In formulating or varying the national television conversion scheme, the ACMA must make provision for:

- (a) public consultation; and
- (b) consultation with national broadcasters; and
- (c) consultation with holders of commercial television broadcasting licences; and
- (e) consultation with owners and operators of broadcasting transmission towers.

**34 Compliance with scheme**

A national broadcaster must comply with the national television conversion scheme.

### **35 Simulcasting requirements**

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

### **35A Provision of electronic program guide information**

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

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- (4) For the purposes of the application of subclause (2) to information provided to a national broadcaster, *electronic program guide* has the same meaning as in subclause 19(24) of Schedule 4.

**36 Digital transmitter not to be used to provide a subscription television broadcasting service etc.**

- (1) If a national broadcaster holds a transmitter licence that authorises the operation of a transmitter for transmitting the national broadcasting service concerned in digital mode, the national broadcaster must not operate, or permit the operation of, that transmitter to transmit in digital mode:
- (a) a commercial broadcasting service that provides radio programs; or
  - (b) a subscription radio broadcasting service; or
  - (c) a subscription television broadcasting service; or
  - (d) a subscription radio narrowcasting service; or
  - (e) a subscription television narrowcasting service; or
  - (f) an open narrowcasting radio service; or
  - (g) an open narrowcasting television service.



## **Part 3A—Accessibility of domestic reception equipment**

### **36B Accessibility of domestic reception equipment**

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

- (2) In this clause:

*designated person* means:

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

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

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

### **36C Compliance by national broadcasters**

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

Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.

Note 2: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.

**Schedule 4** Digital television broadcasting  
**Part 3A** Accessibility of domestic reception equipment

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Note 3: For compliance by holders of datacasting transmitter licences, see section 109A of the *Radiocommunications Act 1992*.

## **Part 4—Standards**

### **Division 1—Digital television format standards**

#### **37 Non-remote areas—SDTV format standards**

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

#### **37A Non-remote areas—HDTV format standards**

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

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

**37B Remote areas—SDTV format standards**

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

**37C Remote areas—HDTV format standards**

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

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

### **37D Compliance by national broadcasters**

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

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

## Division 2—HDTV quota standards

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

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

- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
    - (i) as soon as practicable after the licensee begins to transmit the commercial television broadcasting service concerned in SDTV digital mode in that area; and
    - (ii) in any event, within the phase-in period;
  - (b) the objective that, after the end of the phase-in period, each holder of a commercial television broadcasting licence for a licence area is required to transmit at least the HDTV quota of high-definition television programs in HDTV digital mode in that area on the HDTV version of the commercial television broadcasting service concerned.
- (2A) For the purposes of subclause (2), the ***phase-in period*** is the period ending at the later of the following times:
- (a) the end of 30 June 2003;
  - (b) the end of the 2-year period beginning when a licensee transmitting a commercial television broadcasting service in an area is required to commence transmitting the service in SDTV digital mode in that area.
- (2B) For the purposes of subclause (2), the HDTV quota is as follows:
- (a) the HDTV quota for each calendar year that starts after the end of a licensee's phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
  - (b) if a licensee's phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the ***first quota period***) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
  - (c) if a licensee's phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the ***first quota period***) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours increased on a pro-rata basis (because the first quota period is more than a full calendar year).

Clause 37EA

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*Prime viewing hours quotas*

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

*Application*

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

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

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

**37EA Further HDTV transmission rules for commercial television broadcasting licensees in non-remote areas**

- (1) In determining, for the purposes of standards made under subclause 37E(1), whether a commercial television broadcasting licensee has ensured that the HDTV simulcast requirement is met:
- (a) if a relevant determination is in force under subclause (2)—ignore HDTV demonstration programs, so long as the licensee complies with such conditions (if any) as are specified in the determination; and
  - (b) if a relevant determination is in force under subclause (4)—ignore any advertising or sponsorship matter covered by the determination.



*ACMA determinations*

- (2) The ACMA may, by writing, determine that paragraph (1)(a) applies to HDTV demonstration programs transmitted by a specified commercial television broadcasting licensee during a specified period.

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

- (3) The period specified in a determination under subclause (2) must not be more than 12 months from the commencement of the determination.

- (4) The ACMA may, by writing, determine that paragraph (1)(b) applies to specified advertising or sponsorship matter transmitted by a specified commercial television broadcasting licensee during a specified period.

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

- (5) The period specified in a determination under subclause (4) must not be more than 2 years from the commencement of the simulcast period for the licence area concerned.

*HDTV quota*

- (7) In determining, after the end of the phase-in period referred to in subclause 37E(2A), whether a commercial television broadcasting licensee has met the HDTV quota (within the meaning of subclause 37E(2B)), ignore any HDTV demonstration programs transmitted by the licensee.

*Disallowable instrument*

- (8) A determination under subclause (2) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Interpretation*

- (9) A reference in this clause to **advertising or sponsorship matter** is a reference to advertising or sponsorship matter (whether or not of a commercial kind).

Clause 37F

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(10) In this clause:

***HDTV demonstration program*** means a television program that is:

- (a) not longer than 60 minutes; and
- (b) transmitted in HDTV digital mode on the HDTV version of a commercial television broadcasting service; and
- (c) produced for the sole purpose of allowing the benefits of transmission in HDTV digital mode to be demonstrated to potential purchasers of equipment capable of receiving television programs in HDTV digital mode.

***HDTV simulcast requirement*** means the requirement referred to in paragraph 37E(1)(c) or (d) of this Schedule.

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

(1) The regulations must determine standards that require each national broadcaster:

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

- (2) Standards made for the purposes of subclause (1) must be directed towards ensuring the achievement of the following policy objectives:
- (a) the objective that the transmission mentioned in paragraph (1)(a) is to commence:
    - (i) as soon as practicable after the broadcaster begins to transmit the national television broadcasting service concerned in SDTV digital mode in that area; and
    - (ii) in any event, within the phase-in period;
  - (b) the objective that, after the end of the phase-in period, each national broadcaster is required to transmit at least the HDTV quota of high-definition television programs in HDTV digital mode in a coverage area on the HDTV version of the national television broadcasting service concerned.
- (2A) For the purposes of subclause (2), the *phase-in period* is the period ending at the later of the following times:
- (a) the end of 30 June 2003;
  - (b) the end of the 2-year period beginning when a broadcaster transmitting a national television broadcasting service in an area is required to commence transmitting the service in SDTV digital mode in that area.
- (2B) For the purposes of subclause (2), the HDTV quota is as follows:
- (a) the HDTV quota for each calendar year that starts after the end of a national broadcaster's phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
  - (b) if a national broadcaster's phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
  - (c) if a national broadcaster's phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours

Clause 37FA

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increased on a pro-rata basis (because the first quota period is more than a full calendar year).

*Prime viewing hours quotas*

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

*Application*

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

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

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

**37FA Further HDTV transmission rules for national broadcasters in non-remote areas**

- (1) In determining, for the purposes of standards made under subclause 37F(1), whether a national broadcaster has ensured that the HDTV simulcast requirement is met:
- (a) if a relevant determination is in force under subclause (2)—ignore HDTV demonstration programs, so long as the national broadcaster complies with such conditions (if any) as are specified in the determination; and
  - (b) in the case of the Special Broadcasting Service Corporation where a relevant determination is in force under subclause (4)—ignore any advertising or sponsorship matter covered by the determination.

*ACMA determinations*

- (2) The ACMA may, by writing, determine that paragraph (1)(a) applies to HDTV demonstration programs transmitted by a specified national broadcaster during a specified period.

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

- (3) The period specified in a determination under subclause (2) must not be more than 12 months from the commencement of the determination.

- (4) The ACMA may, by writing, determine that paragraph (1)(b) applies to specified advertising or sponsorship matter transmitted by the Special Broadcasting Service Corporation during a specified period.

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

- (5) The period specified in a determination under subclause (4) must not be more than 2 years from the commencement of the simulcast period for the coverage area concerned.

*HDTV quota*

- (7) In determining, after the end of the phase-in period referred to in subclause 37F(2A), whether a national broadcaster has met the HDTV quota (within the meaning of subclause 37F(2B)), ignore any HDTV demonstration programs transmitted by the national broadcaster.

*Disallowable instrument*

- (8) A determination under subclause (2) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Interpretation*

- (9) A reference in this clause to **advertising or sponsorship matter** is a reference to advertising or sponsorship matter (whether or not of a commercial kind).
- (10) In this clause:
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Clause 37G

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**HDTV demonstration program** means a television program that is:

- (a) not longer than 60 minutes; and
- (b) transmitted in HDTV digital mode on the HDTV version of a national television broadcasting service; and
- (c) produced for the sole purpose of allowing the benefits of transmission in HDTV digital mode to be demonstrated to potential purchasers of equipment capable of receiving television programs in HDTV digital mode.

**HDTV simulcast requirement** means the requirement referred to in paragraph 37F(1)(c) of this Schedule.

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

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

- (d) if the licence was allocated under section 38B—to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as a program (the *SDTV program*) that is transmitted simultaneously by the licensee on that service in SDTV digital mode in that area.
- (1A) If the regulations determine standards that require each commercial television broadcasting licensee to ensure the requirement in paragraph (1)(c) or (d) is met, the regulations may also make provision for and in relation to exceptions to that requirement.
- (1B) In making provision for and in relation to exceptions to that requirement, the regulations may empower the ACMA to make written determinations and to impose conditions on commercial television broadcasting licensees in those determinations.
- (1C) Subclause (1B) does not limit subclause (1A).

*Prime viewing hours quotas*

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

*Application*

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

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

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

Clause 37H

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**37H Remote areas—HDTV quotas for national broadcasters**

- (1) The regulations may determine standards that require each national broadcaster:
  - (a) in addition to transmitting a version of the national television broadcasting service concerned in SDTV digital mode in the coverage area concerned, to transmit another version (the ***HDTV version***) of the service in digital mode in that area; and
  - (b) to meet specified quotas in relation to the extent to which high-definition television programs, or specified kinds of high-definition television programs, are transmitted in HDTV digital mode on the HDTV version of that service in that area; and
  - (c) to ensure that a particular television program transmitted on the HDTV version of that service in that area during the simulcast period for that area is the same as:
    - (i) a program (the ***analog program***) that is transmitted simultaneously by the broadcaster on that service in analog mode in that area and that is not covered by a determination under subclause 19(9) or (10); or
    - (ii) a program (the ***SDTV program***) that is transmitted simultaneously by the broadcaster on that service in SDTV digital mode in that area and that is covered by a determination under subclause 19(9) or (10).
- (1A) If the regulations determine standards that require each national broadcaster to ensure the requirement in paragraph (1)(c) is met, the regulations may also make provision for and in relation to exceptions to that requirement.
- (1B) In making provision for and in relation to exceptions to that requirement, the regulations may empower the ACMA to make written determinations and to impose conditions on national broadcasters in those determinations.
- (1C) Subclause (1B) does not limit subclause (1A).



*Prime viewing hours quotas*

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

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

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

### **37J HDTV version**

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

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

### **37K Compliance by national broadcasters**

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

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

Clause 37L

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**37L High-definition television programs**

- (1) For the purposes of the application of this Division to a commercial television broadcasting licensee, a ***high-definition television program*** is:
  - (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
  - (b) a television program, or incidental material, to the extent that:
    - (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
    - (ii) it has been converted to a high-definition digital video format;  
where the conversion has not resulted in a significant reduction in picture quality; or
  - (c) incidental material not covered by paragraph (a) or (b) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a) or (b).
  
- (2) For the purposes of the application of this Division to a national broadcaster, a ***high-definition television program*** is:
  - (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
  - (b) a television program, or incidental material, to the extent that:
    - (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
    - (ii) it has been converted to a high-definition digital video format;  
where the conversion has not resulted in a significant reduction in picture quality; or
  - (c) a television program, or incidental material, to the extent that:

- (i) it was originally produced in a standard definition digital video format; and
    - (ii) it has been converted to a high-definition digital video format; or
  - (d) a television program, or incidental material, to the extent that:
    - (i) it was originally produced in an analog video format; and
    - (ii) it has been converted to a standard definition digital video format;where the converted program or material was subsequently converted to a high-definition digital video format; or
  - (e) incidental material not covered by paragraph (a), (b), (c) or (d) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a), (b), (c) or (d).
- (3) If material (the *archival material*) included in a television program or in incidental material satisfies the following criteria:
- (a) the archival material was originally produced:
    - (i) before 1 July 2003; or
    - (ii) if another day is determined in writing by the Minister in relation to a class of television programs or incidental material that includes the television program or incidental material concerned—before that other day;
  - (b) the archival material would, apart from this subclause, prevent the part of the television program or incidental material which includes the archival material from satisfying the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be);
  - (c) the archival material, taken together with any other material to which paragraphs (a) and (b) apply and that is also included in the same television program or incidental material, amounts to an insubstantial proportion of the television program or incidental material;
- that part of the television program or incidental material is taken to satisfy the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be).

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- (4) The following provisions apply to determinations of a day under subparagraph (3)(a)(ii):
- (a) a day so determined may be a specified day, or a day that is identified in some other way (for example, the day occurring a specified period before first transmission);
  - (b) the Minister must not make a determination that would result in a day so determined being earlier than 1 July 2003.
- (5) A determination under subparagraph (3)(a)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) In this clause:
- incidental material*** means:
- (a) advertising or sponsorship material (whether or not of a commercial kind); or
  - (b) a promotion for a television program or a television broadcasting service; or
  - (c) community information material or community promotional material; or
  - (d) a news break or weather bulletin; or
  - (e) any other similar material.

***television program*** does not include incidental material (whether transmitted during or between television programs).

**37M Prime viewing hours**

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

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

## **Division 3—Captioning standards**

### **38 Captioning standards**

- (1) The regulations must determine standards that are to be observed by:
  - (a) holders of commercial television broadcasting licences; and
  - (b) national broadcasters;in relation to the captioning of television programs for the deaf and hearing impaired.
- (2) Standards under subclause (1) must require licensees and national broadcasters to meet specified goals or targets in relation to the extent to which television programs, or specified kinds of television programs, are captioned for the deaf and hearing impaired.
- (3) Subclause (2) does not limit subclause (1).
- (4) Standards under subclause (1) must be directed towards ensuring the achievement of the following objectives:
  - (a) the objective that, as far as is practicable:
    - (i) holders of commercial television broadcasting licences; and
    - (ii) national broadcasters;should provide a captioning service for television programs transmitted during prime viewing hours;
  - (b) the objective that, as far as is practicable:
    - (i) holders of commercial television broadcasting licences; and
    - (ii) national broadcasters;should provide a captioning service for television news programs, and television current affairs programs, transmitted outside prime viewing hours.
- (4A) Subclause (4) has effect subject to subclause (4B).
- (4B) Standards under subclause (1) must not require the provision of a captioning service for:

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- (a) a television program, or a part of a television program, that is wholly in a language other than English; or
  - (b) a television program, or a part of a television program, the audio component of which consists only of music that has no human vocal content that is recognisable as being in the English language; or
  - (c) so much of the audio component of a television program as consists of incidental or background music.
- (4C) For the purposes of paragraphs (4B)(a) and (b), disregard minor and infrequent uses of the English language.
- (5) For the purposes of subclause (4), **prime viewing hours** are the hours:
- (a) beginning at 6 pm each day or, if another time is prescribed, beginning at that prescribed time each day; and
  - (b) ending at 10.30 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.
- (6) Standards under subclause (1) do not apply to a particular licensee or national broadcaster before the first occasion on or after 1 January 2001 on which the licensee or broadcaster broadcasts television programs in digital mode.
- (7) A national broadcaster must comply with a standard under subclause (1).
- Note: For compliance by licensees, see clause 7 of Schedule 2.
- (8) In this clause:
- program** does not include advertising or sponsorship matter (whether or not of a commercial kind).

## **Division 4—Technical standards**

### **39 Technical standards for digital transmission of television broadcasting services**

- (1) The regulations may determine technical standards that:
  - (a) relate to the transmission of commercial television broadcasting services, and national broadcasting services, in digital mode; and
  - (b) are to be followed by the ACMA in formulating or varying the commercial television conversion scheme or the national television conversion scheme.
- (2) Standards under subclause (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.
- (2AA) Standards under subclause (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.
- (2A) For the purposes of this clause, an *eligible datacasting service* is:
  - (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
  - (b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.
- (3) The commercial television conversion scheme must be consistent with any standards determined under subclause (1).
- (4) The national television conversion scheme must be consistent with any standards determined under subclause (1).
- (5) In this clause:

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

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***conditional access system*** means a conditional access system that:

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



## **Division 5—Miscellaneous**

### **41 Standards may incorporate other instruments**

Section 589 of the *Telecommunications Act 1997* applies to regulations made for the purposes of this Part in a corresponding way to the way in which it applies to an instrument under that Act.

## Part 5—Transmitter access regime

### 42 Simplified outline

The following is a simplified outline of this Part:

- The owner or operator of a broadcasting transmission tower or a designated associated facility must provide:
  - (a) the holder of a commercial television broadcasting licence; or
  - (b) a national broadcaster;with access to the tower or facility.
- The owner or operator of a broadcasting transmission tower or a designated associated facility must provide a datacaster with access to the tower or facility.
- The owner or operator of a broadcasting transmission tower must provide:
  - (a) the holder of a commercial television broadcasting licence; or
  - (b) a national broadcaster;with access to the site of the tower.
- The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the site of the tower.

### 43 Definitions

In this Part:

*ACCC* means the Australian Competition and Consumer Commission.

*business day* means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

*datacaster* means a person who holds a datacasting transmitter licence.

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

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

*facility* includes apparatus, equipment, a structure, a line or an electricity cable or wire.

*site* means:

- (a) land; or
- (b) a building on land; or
- (c) a structure on land.

#### 43A Designated associated facilities

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

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

where:

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

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- (ii) the provision of datacasting services in digital mode.

**44 Extended meaning of access**

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

**45 Access to broadcasting transmission towers**

*Television broadcasting services in digital mode*

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by the holder of a commercial television broadcasting licence (the *access seeker*), or a national broadcaster (also the *access seeker*), give the access seeker access to the tower.
- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subclause (1) unless:
  - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain a transmitter and/or associated facilities used, or for use, wholly or principally in connection with the transmission of the access seeker's television broadcasting service in digital mode; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Datacasting services in digital mode*

- (3) The owner or operator of a broadcasting transmission tower must, if requested to do so by a datacaster (the *access seeker*), give the access seeker access to the tower.
- (4) The owner or operator of the broadcasting transmission tower is not required to comply with subclause (3) unless:
  - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain a transmitter and/or associated facilities used, or for use, in connection with the provision of datacasting services in digital mode; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Compliance not technically feasible*

- (5) The owner or operator of a broadcasting transmission tower is not required to comply with subclause (1) or (3) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subclause (1) or (3), as the case may be, in relation to that tower is not technically feasible.
- (6) In determining whether compliance with subclause (1) or (3) in relation to a tower is technically feasible, the ACMA must have regard to:
  - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, the tower; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the tower; and
    - (ii) making alterations to the tower; and
  - (d) such other matters (if any) as the ACMA considers relevant.

Clause 45A

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*Issue of certificate*

- (7) If the ACMA receives a request to make a decision about the issue of a certificate under subclause (5), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

**45A Access to designated associated facilities**

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

*Television broadcasting services in digital mode*

- (2) The owner or operator of the designated associated facility must, if requested to do so by the holder of a commercial television broadcasting licence (the *access seeker*), or a national broadcaster (also called the *access seeker*), give the access seeker access to the facility.
- (3) The owner or operator of the designated associated facility is not required to comply with subclause (2) unless:
- (a) the access is provided for the sole purpose of enabling the access seeker to use the facility, or a service provided by means of the facility, wholly or principally in connection with the transmission of the access seeker's television broadcasting service in digital mode; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Datacasting services in digital mode*

- (4) The owner or operator of the designated associated facility must, if requested to do so by a datacaster (the *access seeker*), give the access seeker access to the facility.
- (5) The owner or operator of the designated associated facility is not required to comply with subclause (4) unless:

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Clause 45A

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

*Compliance not technically feasible*

- (6) The owner or operator of a designated associated facility is not required to comply with subclause (2) or (4) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subclause (2) or (4), as the case may be, in relation to that facility is not technically feasible.
- (7) In determining whether compliance with subclause (2) or (4) in relation to a facility is technically feasible, the ACMA must have regard to:
  - (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the site; and
    - (ii) making alterations to a facility situated on the site; and
  - (d) such other matters (if any) as the ACMA considers relevant.

*Issue of certificate*

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

Clause 46

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*Exemptions*

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

**46 Access to sites of broadcasting transmission towers**

*Television broadcasting services in digital mode*

- (1) The owner or operator of a broadcasting transmission tower must, if requested to do so by the holder of a commercial television broadcasting licence (the *access seeker*), or a national broadcaster (also the *access seeker*), give the access seeker access to a site if:
  - (a) the tower is situated on the site; and
  - (b) either:
    - (i) the site is owned, occupied or controlled by the owner or operator of the tower; or
    - (ii) the owner or operator of the tower has a right (either conditional or unconditional) to use the site.
- (2) The owner or operator of the broadcasting transmission tower is not required to comply with subclause (1) unless:
  - (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain a transmitter and/or associated facilities used, or for use, wholly or principally in connection with the transmission of the access seeker's television broadcasting service in digital mode; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Datacasting services in digital mode*

- (3) The owner or operator of a broadcasting transmission tower must, if requested to do so by a datacaster (the *access seeker*), give the access seeker access to a site if the tower is situated on the site.



- (4) The owner or operator of the broadcasting transmission tower is not required to comply with subclause (3) unless:
- (a) the access is provided for the sole purpose of enabling the access seeker to install or maintain a transmitter and/or associated facilities used, or for use, in connection with the provision of datacasting services in digital mode; and
  - (b) the access seeker gives the owner or operator reasonable notice that the access seeker requires the access.

*Compliance not technically feasible*

- (5) The owner or operator of a broadcasting transmission tower is not required to comply with subclause (1) or (3) if there is in force a written certificate issued by the ACMA stating that, in the ACMA's opinion, compliance with subclause (1) or (3), as the case may be, in relation to that tower is not technically feasible.
- (6) In determining whether compliance with subclause (1) or (3) in relation to a site is technically feasible, the ACMA must have regard to:
- (a) whether compliance is likely to result in significant difficulties of a technical or engineering nature; and
  - (b) whether compliance is likely to result in a significant threat to the health or safety of persons who operate, or work on, a facility situated on the site; and
  - (c) if compliance is likely to have a result referred to in paragraph (a) or (b)—whether there are practicable means of avoiding such a result, including (but not limited to):
    - (i) changing the configuration or operating parameters of a facility situated on the site; and
    - (ii) making alterations to a facility situated on the site; and
  - (d) such other matters (if any) as the ACMA considers relevant.

*Issue of certificate*

- (7) If the ACMA receives a request to make a decision about the issue of a certificate under subclause (5), the ACMA must use its best endeavours to make that decision within 10 business days after the request was made.

Clause 47

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**47 Terms and conditions of access**

*Access to towers*

- (1) The owner or operator of a broadcasting transmission tower must comply with subclause 45(1) or (3) on such terms and conditions as are:
- (a) agreed between the following parties:
    - (i) the owner or operator;
    - (ii) the access seeker (within the meaning of that subclause); or
  - (b) failing agreement, determined by an arbitrator appointed by the parties.

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

*Access to designated associated facilities*

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

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

*Access to sites*

- (2) The owner or operator of a broadcasting transmission tower must comply with subclause 46(1) or (3) on such terms and conditions as are:
- (a) agreed between the following parties:
    - (i) the owner or operator;
    - (ii) the access seeker (within the meaning of that subclause); or

- (b) failing agreement, determined by an arbitrator appointed by the parties.

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

*Conduct of arbitration*

- (3) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.
- (4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chair of the ACCC.
- (5) Subclause (4) does not, by implication, limit subclause (3).

**48 Code relating to access**

- (1) The ACCC may, by written instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Part.
- (2) Before making an instrument under subclause (1), the ACCC must consult:
  - (a) commercial television broadcasting licensees; and
  - (b) national broadcasters; and
  - (c) owners and operators of broadcasting transmission towers.
- (3) An access seeker must comply with the Code.
- (4) The owner or operator of a broadcasting transmission tower must comply with the Code, to the extent to which the Code relates to the provision of access under clause 45 or 46.
- (4A) The owner or operator of a designated associated facility must comply with the Code, to the extent to which the Code relates to the provision of access under clause 45A.
- (5) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 49

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**49 Arbitration—acquisition of property**

- (1) This clause applies to a provision of this Part that authorises the conduct of an arbitration (whether by the ACCC or another person).
- (2) The provision has no effect to the extent (if any) to which it purports to authorise the acquisition of property if that acquisition:
  - (a) is otherwise than on just terms; and
  - (b) would be invalid because of paragraph 51(xxxi) of the Constitution.
- (3) In this clause:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

*just terms* has the same meaning as in paragraph 51(xxxi) of the Constitution.

**50 Relationship between this Part and the *National Transmission Network Sale Act 1998***

Part 3 of the *National Transmission Network Sale Act 1998* does not apply in relation to an access seeker seeking access to a broadcasting transmission tower or a site to the extent to which this Part applies in relation to the access seeker seeking access to that tower or site.

## **Part 6—Collection of datacasting charge**

### **51 Collection of datacasting charge**

#### *Definitions*

- (1) In this clause:

**charge** means charge imposed by the *Datacasting Charge (Imposition) Act 1998*.

**late payment penalty** means an amount that is payable by way of penalty in accordance with a determination under subclause (3).

#### *When charge due and payable*

- (2) Charge is due and payable at the time ascertained in accordance with a written determination made by the ACMA.

#### *Late payment penalty*

- (3) The ACMA may, by written instrument, determine that, if any charge payable by a person remains unpaid after the time when it became due for payment, the person is liable to pay to the Commonwealth, by way of penalty, an amount calculated at the rate of:
- (a) 20% per annum; or
  - (b) if the determination specifies a lower percentage—that lower percentage per annum;
- on the amount unpaid, computed from that time.

#### *Determination has effect*

- (4) A determination under subclause (3) has effect accordingly.

#### *Remission of penalty*

- (5) A determination under subclause (3) may authorise the ACMA to make decisions about the remission of the whole or a part of an amount of late payment penalty.

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*Payment of charge and late payment penalty*

- (6) Charge and late payment penalty are payable to the ACMA on behalf of the Commonwealth.

*Recovery of charge and penalty*

- (7) Charge and late payment penalty may be recovered by the ACMA, on behalf of the Commonwealth, as debts due to the Commonwealth.

*Payments to the Commonwealth*

- (8) Amounts received by way of charge or late payment penalty must be paid to the Commonwealth.

*Disallowable instrument*

- (9) A determination under subclause (2) or (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**52 Cancellation of certain exemptions from datacasting charge**

- (1) This clause cancels the effect of a provision of another Act that would have the effect of exempting a person from liability to pay charge imposed by the *Datacasting Charge (Imposition) Act 1998*.
- (2) The cancellation does not apply if the provision of the other Act is enacted after the commencement of this clause and refers specifically to charge imposed by the *Datacasting Charge (Imposition) Act 1998*.

## Part 7—Injunctions

### 54 Injunctions

#### *Restraining injunctions*

- (1) If:
  - (a) the holder of a commercial television broadcasting licence has, in accordance with the commercial television conversion scheme, given an implementation plan to the ACMA; and
  - (b) the ACMA has approved the implementation plan; and
  - (c) the holder has engaged, is engaging or is proposing to engage in any conduct in contravention of the implementation plan;the Federal Court may, on the application of the ACMA, grant an injunction:
  - (d) restraining the holder from engaging in the conduct; and
  - (e) if, in the court's opinion, it is desirable to do so—requiring the holder to do something.
- (2) If a person has engaged, is engaging or is proposing to engage in any conduct in contravention of Part 5 of this Schedule, the Federal Court may, on the application of the ACMA or of the access seeker referred to in that Part, grant an injunction:
  - (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

#### *Performance injunctions*

- (3) If:
  - (a) the holder of a commercial television broadcasting licence has, in accordance with the commercial television conversion scheme, given an implementation plan to the ACMA; and
  - (b) the ACMA has approved the implementation plan; and
  - (c) the holder has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and

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- (d) the refusal or failure was, is or would be a contravention of the implementation plan;  
the Federal Court may, on the application of the ACMA, grant an injunction requiring the holder to do that act or thing.
- (4) If:
- (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act or thing; and
  - (b) the refusal or failure was, is or would be a contravention of Part 5 of this Schedule;
- the Federal Court may, on the application of the ACMA or of the access seeker referred to in that Part, grant an injunction requiring the person to do that act or thing.

**55 Interim injunctions**

*Grant of interim injunction*

- (1) If an application is made to the court for an injunction under clause 54, the court may, before considering the application, grant an interim injunction restraining a person from engaging in conduct of a kind referred to in that clause.

*No undertakings as to damages*

- (2) The court is not to require an applicant for an injunction under clause 54, as a condition of granting an interim injunction, to give any undertakings as to damages.

**56 Discharge etc. of injunctions**

The court may discharge or vary an injunction granted under this Part.

**57 Certain limits on granting injunctions not to apply**

*Restraining injunctions*

- (1) The power of the court under this Part to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:



- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the person intends to engage again, or to continue to engage, in conduct of that kind; or
- (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will engage in conduct of that kind—whether or not the person has previously engaged in conduct of that kind and whether or not there is an imminent danger of substantial damage to any person if the person engages in conduct of that kind.

*Performance injunctions*

- (2) The power of the court under this Part to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) if the court is satisfied that the person has refused or failed to do that act or thing—whether or not it appears to the court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing; or
  - (b) if it appears to the court that, if an injunction is not granted, it is likely that the person will refuse or fail to do that act or thing—whether or not the person has previously refused or failed to do that act or thing and whether or not there is an imminent danger of substantial damage to any person if the person refuses or fails to do that act or thing.

**58 Other powers of the court unaffected**

The powers conferred on the court under this Part are in addition to, and not instead of, any other powers of the court, whether conferred by this Act or otherwise.

## Part 8—Reviews

### 60 Reviews before 1 January 2005

- (1) Before 1 January 2005, the Minister must cause to be conducted a review of the following matters:
  - (b) whether paragraph 7(1)(m) of Schedule 2 (which deals with simulcast requirements for commercial television broadcasting licensees) should be amended or repealed;
  - (c) whether paragraph 7(1)(p) of Schedule 2 or clause 36 of this Schedule (which deal with subscription television broadcasting services and other matters) should be amended or repealed;
  - (e) whether all parts of the broadcasting services bands that are available for allocation for broadcasting services or datacasting services have been so identified;
  - (f) whether the parts of the broadcasting services bands that have been allocated for use for broadcasting services or datacasting services have been efficiently structured;
  - (g) whether the following provisions (which deal with additional commercial television broadcasting licences) should be amended or repealed:
    - (i) section 28A;
    - (ii) section 38A;
    - (iii) section 38B;
    - (iv) section 73;
    - (v) section 73A;
    - (vi) subclauses 6(5A), (5AA), (5B) and (5C) of this Schedule;
    - (vii) paragraph 37E(1)(d) of this Schedule;
    - (viii) paragraph 37E(4)(c) of this Schedule;
    - (ix) paragraph 37G(1)(d) of this Schedule;
  - (h) the competitive and regulatory arrangements that should apply to the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:

- (i) there is in force a licence (other than a datacasting licence) allocated by the ACMA under this Act authorising the provision of that service; or
  - (ii) that service is provided in accordance with a class licence;
- (i) the arrangements that should apply in relation to revenue to be raised by the Commonwealth (whether by way of taxation or otherwise) in connection with the operation of a radiocommunications transmitter on or after 1 January 2007 for transmitting a datacasting service under a datacasting transmitter licence, where:
- (i) there is in force a licence (other than a datacasting licence) allocated by the ACMA under this Act authorising the provision of that service; or
  - (ii) that service is provided in accordance with a class licence;
- (j) the conditions that should apply to commercial television broadcasting licences on or after 1 January 2007 for the provision of commercial television broadcasting services;
- (k) the viability of creating an indigenous television broadcasting service and the regulatory arrangements that should apply to the digital transmission of such a service using spectrum in the broadcasting services bands.
- (1A) A review under subclause (1) of a matter referred to in paragraph (1)(h) or (i) is to be conducted on the basis that, if the licence referred to in subparagraph (1)(h)(i) or (i)(i) is a commercial television broadcasting licence, the licensee should, on and after 1 January 2007, be treated in the same way as persons who held commercial television broadcasting licences immediately before that date, in relation to:
- (a) the duration of related transmitter licences; and
  - (b) fees under the *Television Licence Fees Act 1964*.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

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**60A Reviews before 1 July 2005**

- (1) Before 1 July 2005, the Minister must cause to be conducted a review of the following matters:
  - (a) whether Division 2 of Part 4 of this Schedule (which deals with HDTV quotas) should be amended or repealed;
  - (b) the regulatory arrangements that should apply to:
    - (i) the transmission of television programs by commercial television broadcasting licensees in HDTV digital mode in remote licence areas; and
    - (ii) the transmission of television programs by national broadcasters in HDTV digital mode in remote coverage areas.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
- (3) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.

**60B Review before 1 January 2006**

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

## **Part 9—Charges relating to the ACMA's costs**

## Part 10—Review of decisions

### 62 Review by the AAT

#### *Commercial television licensees*

- (1) An application may be made to the AAT for a review of any of the following decisions made by the ACMA under the commercial television conversion scheme:
  - (a) a decision to refuse to approve an implementation plan, or a variation of an implementation plan, given to the ACMA by the holder of a commercial television broadcasting licence;
  - (b) a decision that the holder of a commercial television broadcasting licence has failed to satisfy the ACMA that exceptional circumstances exist as mentioned in subclause 8(2), (3) or (7) (which deal with surrender of transmitter licences);
  - (c) a decision to issue a replacement transmitter licence to the holder of a commercial television broadcasting licence as mentioned in subclause 8(8) or (10A);
  - (d) a prescribed decision that relates to the holder of a commercial television broadcasting licence.
- (2) An application under subclause (1) may only be made by the licensee concerned.

#### *National broadcasters*

- (3) An application may be made to the AAT for a review of any of the following decisions made by the ACMA under the national television conversion scheme:
  - (a) a decision that a national broadcaster has failed to satisfy the ACMA that exceptional circumstances exist as mentioned in subclause 23(2), (3) or (7) (which deal with surrender of transmitter licences);
  - (b) a decision to issue a replacement transmitter licence to a national broadcaster as mentioned in subclause 23(8) or (10A);

- (c) a prescribed decision that relates to a national broadcaster.
- (4) An application under subclause (3) may only be made by the national broadcaster concerned.

*Transmitter access regime*

- (5) An application may be made to the AAT for a review of a decision of the ACMA to issue a certificate under subclause 45(5), 45A(6) or 46(5).
- (6) An application under subclause (5) may only be made by the access seeker concerned.
- (7) An application may be made to the AAT for a review of a decision of the ACMA to refuse to issue a certificate under subclause 45(5) or 46(5).
- (8) An application under subclause (7) may only be made by the owner or operator of the broadcasting transmission tower concerned.
- (9) An application may be made to the AAT for a review of a decision of the ACMA to refuse to issue a certificate under subclause 45A(6).
- (10) An application under subclause (9) may only be made by the owner or operator of the designated associated facility concerned.

**63 Notification of decisions to include notification of reasons and appeal rights**

If the ACMA makes a decision that is reviewable under clause 62, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and
- (b) a statement to the effect that an application may be made to the AAT for a review of the decision.

## Part 11—Regional equalisation plan

### 64 Regional equalisation plan

- (1) As soon as practicable after the commencement of this clause, the Minister must, by writing, formulate a plan (the *regional equalisation plan*) which specifies the measures proposed to be taken by the Minister or the Commonwealth Government:
  - (a) to facilitate the provision of commercial television broadcasting services transmitted in digital mode in regional licence areas; and
  - (b) to facilitate the provision of datacasting services transmitted in digital mode in regional licence areas by the holders of commercial television broadcasting licences.

#### *Objectives*

- (2) In formulating or varying the regional equalisation plan, the Minister must have regard to the following objectives:
  - (a) the objective of maximising the diversity of choice in television services provided in regional licence areas;
  - (b) the objective of bringing to regional licence areas a similar range of entertainment and information services as are available in metropolitan licence areas;
  - (c) the objective of maintaining the financial viability of the commercial television broadcasting industry in regional licence areas;
  - (d) the objective of providing commercial television broadcasting services in regional licence areas that are relevant to, and responsive to, local needs in those areas;
  - (e) the objective of discouraging the concentration of media ownership in regional licence areas.
- (3) Subclause (2) does not limit the matters to which the Minister may have regard.



*Variation of plan*

- (4) The regional equalisation plan may be varied, but not revoked, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.
- (5) Subclause (4) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

*Disallowable instrument*

- (6) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Schedule 5—Online services

Note: See section 216B.

### Part 1—Introduction

#### 1 Explanation of the context of this Schedule

- (1) This clause explains, in simplified form, the context of this Schedule within the proposed Australian scheme for dealing with content on the Internet.

*This Schedule*

- (2) The first component of the proposed scheme is this Schedule, which regulates Internet service providers and Internet content hosts, but does not impose any obligations on:
- (a) producers of content; or
  - (b) persons who upload or access content.

*State/Territory laws and telecommunications offence provisions of the Criminal Code*

- (3) The second component of the proposed scheme will be:
- (a) State/Territory laws that impose obligations on:
    - (i) producers of content; and
    - (ii) persons who upload or access content; and
  - (b) Subdivision C (Offences related to use of telecommunications) of Division 474 of Part 10.6 of the *Criminal Code*.

*Non-legislative initiatives*

- (4) The third component of the proposed scheme will be a range of non-legislative initiatives directed towards:
- (a) monitoring content on the Internet; and

- (b) educating and advising the public about content on the Internet.

## 2 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating certain aspects of the Internet industry.
- A person may complain to the ACMA about *prohibited content* or *potential prohibited content* on the Internet, and the ACMA must investigate the complaint.
- Internet content hosted in Australia is *prohibited content* if:
  - (a) the content has been classified RC or X 18+ by the Classification Board; or
  - (b) the content has been classified R 18+ by the Classification Board and access to the content is not subject to a restricted access system.
- Internet content hosted outside Australia is *prohibited content* if the Internet content has been classified RC or X 18+ by the Classification Board.
- Internet content is *potential prohibited content* if the content has not been classified by the Classification Board, but if it were to be classified, there is a substantial likelihood that the content would be prohibited content.
- If the ACMA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified RC or X 18+, the ACMA must:
  - (a) request the Classification Board to classify the content; and

Clause 2

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- (b) give the relevant Internet content host an ***interim take-down notice*** directing the host not to host the content pending the classification of the content.
- If the ACMA is satisfied that Internet content hosted in Australia is potential prohibited content, and is likely to be classified R 18+, the ACMA must request the Classification Board to classify the content.
- If the ACMA is satisfied that Internet content hosted in Australia is prohibited content, the ACMA must give the relevant Internet content host a ***final take-down notice*** directing the host not to host the prohibited content.
- If the ACMA is satisfied that Internet content hosted outside Australia is prohibited content or potential prohibited content, the ACMA must:
  - (a) if the ACMA considers that the content is of a sufficiently serious nature to warrant referral to a law enforcement agency—notify the content to an Australian police force; and
  - (b) notify the content to Internet service providers so that the providers can deal with the content in accordance with procedures specified in an industry code or industry standard (for example, procedures for the filtering, by technical means, of such content).
- Bodies and associations that represent sections of the Internet industry may develop industry codes.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.

- The ACMA may make online provider determinations regulating Internet service providers and Internet content hosts.

### 3 Definitions

In this Schedule, unless the contrary intention appears:

**AAT** means the Administrative Appeals Tribunal.

**access** includes:

- (a) access that is subject to a pre-condition (for example, the use of a password); and
- (b) access by way of push technology; and
- (c) access by way of a standing request.

**access-control system**, in relation to Internet content, means a system under which:

- (a) persons seeking access to the Internet content have been issued with a Personal Identification Number that provides a means of limiting access by other persons to the Internet content; or
- (b) persons seeking access to the Internet content have been provided with some other means of limiting access by other persons to the Internet content.

**adult** means an individual who is 18 or older.

**Australia**, when used in a geographical sense, includes all the external Territories.

**Australian police force** means:

- (a) the Australian Federal Police; or
- (b) the police force of a State or Territory.

**business day** means a day that is not a Saturday, a Sunday or a public holiday in the place concerned.

**child** means an individual who is not an adult.

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***civil proceeding*** includes a civil action.

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

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

***classified*** means classified under this Schedule.

***computer game*** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

***data storage device*** means any article or material (for example, a disk) from which information is capable of being reproduced, with or without the aid of any other article or device.

***designated notification scheme*** means a scheme:

- (a) in the nature of a scheme for substituted service; and
- (b) under which the ACMA is taken, for the purposes of this Schedule, to have notified each Internet service provider of a matter or thing.

Note: For example, the ACMA may make matters or things available on the Internet (with or without security measures).

***film*** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*.

Note: ***Film*** is defined broadly in that Act, and includes any form of recording from which a visual image can be produced.

***final take-down notice*** means a notice under subclause 30(1) or paragraph 30(4)(b) of this Schedule.

***immediate circle*** has the same meaning as in the *Telecommunications Act 1997*.

***information*** means information:

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

- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms.

***interim take-down notice*** means a notice under subparagraph 30(2)(a)(i) of this Schedule.

***Internet carriage service*** means a listed carriage service that enables end-users to access the Internet.

***Internet content*** means information that:

- (a) is kept on a data storage device; and
- (b) is accessed, or available for access, using an Internet carriage service;

but does not include:

- (c) ordinary electronic mail; or
- (d) information that is transmitted in the form of a broadcasting service.

***Internet content host*** means a person who hosts Internet content in Australia, or who proposes to host Internet content in Australia.

***Internet service provider*** has the meaning given by clause 8.

***listed carriage service*** has the same meaning as in the *Telecommunications Act 1997*.

***online provider rule*** has the meaning given by clause 79.

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

***point-to-multipoint service*** has the same meaning as in the *Telecommunications Act 1997*.

***potential prohibited content*** has the meaning given by clause 11.

***prohibited content*** has the meaning given by clause 10.

***restricted access system*** has the meaning given by clause 4.

***special access-prevention notice*** means a notice under clause 47.

Clause 4

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*special take-down notice* means a notice under clause 36.

*standard access-prevention notice* means a notice under paragraph 40(1)(c) of this Schedule.

#### 4 Restricted access system

- (1) The ACMA may, by written instrument, declare that a specified access-control system is a *restricted access system* in relation to Internet content for the purposes of this Schedule. A declaration under this subclause has effect accordingly.

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

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

#### 5 Internet content that consists of a film

For the purposes of this Schedule, in determining whether Internet content consists of the entire unmodified contents of a film, disregard any differences between:

- (a) the technique used to embody sounds and/or visual images in the film; and
- (b) the technique used to embody the sounds and/or visual images in a form in which they can be accessed on the Internet.

#### 6 Replacement of X 18+ classification

- (1) If the *Classification (Publications, Films and Computer Games) Act 1995* is amended by replacing the classification X 18+ with another classification, this Schedule has effect as if each reference



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in this Schedule to the classification X 18+ were a reference to the other classification.

- (2) To avoid doubt, the rule in subclause (1) applies even if the other classification is not equivalent to the classification X 18+.

**7 Extended meaning of use**

Unless the contrary intention appears, a reference in this Schedule to the *use* of a thing is a reference to the use of the thing either:

- (a) in isolation; or
- (b) in conjunction with one or more other things.

## Part 2—Internet service providers

### 8 Internet service providers

#### *Basic definition*

- (1) For the purposes of this Schedule, if a person supplies, or proposes to supply, an Internet carriage service to the public, the person is an **Internet service provider**.

#### *Declared Internet service providers*

- (2) The Minister may, by written instrument, declare that a specified person who supplies, or proposes to supply, a specified Internet carriage service is an **Internet service provider** for the purposes of this Schedule. A declaration under this subclause has effect accordingly.

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

- (3) An instrument under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### 9 Supply to the public

- (1) This clause sets out the circumstances in which an Internet carriage service is taken, for the purposes of subclause 8(1), to be supplied to the public.
- (2) If:
- (a) an Internet carriage service is used for the carriage of information between 2 end-users; and
  - (b) each end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.

Note: If a company makes Internet content available for access on the Internet, and an individual obtains access to the content using an

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Internet carriage service, the company and the individual are end-users in relation to the carriage of the content by the Internet carriage service.

- (3) If:
- (a) an Internet carriage service is used to supply point-to-multipoint services to end-users; and
  - (b) at least one end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.
- (4) If:
- (a) an Internet carriage service is used to supply designated content services (other than point-to-multipoint services) to end-users; and
  - (b) at least one end-user is outside the immediate circle of the supplier of the service;
- the service is supplied to the public.
- (5) For the purposes of this clause, a **designated content service** is a content service of a kind specified in a written determination made by the Minister.
- (6) A determination under subclause (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (7) In this clause:
- content service** has the same meaning as in the *Telecommunications Act 1997*.

## Part 3—Prohibited content

### Division 1—Prohibited content and potential prohibited content

#### 10 Prohibited content

*Internet content hosted in Australia*

- (1) For the purposes of this Schedule, Internet content hosted in Australia is ***prohibited content*** if:
  - (a) the Internet content has been classified RC or X 18+ by the Classification Board; or
  - (b) both:
    - (i) the Internet content has been classified R 18+ by the Classification Board; and
    - (ii) access to the Internet content is not subject to a restricted access system.

*Internet content hosted outside Australia*

- (2) For the purposes of this Schedule, Internet content hosted outside Australia is ***prohibited content*** if the Internet content has been classified RC or X 18+ by the Classification Board.

Note: ***Classified*** means classified under this Schedule—see clause 3.

#### 11 Potential prohibited content

- (1) For the purposes of this Schedule, Internet content is ***potential prohibited content*** if:
  - (a) the Internet content has not been classified by the Classification Board; and
  - (b) if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be prohibited content.

- (2) In determining whether particular Internet content is potential prohibited content, it is to be assumed that this Schedule authorised the Classification Board to classify the Internet content.

## **12 Classification of Internet content that consists of a film or a computer game**

### *Deemed classification*

- (1) If:
- (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the film or computer game has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the Internet content is taken to have been classified by the Classification Board under this Schedule in the same way as the film or the computer game, as the case may be, was classified under that Act.

### *Actual classification*

- (2) If:
- (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the film or computer game has not been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the Classification Board is to classify the Internet content under this Schedule in a corresponding way to the way in which the film or computer game, as the case may be, would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

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**Part 3** Prohibited content

**Division 1** Prohibited content and potential prohibited content

Clause 13

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**13 Classification of Internet content that does not consist of a film or a computer game**

If Internet content does not consist of:

- (a) the entire unmodified contents of a film; or
- (b) a computer game;

the Classification Board is to classify the Internet content under this Schedule in a corresponding way to the way in which a film would be classified under the *Classification (Publications, Films and Computer Games) Act 1995*.

## **Division 2—Reclassification**

### **14 Reclassification of Internet content**

- (1) If Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)):
  - (a) the Classification Board must not reclassify the content within the 2-year period beginning on the day on which the classification occurred; and
  - (b) after that 2-year period, the Classification Board may reclassify the content.
- (2) The Classification Board may act under paragraph (1)(b):
  - (a) if required to do so by the Minister or the ACMA; or
  - (b) on the Classification Board's own initiative.
- (3) If the Minister or the ACMA requires the Classification Board to act under paragraph (1)(b), the Classification Board must do so.
- (4) If Internet content is reclassified by the Classification Board, the Classification Board must notify the ACMA accordingly.

### **15 Notice of intention to reclassify Internet content**

- (1) If:
  - (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) the Classification Board intends to reclassify the content;then:
  - (c) the Director of the Classification Board must give notice of that intention, inviting submissions about the matter; and
  - (d) the Director of the Classification Board must cause the contents of the notice to be published, in such manner as the Director decides, at least 30 days before the Classification Board proposes to consider the matter; and
  - (e) the Director of the Classification Board must give a copy of the notice to the Minister and to the ACMA at least 30 days

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before the Classification Board proposes to consider the matter.

- (2) A notice under paragraph (1)(c) must specify the day on which the Board proposes to consider the matter.
- (3) The matters that the Classification Board is to take into account in reclassifying the Internet content include issues raised in submissions made to the Classification Board about the matter.



## **Division 3—Review of classification decisions**

### **Subdivision A—Review of classification of Internet content**

#### **16 Persons who may apply for review**

- (1) If Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)), any of the following persons may apply to the Classification Review Board for a review of the classification:
  - (a) the Minister;
  - (b) the ACMA;
  - (c) an Internet service provider who supplies an Internet carriage service that enables end-users to access the content;
  - (d) an Internet content host who hosts the content in Australia, or proposes to host the content in Australia;
  - (e) a person aggrieved by the classification.
- (2) Without limiting paragraph (1)(e), if the classification referred to in that paragraph is a restricted classification, the following persons or bodies are taken to be persons aggrieved by the classification:
  - (a) a person who has engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the Internet content concerned;
  - (b) an organisation or association, whether incorporated or not, whose objects or purposes include, and whose activities relate to, the contentious aspects of that theme or subject matter.
- (3) However, a person or body is not aggrieved by a restricted classification because of subclause (2) if the classification was made before:
  - (a) the person engaged in a series of activities relating to, or research into, the contentious aspects of the theme or subject matter of the Internet content concerned; or

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- (b) the organisation or association was formed, or its objects or purposes included and its activities related to, the contentious aspects of that theme or subject matter.
- (4) In this clause:
  - restricted classification* means:
    - (a) for Internet content that does not consist of a computer game—the classification MA 15+, R 18+, X 18+ or RC; or
    - (b) for Internet content that consists of a computer game—the classification MA 15+ or RC.

**17 Applications for review**

- (1) An application for review of a classification must be:
  - (a) in writing; and
  - (b) made in a form approved in writing by the Convenor of the Classification Review Board; and
  - (c) signed by or on behalf of the applicant; and
  - (d) except for an application made by the Minister—accompanied by the fee ascertained under subclause (4).
- (2) An application by the Minister or the ACMA for review of a classification may be made at any time.
- (3) Any other application for review of a classification must be made:
  - (a) within 30 days after the applicant became aware of the classification; or
  - (b) within such longer period as the Classification Review Board allows.
- (4) Regulations prescribing fees for the purposes of paragraph 43(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, to a review of a classification under this Schedule in a corresponding way to the way in which they apply to a review of a classification under that Act.

- (5) A fee under subclause (1) must not be such as to amount to taxation.
- (6) In this clause:  
*modifications* includes additions, omissions and substitutions.

## **18 Review**

- (1) For the purposes of reviewing a classification of Internet content, the Classification Review Board:
  - (a) may exercise all the powers and discretions that are conferred on the Classification Board by this Schedule; and
  - (b) must make a decision in writing:
    - (i) confirming the classification; or
    - (ii) reclassifying the content.
- (2) If the Classification Review Board reclassifies the Internet content, this Schedule (other than this Subdivision) has effect as if the content had been reclassified by the Classification Board.

### **Subdivision B—Review of Internet content that consists of a film or a computer game**

## **19 Review of classification of Internet content that consists of a film or a computer game**

If:

- (a) Internet content consists of:
  - (i) the entire unmodified contents of a film; or
  - (ii) a computer game; and
- (b) the film or computer game has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*; and
- (c) the decision to classify the film or computer game is reviewed by the Classification Review Board under that Act; and

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**Division 3** Review of classification decisions

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(d) as a result of the review, the Classification Review Board classifies the film or computer game under that Act; this Schedule has effect as if the film or computer game had been classified by the Classification Board under this Schedule in the same way as the film or computer game was classified under that Act by the Classification Review Board.

## **Division 4—Miscellaneous**

### **20 Fees for classification of Internet content**

- (1) The ACMA is liable to pay fees in respect of the classification under this Schedule of Internet content.
- (2) The amount of a fee payable under subclause (1) is ascertained under whichever of subclause (3), (4) or (5) is applicable.

#### *Films*

- (3) If Internet content consists of the entire unmodified contents of a film, regulations prescribing fees for the purposes of paragraph 14(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the film.

#### *Computer games*

- (4) If Internet content consists of a computer game, regulations prescribing fees for the purposes of paragraph 17(1)(d) of the *Classification (Publications, Films and Computer Games) Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of the computer game.

#### *Content other than films or computer games*

- (5) If Internet content does not consist of:
  - (a) the entire unmodified contents of a film; or
  - (b) a computer game;regulations prescribing fees for the purposes of paragraph 14(1)(d) of the *Classification (Publications, Films and Computer Games)*

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*Act 1995* apply, subject to such modifications (if any) as are specified in regulations made for the purposes of this subclause, in relation to the classification under this Schedule of the content in a corresponding way to the way in which they apply to the classification under that Act of a film.

*Fees must not be such as to amount to taxation*

- (6) A fee under subclause (1) must not be such as to amount to taxation.

*Definitions*

- (7) In this clause:

***classification under this Schedule*** means classification under this Schedule that is sought by the ACMA (otherwise than by way of an application under clause 16).

***modifications*** includes additions, omissions and substitutions.

**21 Decisions of the Classification Board etc.**

- (1) Section 57 of the *Classification (Publications, Films and Computer Games) Act 1995* applies to the consideration by the Classification Board of a matter arising under this Schedule in a corresponding way to the way in which it applies to the consideration of an application under that Act.
- (2) To avoid doubt, sections 10, 19, 20, 22, 23A, 24, 25, 26, 27, 28 and 44A, and Division 6 of Part 2, of the *Classification (Publications, Films and Computer Games) Act 1995* do not apply to a classification under this Schedule.

## **Part 4—Complaints to, and investigations by, the ACMA**

### **Division 1—Making of complaints to the ACMA**

#### **22 Complaints about prohibited content or potential prohibited content**

*Complaints about access to prohibited content or potential  
prohibited content*

- (1) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content using an Internet carriage service, the person may make a complaint to the ACMA about the matter.

*Complaints relating to Internet content hosts*

- (2) If a person has reason to believe that an Internet content host is:
  - (a) hosting prohibited content in Australia; or
  - (b) hosting potential prohibited content in Australia;the person may make a complaint to the ACMA about the matter.

*Content of complaint*

- (3) A complaint under subclause (1) or (2) about particular Internet content must:
  - (a) identify the Internet content; and
  - (b) set out how to access the Internet content (for example: set out a URL, a password, or the name of a newsgroup); and
  - (c) if the complainant knows the country or countries in which the Internet content is hosted—set out the name of that country or those countries; and
  - (d) set out the complainant's reasons for believing that the Internet content is prohibited content or potential prohibited content; and

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**Part 4** Complaints to, and investigations by, the ACMA

**Division 1** Making of complaints to the ACMA

Clause 23

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- (e) set out such other information (if any) as the ACMA requires.
- (4) The rule in paragraph (3)(b) does not apply to a complaint to the extent (if any) to which finding out how to access the Internet content would cause the complainant to contravene a law of a State or Territory.

*Transitional*

- (5) A person is not entitled to make a complaint under subclause (1) or (2) about something that occurs before 1 January 2000.

**23 Complaints about breaches of online provider rules etc.**

If a person has reason to believe that an Internet service provider, or an Internet content host:

- (a) has contravened a code registered under Part 5 of this Schedule that is applicable to the provider or host; or
- (b) has contravened an online provider rule that is applicable to the provider or host;

the person may make a complaint to the ACMA about the matter.

**24 Form of complaint**

- (1) A complaint under this Division is to be in writing.
- (2) However, the ACMA may permit complaints to be given, in accordance with specified software requirements, by way of a specified kind of electronic transmission.

**25 Residency etc. of complainant**

A person is not entitled to make a complaint under this Division unless the person is:

- (a) an individual who resides in Australia; or
- (b) a body corporate that carries on activities in Australia; or
- (c) the Commonwealth, a State or a Territory.



## **Division 2—Investigations by the ACMA**

### **26 Investigation of complaints by the ACMA**

- (1) The ACMA must investigate a complaint under Division 1.
- (2) However, the ACMA need not investigate the complaint if:
  - (a) the ACMA is satisfied that the complaint is:
    - (i) frivolous; or
    - (ii) vexatious; or
    - (iii) not made in good faith; or
  - (b) the ACMA has reason to believe that the complaint was made for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Schedule.
- (3) The ACMA must notify the complainant of the results of such an investigation.
- (4) The ACMA may terminate such an investigation if it is of the opinion that it does not have sufficient information to conclude the investigation.

### **27 ACMA may investigate matters on its own initiative**

- (1) The ACMA may investigate any of the following matters if the ACMA thinks that it is desirable to do so:
  - (a) whether an Internet service provider is supplying an Internet carriage service that enables end-users to access prohibited content or potential prohibited content;
  - (b) whether an Internet content host is hosting prohibited content, or potential prohibited content, in Australia;
  - (c) whether an Internet service provider, or an Internet content host:
    - (i) has contravened a code registered under Part 5 of this Schedule that is applicable to the provider or host; or

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**Part 4** Complaints to, and investigations by, the ACMA

**Division 2** Investigations by the ACMA

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- (ii) has contravened an online provider rule that is applicable to the provider or host.
- (2) Paragraphs (1)(a) and (b) do not authorise the ACMA to investigate something that occurs before 1 January 2000.

**28 Conduct of investigations**

- (1) An investigation under this Division is to be conducted as the ACMA thinks fit.
- (2) The ACMA may, for the purposes of an investigation, obtain information from such persons, and make such inquiries, as it thinks fit.
- (3) This clause has effect subject to Part 13 of this Act (which confers certain investigative powers on the ACMA).

**29 Protection from civil proceedings**

Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because of any of the following acts done in good faith:

- (a) the making of a complaint under Division 1;
- (b) the making of a statement to, or the giving of a document or information to, the ACMA in connection with an investigation under this Division.

### **Division 3—Action to be taken in relation to a complaint about prohibited content hosted in Australia**

#### **30 Action to be taken in relation to a complaint about prohibited content hosted in Australia**

*Prohibited content*

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that Internet content hosted in Australia is prohibited content, the ACMA must give the relevant Internet content host a written notice (a ***final take-down notice***) directing the Internet content host not to host the prohibited content.

*Potential prohibited content*

- (2) The following provisions have effect if, in the course of an investigation under Division 2, the ACMA is satisfied that Internet content hosted in Australia is potential prohibited content:
  - (a) if the ACMA is satisfied that, if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be classified RC or X 18+—the ACMA must:
    - (i) give the relevant Internet content host a written notice (an ***interim take-down notice***) directing the Internet content host not to host the Internet content until the ACMA notifies the host under subclause (4) of the Classification Board’s classification of the Internet content; and
    - (ii) request the Classification Board to classify the Internet content;
  - (b) if the ACMA is satisfied that, if the Internet content were to be classified by the Classification Board, there is a substantial likelihood that the Internet content would be classified R 18+— the ACMA must request the Classification Board to classify the Internet content.

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**Part 4** Complaints to, and investigations by, the ACMA

**Division 3** Action to be taken in relation to a complaint about prohibited content hosted in Australia

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- (3) If the Classification Board receives a request under paragraph (2)(a) or (b) to classify particular Internet content, the Classification Board must:
  - (a) classify the content; and
  - (b) inform the ACMA, in writing, of its classification.
- (4) If the ACMA is informed under paragraph (3)(b) of the classification of particular Internet content, the ACMA must:
  - (a) give the relevant Internet content host a written notice setting out the classification; and
  - (b) in a case where the effect of the classification is that the Internet content is prohibited content—give the Internet content host a written notice (a *final take-down notice*) directing the host not to host the prohibited content.
- (5) If the ACMA requests the Classification Board to classify particular Internet content:
  - (a) the ACMA must give the Classification Board:
    - (i) sufficient information about the content to enable the Classification Board to access the content; or
    - (ii) a copy of the content; and
  - (b) the ACMA must give the Classification Board sufficient information about the content to enable the Classification Board to classify the content; and
  - (c) the ACMA may, at the request of the Classification Board or on its own initiative, give the Classification Board additional information about the content if the ACMA is of the opinion that the additional information would be likely to facilitate the classification of the content.
- (6) If the ACMA makes a decision under paragraph (2)(b) to request the Classification Board to classify Internet content, the ACMA must give the relevant Internet content host a written notice setting out the decision.

**31 Deferral of action in order to avoid prejudicing a criminal investigation**

- (1) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that Internet content hosted in Australia is prohibited content or potential prohibited content; and
  - (b) apart from this subclause, the ACMA would be required to take action under subclause 30(1) or (2) in relation to the content; and
  - (c) a member of an Australian police force satisfies the ACMA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;
- the ACMA may defer taking that action until the end of that period.
- (2) Subclause (1) has effect despite anything in clause 30.

**32 Revocation of final take-down notices—subsequent implementation of restricted access system for R 18+ rated content**

- (1) If:
- (a) a final take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) the Internet content has been classified R 18+ by the Classification Board; and
  - (c) at the time when the final take-down notice was issued, access to the Internet content was not subject to a restricted access system; and
  - (d) the Internet content host satisfies the ACMA that:
    - (i) at a later time when the final take-down notice was in force, a restricted access system was implemented in relation to the Internet content; and
    - (ii) as a result of that implementation, the content ceases to be prohibited content;

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**Part 4** Complaints to, and investigations by, the ACMA

**Division 3** Action to be taken in relation to a complaint about prohibited content hosted in Australia

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the ACMA must revoke the final take-down notice.

- (2) If a final take-down notice is revoked under this clause, the ACMA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

**33 Revocation of interim take-down notices—voluntary withdrawal of Internet content**

- (1) If:
- (a) an interim take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) before the Classification Board classifies the Internet content, the Internet content host:
    - (i) ceases to host the Internet content; and
    - (ii) gives the ACMA a written undertaking not to host the Internet content;

the ACMA may:

- (c) accept the undertaking; and
  - (d) revoke the interim take-down notice; and
  - (e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with subclause 30(3) in relation to the classification of the Internet content.
- (2) If an interim take-down notice is revoked under this clause, the ACMA must give the Internet content host concerned a written notice stating that the interim take-down notice has been revoked.

**34 Revocation of take-down notices—reclassification of Internet content**

- (1) If:
- (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) a final take-down notice relating to the Internet content is applicable to a particular Internet content host; and
  - (c) the Classification Board reclassifies the Internet content; and

- (d) as a result of the reclassification, the content ceases to be prohibited content;  
the ACMA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ACMA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

### **35 Revocation of take-down notices—reclassification of Internet content that consists of a film or a computer game**

- (1) If:
  - (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) a final take-down notice relating to the Internet content is applicable to a particular Internet content host; and
  - (d) as a result of the reclassification, the Internet content ceases to be prohibited content;  
the ACMA must revoke the final take-down notice.
- (2) If a final take-down notice is revoked under this clause, the ACMA must give the Internet content host concerned a written notice stating that the final take-down notice has been revoked.

### **36 Anti-avoidance—special take-down notices**

- If:
  - (a) an interim take-down notice or a final take-down notice relating to particular Internet content is applicable to a particular Internet content host; and
  - (b) the ACMA is satisfied that the Internet content host is hosting in Australia, or is proposing to host in Australia, Internet content (the *similar Internet content*) that is the same as, or substantially similar to, the Internet content

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identified in the interim take-down notice or the final take-down notice, as the case may be; and

- (c) the ACMA is satisfied that the similar Internet content is prohibited content or potential prohibited content;

the ACMA may give the Internet content host a written notice (a *special take-down notice*) directing the host not to host the similar Internet content at any time when the interim take-down notice or final take-down notice, as the case may be, is in force.

**37 Compliance with rules relating to prohibited content etc.**

*Interim take-down notice*

- (1) An Internet content host must comply with an interim take-down notice that applies to the host as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the host.

*Final take-down notice*

- (2) An Internet content host must comply with a final take-down notice that applies to the host as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the host.

*Special take-down notice*

- (3) An Internet content host must comply with a special take-down notice that applies to the host as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the host.

*Undertaking*

- (4) An Internet content host must comply with an undertaking given by the host and accepted under clause 33.

Note: For enforcement, see Part 6 of this Schedule.



### **38 Identification of Internet content**

Internet content may be identified in a notice under this Division:

- (a) by setting out the content; or
- (b) by describing the content; or
- (c) in any other way.

### **39 Application of notices under this Division**

A notice under this Division applies to particular Internet content only to the extent to which the content is accessed, or available for access, from an Internet site, or a distinct part of an Internet site, specified in the notice.

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

## **Division 4—Action to be taken in relation to a complaint about prohibited content hosted outside Australia**

### **40 Action to be taken in relation to a complaint about prohibited content hosted outside Australia**

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that Internet content hosted outside Australia is prohibited content or potential prohibited content, the ACMA must:
- (a) if the ACMA considers the content is of a sufficiently serious nature to warrant referral to a law enforcement agency (whether in or outside Australia)—notify the content to:
    - (i) a member of an Australian police force; or
    - (ii) if there is an arrangement between the ACMA and the chief (however described) of an Australian police force under which the ACMA is authorised to notify the content to another person or body (whether in or outside Australia)—that other person or body; and
  - (b) if a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2)—notify the content to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be; and
  - (c) if paragraph (b) does not apply—give each Internet service provider known to the ACMA a written notice (a *standard access-prevention notice*) directing the provider to take all reasonable steps to prevent end-users from accessing the content.
- Note: The ACMA may be taken to have given a notice under paragraph (c)—see clause 51.
- (2) For the purposes of paragraph (1)(c), in determining whether particular steps are reasonable, regard must be had to:
- (a) the technical and commercial feasibility of taking the steps; and
  - (b) the matters set out in subsection 4(3).

- (3) Subclause (2) does not, by implication, limit the matters to which regard must be had.

*Recognised alternative access-prevention arrangements*

- (4) An Internet service provider is not required to comply with a standard access-prevention notice in relation to a particular end-user if access by the end-user is subject to a recognised alternative access-prevention arrangement (as defined by subclause (5)) that is applicable to the end-user.
- (5) The ACMA may, by written instrument, declare that a specified arrangement is a ***recognised alternative access-prevention arrangement*** for the purposes of the application of this Division to one or more specified end-users if the ACMA is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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

- (6) The following are examples of arrangements that could be declared to be recognised alternative access-prevention arrangements under subclause (5):
- (a) an arrangement that involves the use of regularly updated Internet content filtering software;
  - (b) an arrangement that involves the use of a “family-friendly” filtered Internet carriage service.
- (7) An instrument under subclause (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

*Referral to law enforcement agency*

- (8) The manner in which Internet content may be notified under paragraph (1)(a) to a member of an Australian police force includes (but is not limited to) a manner ascertained in accordance with an arrangement between the ACMA and the chief (however described) of the police force concerned.

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- (9) If a member of an Australian police force is notified of particular Internet content under this clause, the member may notify the content to a member of another law enforcement agency (whether in or outside Australia).
- (10) This clause does not, by implication, limit the ACMA's powers to refer other matters to a member of an Australian police force.

**41 Deferral of action in order to avoid prejudicing a criminal investigation**

- (1) If:
  - (a) in the course of an investigation under Division 2, the ACMA is satisfied that Internet content hosted outside Australia is prohibited content or potential prohibited content; and
  - (b) apart from this subclause, the ACMA would be required to take action under subclause 40(1) in relation to the content; and
  - (c) a member of an Australian police force satisfies the ACMA that the taking of that action should be deferred until the end of a particular period in order to avoid prejudicing a criminal investigation;the ACMA may defer taking that action until the end of that period.
- (2) Subclause (1) has effect despite anything in clause 40.

**42 Withdrawal of notification of content—reclassification of Internet content**

- (1) If:
  - (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and
  - (b) the Internet content has been notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
  - (c) the Classification Board reclassifies the Internet content; and

- (d) as a result of the reclassification, the Internet content ceases to be prohibited content;  
the notification of the Internet content is taken to have been withdrawn.
- (2) If:
- (a) a notification of Internet content is withdrawn under subclause (1); and
  - (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);
- the ACMA must notify the withdrawal to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

**43 Withdrawal of notification of content—reclassification of Internet content that consists of a film or a computer game**

- (1) If:
- (a) Internet content consists of:
    - (i) the entire unmodified contents of a film; or
    - (ii) a computer game; and
  - (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) the Internet content has been notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
  - (d) as a result of the reclassification, the Internet content ceases to be prohibited content;
- the notification of the Internet content is taken to have been withdrawn.
- (2) If:
- (a) a notification of Internet content is withdrawn under subclause (1); and

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- (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);

the ACMA must notify the withdrawal to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

**44 Revocation of standard access-prevention notice—reclassification of Internet content**

(1) If:

- (a) Internet content has been classified by the Classification Board (otherwise than because of subclause 12(1)); and  
(b) a standard access-prevention notice relating to the Internet content is applicable to a particular Internet service provider; and  
(c) the Classification Board reclassifies the Internet content; and  
(d) as a result of the reclassification, the content ceases to be prohibited content;

the ACMA is taken to have revoked the standard access-prevention notice.

- (2) If a standard access-prevention notice is revoked under this clause, the ACMA must give the Internet service provider concerned a written notice stating that the standard access-prevention notice has been revoked.

Note: The ACMA may be taken to have given a notice under subclause (2)—see clause 51.

**45 Revocation of standard access-prevention notice—reclassification of Internet content that consists of a film or a computer game**

(1) If:

- (a) Internet content consists of:  
(i) the entire unmodified contents of a film; or  
(ii) a computer game; and

- (b) the Classification Board reclassifies the film or computer game under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) a standard access-prevention notice relating to the Internet content is applicable to a particular Internet service provider; and
  - (d) as a result of the reclassification, the Internet content ceases to be prohibited content;
- the ACMA is taken to have revoked the standard access-prevention notice.
- (2) If a standard access-prevention notice is revoked under this clause, the ACMA must give the Internet service provider concerned a written notice stating that the standard access-prevention notice has been revoked.

Note: The ACMA may be taken to have given a notice under subclause (2)—see clause 51.

#### **46 Anti-avoidance—notified Internet content**

- (1) If:
    - (a) particular Internet content has been notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
    - (b) the notification has not been withdrawn; and
    - (c) the ACMA is satisfied that Internet content (the *similar Internet content*) that is the same as, or substantially similar to, the first-mentioned Internet content is being hosted outside Australia; and
    - (d) the ACMA is satisfied that the similar Internet content is prohibited content or potential prohibited content; and
    - (e) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);the ACMA must notify the similar Internet content to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be.
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(2) If:

- (a) particular Internet content is notified to Internet service providers as mentioned in paragraph 40(1)(b) of this Schedule; and
- (b) as a result of the application of subclause (1) to that content, the ACMA notifies similar Internet content to Internet service providers in accordance with subclause (1); and
- (c) the notification of the first-mentioned content is withdrawn; the notification of the similar Internet content is taken to have been withdrawn.

(3) If:

- (a) a notification of Internet content is withdrawn under subclause (2); and
- (b) a code registered, or standard determined, under Part 5 of this Schedule deals with the matters referred to in subclause 60(2);

the ACMA must notify the withdrawal to Internet service providers under the designated notification scheme set out in the code or standard, as the case may be.

**47 Anti-avoidance—special access-prevention notice**

(1) If:

- (a) a standard access-prevention notice relating to particular Internet content is applicable to a particular Internet service provider; and
- (b) the ACMA is satisfied that the Internet service provider is supplying an Internet carriage service that enables end-users to access Internet content (the ***similar Internet content***) that is the same as, or substantially similar to, the Internet content identified in the standard access-prevention notice; and
- (c) the ACMA is satisfied that the similar Internet content is prohibited content or potential prohibited content;

the ACMA may give the provider a written notice (***special access-prevention notice***) directing the provider to take all reasonable steps to prevent end-users from accessing the similar



Internet content at any time when the standard access-prevention notice is in force.

Note: The ACMA may be taken to have given a notice under this clause—see clause 51.

- (2) For the purposes of subclause (1), in determining whether particular steps are reasonable, regard must be had to:
  - (a) the technical and commercial feasibility of taking the steps; and
  - (b) the matters set out in subsection 4(3).
- (3) Subclause (2) does not, by implication, limit the matters to which regard must be had.

*Recognised alternative access-prevention arrangements*

- (4) An Internet service provider is not required to comply with a special access-prevention notice in relation to a particular end-user if access by the end-user is subject to a recognised alternative access-prevention arrangement (as defined by subclause 40(5)) that is applicable to the end-user.

## **48 Compliance with access-prevention notices**

*Standard access-prevention notice*

- (1) An Internet service provider must comply with a standard access-prevention notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

*Special access-prevention notice*

- (2) An Internet service provider must comply with a special access-prevention notice that applies to the provider as soon as practicable, and in any event by 6 pm on the next business day, after the notice was given to the provider.

Note: For enforcement, see Part 6 of this Schedule.

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**49 Notification of Internet content**

Internet content may be notified in accordance with this Division by:

- (a) setting out the content; or
- (b) describing the content; or
- (c) in any other way.

**50 Application of notifications under this Division**

A notification under this Division applies to particular Internet content only to the extent to which the content is accessed, or available for access, from an Internet site, or a distinct part of an Internet site, specified in the notification.

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

**51 ACMA may be taken to have issued access-prevention notices**

- (1) Subject to subclause (2), the ACMA may, by written instrument, formulate a scheme:
  - (a) in the nature of a scheme for substituted service; and
  - (b) under which the ACMA is taken, for the purposes of this Schedule, to have done any or all of the following:
    - (i) given each Internet service provider a standard access-prevention notice under paragraph 40(1)(c) of this Schedule;
    - (ii) in a case where a standard access-prevention notice is revoked under clause 44 or 45—given each Internet service provider a notice of the revocation under whichever of subclause 44(2) or 45(2) is applicable;
    - (iii) given each Internet service provider a special access-prevention notice under clause 47.
- (2) It is a minimum requirement for a scheme formulated under subclause (1) that each Internet service provider be alerted by electronic means to the existence of a notice.

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Note: For example, it is not sufficient for the ACMA to make notices available on the Internet (with or without security measures) without notifying Internet service providers that a notice has been issued.

- (3) Paragraph 40(1)(c) of this Schedule has effect, in relation to a scheme under subclause (1), as if the reference in that paragraph to each Internet service provider known to the ACMA were a reference to each Internet service provider.
- (4) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Part 5—Industry codes and industry standards**

### **Division 1—Simplified outline**

#### **52 Simplified outline**

The following is a simplified outline of this Part.

- Bodies and associations that represent sections of the Internet industry may develop industry codes.
- Industry codes may be registered by the ACMA.
- Compliance with an industry code is voluntary unless the ACMA directs a particular participant in the Internet industry to comply with the code.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

## **Division 2—Interpretation**

### **53 Industry codes**

For the purposes of this Part, an *industry code* is a code developed under this Part (whether or not in response to a request under this Part).

### **54 Industry standards**

For the purposes of this Part, an *industry standard* is a standard determined under this Part.

### **55 Internet activity**

For the purposes of this Part, an *Internet activity* is an activity that consists of:

- (a) supplying an Internet carriage service; or
- (b) hosting Internet content in Australia.

### **56 Sections of the Internet industry**

- (1) For the purposes of this Part, *sections of the Internet industry* are to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, each of the following groups is a *section of the Internet industry*:
  - (a) Internet service providers;
  - (b) Internet content hosts.

### **57 Participants in a section of the Internet industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the Internet industry, the person is a *participant* in that section of the Internet industry.

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**58 Designated body**

- (1) The Minister may, by written instrument, declare that a specified body or association is the *designated body* for the purposes of this Part. The declaration has effect accordingly.
- (2) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **Division 3—General principles relating to industry codes and industry standards**

#### **59 Statement of regulatory policy**

- (1) The Parliament intends that bodies or associations that the ACMA is satisfied represent the Internet content host section of the Internet industry should develop a single code (*industry code*) that is to apply to participants in that section of the industry in relation to the Internet activities of the participants.
- (2) The Parliament intends that bodies or associations that the ACMA is satisfied represent the Internet service provider section of the Internet industry should develop no more than 2 codes (*industry codes*) that are to apply to participants in that section of the industry in relation to the Internet activities of the participants.
- (3) The Parliament intends that, for the Internet service provider section of the Internet industry, one of those industry codes should deal exclusively with the matters set out in subclause 60(2).
- (4) The Parliament intends that the ACMA should make reasonable efforts to ensure that, for each section of the Internet industry, either:
  - (a) an industry code is registered under this Part before 1 January 2000; or
  - (b) an industry standard is registered under this Part before 31 March 2000.

#### **60 Matters that must be dealt with by industry codes and industry standards**

##### *Both sections of the Internet industry*

- (1) The Parliament intends that, for both sections of the Internet industry, there should be:
  - (a) an industry code or an industry standard that deals with; or

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- (b) an industry code and an industry standard that together deal with;
- each of the following matters:
- (c) procedures directed towards the achievement of the objective of ensuring that online accounts are not provided to children without the consent of a parent or responsible adult;
  - (d) giving parents and responsible adults information about how to supervise and control children's access to Internet content;
  - (e) procedures to be followed in order to assist parents and responsible adults to supervise and control children's access to Internet content;
  - (f) procedures to be followed in order to inform producers of Internet content about their legal responsibilities in relation to that content;
  - (g) telling customers about their rights to make complaints under clause 22 or 23;
  - (h) procedures to be followed in order to assist customers to make complaints under clause 22 or 23;
  - (i) procedures to be followed in order to deal with complaints about unsolicited electronic mail that promotes or advertises one or more:
    - (i) Internet sites; or
    - (ii) distinct parts of Internet sites;that enable, or purport to enable, end-users to access information that is likely to cause offence to a reasonable adult;
  - (j) action to be taken to assist in the development and implementation of Internet content filtering technologies (including labelling technologies);
  - (k) giving customers information about the availability, use and appropriate application of Internet content filtering software;
  - (l) procedures directed towards the achievement of the objective of ensuring that customers have the option of subscribing to a filtered Internet carriage service;
  - (m) procedures directed towards the achievement of the objective of ensuring that, in the event that a participant in the relevant section of the Internet industry becomes aware that an



Internet content host is hosting prohibited content in Australia, the host is told about the prohibited content.

*Internet service provider section of the Internet industry*

- (2) The Parliament intends that, for the Internet service provider section of the Internet industry, there should be:
- (a) an industry code or an industry standard that deals with; or
  - (b) an industry code and an industry standard that together deal with;
- each of the following matters:
- (c) the formulation of a designated notification scheme;
  - (d) procedures to be followed by Internet service providers in dealing with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46 (for example, procedures to be followed by a particular class of Internet service providers for the filtering, by technical means, of such content).

*Designated alternative access-prevention arrangements*

- (3) An industry code or an industry standard may provide that an Internet service provider is not required to deal with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46 by taking steps to prevent particular end-users from accessing the content if access by the end-users is subject to an arrangement that is declared by the code or standard to be a designated alternative access-prevention arrangement for the purposes of the application of this clause to those end-users.
- (4) An industry code developed by a body or association must not declare that a specified arrangement is a designated alternative access-prevention arrangement for the purposes of the application of this clause to one or more specified end-users unless the body or association is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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

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- (5) An industry standard made by the ACMA must not declare that a specified arrangement is a designated alternative access-prevention arrangement for the purposes of the application of this clause to one or more specified end-users unless the ACMA is satisfied that the arrangement is likely to provide a reasonably effective means of preventing access by those end-users to prohibited content and potential prohibited content.

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

- (6) The following are examples of arrangements that could be declared to be designated alternative access-prevention arrangements:
- (a) an arrangement that involves the use of regularly updated Internet content filtering software;
  - (b) an arrangement that involves the use of a “family-friendly” filtered Internet carriage service.
- (7) For the purposes of this Schedule, if an industry code:
- (a) deals to any extent with procedures to be followed by Internet service providers in dealing with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and
  - (b) makes provision as mentioned in subclause (3);
- then:
- (c) the code is taken to deal with the matter set out in paragraph (2)(d); and
  - (d) the code is taken to be consistent with subclause (2).
- (8) For the purposes of this Schedule, if an industry standard:
- (a) deals to any extent with procedures to be followed by Internet service providers in dealing with Internet content notified under paragraph 40(1)(b) of this Schedule or clause 46; and
  - (b) makes provision as mentioned in subclause (3);
- then:
- (c) the standard is taken to deal with the matter set out in paragraph (2)(d); and
  - (d) the standard is taken to be consistent with subclause (2).

*Clause does not limit matters*

- (9) This clause does not, by implication, limit the matters that may be dealt with by industry codes and industry standards.

**61 Industry codes and industry standards not to deal with certain matters**

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

- (a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or
- (b) the Telecommunications Industry Ombudsman scheme (within the meaning of that Act).

## **Division 4—Industry codes**

### **62 Registration of industry codes**

- (1) This clause applies if:
  - (a) the ACMA is satisfied that a body or association represents a particular section of the Internet industry; and
  - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the Internet activities of those participants; and
  - (c) the body or association gives a copy of the code to the ACMA; and
  - (d) the ACMA is satisfied that:
    - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
    - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
  - (e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
    - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
  - (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
    - (i) the body or association published a draft of the code and invited participants in that section of the industry to

- make submissions to the body or association about the draft within a specified period; and
- (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period; and
- (g) the ACMA is satisfied that the designated body has been consulted about the development of the code; and
- (h) in a case where the code relates to the Internet content host section of the Internet industry—the ACMA is satisfied that the code is consistent with subclauses 59(1) and 60(1); and
- (i) in a case where the code:
- (i) relates to the Internet service provider section of the Internet industry; and
  - (ii) does not deal with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and 60(1); and
- (j) in a case where the code:
- (i) relates to the Internet service provider section of the Internet industry; and
  - (ii) deals with a matter set out in subclause 60(2); the code is consistent with subclauses 59(2) and (3) and 60(2).

Note: *Designated body* is defined by clause 58.

- (2) The ACMA must register the code by including it in the Register of industry codes kept under clause 78.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
  - (a) an industry code (the *new code*) is registered under this Part; and
  - (b) the new code is expressed to replace another industry code; the other code ceases to be registered under this Part when the new code is registered.

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**63 ACMA may request codes**

- (1) If the ACMA is satisfied that a body or association represents a particular section of the Internet industry, the ACMA may, by written notice given to the body or association, request the body or association to:
  - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the Internet activities of those participants; and
  - (b) give the ACMA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subclause (1) must run for at least 120 days.
- (3) The ACMA must not make a request under subclause (1) in relation to a particular section of the Internet industry unless the ACMA is satisfied that:
  - (a) the development of the code is necessary or convenient in order to:
    - (i) provide appropriate community safeguards; or
    - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
  - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The ACMA may vary a notice under subclause (1) by extending the period specified in the notice.
- (5) Subclause (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A notice under subclause (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

#### **64 Publication of notice where no body or association represents a section of the Internet industry**

- (1) If the ACMA is satisfied that a particular section of the Internet industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:
  - (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subclause 63(1); and
  - (b) setting out the matter or matters relating to Internet activities that would be likely to be specified in the subclause 63(1) notice.
- (2) The period specified in a notice under subclause (1) must run for at least 60 days.

#### **65 Replacement of industry codes**

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.
- (2) If the replacement code differs only in minor respects from the original code, clause 62 has effect, in relation to the registration of the code, as if paragraphs 62(1)(e) and (f) of this Schedule had not been enacted.

Note: Paragraphs 62(1)(e) and (f) deal with submissions about draft codes.

#### **66 Compliance with industry codes**

- (1) If:
  - (a) a person is a participant in a particular section of the Internet industry; and
  - (b) the ACMA is satisfied that the person has contravened, or is contravening, an industry code that:
    - (i) is registered under this Part; and
    - (ii) applies to participants in that section of the industry;

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the ACMA may, by written notice given to the person, direct the person to comply with the industry code.

- (2) A person must comply with a direction under subclause (1).

Note: For enforcement, see Part 6 of this Schedule.

**67 Formal warnings—breach of industry codes**

- (1) This clause applies to a person who is a participant in a particular section of the Internet industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry code registered under this Part.



## **Division 5—Industry standards**

### **68 ACMA may determine an industry standard if a request for an industry code is not complied with**

- (1) This clause applies if:
  - (a) the ACMA has made a request under subclause 63(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the Internet industry; and
    - (ii) deal with one or more matters relating to the Internet activities of those participants; and
  - (b) any of the following conditions is satisfied:
    - (i) the request is not complied with;
    - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
    - (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and
  - (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
- (3) Before determining an industry standard under this clause, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.

Clause 69

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- (4) A standard under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) The Minister may give the ACMA a written direction as to the exercise of its powers under this clause.

**69 ACMA may determine industry standard where no industry body or association formed**

- (1) This clause applies if:
    - (a) the ACMA is satisfied that a particular section of the Internet industry is not represented by a body or association; and
    - (b) the ACMA has published a notice under subclause 64(1) relating to that section of the industry; and
    - (c) that notice:
      - (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subclause 63(1); and
      - (ii) sets out one or more matters relating to the Internet activities of the participants in that section of the industry; and
    - (d) no such body or association comes into existence within that period; and
    - (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
      - (i) provide appropriate community safeguards in relation to that matter or those matters; or
      - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
  - (2) The ACMA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an *industry standard*.
  - (3) A standard under subclause (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
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- (4) The Minister may give the ACMA a written direction as to the exercise of its powers under this clause.

**70 ACMA may determine industry standards—total failure of industry codes**

- (1) This clause applies if:
- (a) an industry code that:
    - (i) applies to participants in a particular section of the Internet industry; and
    - (ii) deals with one or more matters relating to the Internet activities of those participants;has been registered under this Part for at least 180 days; and
  - (b) the ACMA is satisfied that the code is totally deficient (as defined by subclause (7)); and
  - (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subclause is to be known as an **industry standard**.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subclause (3).
- (5) A standard under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 71

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- (6) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the Internet industry and deals with one or more matters relating to the Internet activities of those participants is *totally deficient* if, and only if:
  - (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (8) The Minister may give the ACMA a written direction as to the exercise of its powers under this clause.

**71 ACMA may determine industry standards—partial failure of industry codes**

- (1) This clause applies if:
  - (a) an industry code that:
    - (i) applies to participants in a particular section of the Internet industry; and
    - (ii) deals with 2 or more matters relating to the Internet activities of those participants;has been registered under this Part for at least 180 days; and
  - (b) clause 70 does not apply to the code; and
  - (c) the ACMA is satisfied that the code is deficient (as defined by subclause (7)) to the extent to which the code deals with one or more of those matters (the *deficient matter* or *deficient matters*); and
  - (d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the

industry and deals with the deficient matter or deficient matters.

- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by written instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subclause is to be known as an **industry standard**.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subclause (3).
- (5) A standard under subclause (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subclause does not affect:
  - (a) the continuing registration of the remainder of the industry code; or
  - (b) any investigation, proceeding or remedy in respect of a contravention of the industry code or clause 66 that occurred before that day.
- (7) For the purposes of this clause, an industry code that applies to participants in a particular section of the Internet industry and deals with 2 or more matters relating to the Internet activities of those participants is **deficient** to the extent to which it deals with a particular one of those matters if, and only if:
  - (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.

Clause 72

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- (8) The Minister may give the ACMA a written direction as to the exercise of its powers under this clause.

**72 Compliance with industry standards**

If:

- (a) an industry standard that applies to participants in a particular section of the Internet industry is registered under this Part; and
- (b) a person is a participant in that section of the Internet industry;

the person must comply with the industry standard.

Note: For enforcement, see Part 6 of this Schedule.

**73 Formal warnings—breach of industry standards**

- (1) This clause applies to a person who is a participant in a particular section of the Internet industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

**74 Variation of industry standards**

- (1) The ACMA may, by written instrument, vary an industry standard that applies to participants in a particular section of the Internet industry if it is satisfied that it is necessary or convenient to do so to:
  - (a) provide appropriate community safeguards in relation to one or more matters relating to the Internet activities of those participants; and
  - (b) otherwise regulate adequately those participants in relation to one or more matters relating to the Internet activities of those participants.
- (2) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **75 Revocation of industry standards**

- (1) The ACMA may, by written instrument, revoke an industry standard.
- (2) If:
  - (a) an industry code is registered under this Part; and
  - (b) the code is expressed to replace an industry standard;the industry standard is revoked when the code is registered.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **76 Public consultation on industry standards**

- (1) Before determining or varying an industry standard, the ACMA must:
  - (a) cause to be published in a newspaper circulating in each State a notice:
    - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
    - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and
    - (iii) specifying the place or places where the copies will be available; and
    - (iv) inviting interested persons to give written comments about the draft to the ACMA within the period specified under subparagraph (ii); and
  - (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subclause (1) does not apply to a variation if the variation is of a minor nature.

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**Part 5** Industry codes and industry standards

**Division 5** Industry standards

**Clause 77**

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- (4) If interested persons have given comments in accordance with a notice under subclause (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.
- (5) In this clause:

*State* includes the Northern Territory and the Australian Capital Territory.

**77 Consultation with designated body**

- (1) Before determining or varying an industry standard, the ACMA must consult the designated body.
- (2) Before revoking an industry standard under subclause 75(1), the ACMA must consult the designated body.

Note: *Designated body* is defined by clause 58.



## **Division 6—Register of industry codes and industry standards**

### **78 ACMA to maintain Register of industry codes and industry standards**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
  - (a) all industry codes required to be registered under this Part; and
  - (b) all industry standards; and
  - (c) all requests made under clause 63; and
  - (d) all notices under clause 64; and
  - (e) all directions under clause 66.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

## Part 6—Online provider rules

### 79 Online provider rules

For the purposes of this Schedule, each of the following is an *online provider rule*:

- (a) the rule set out in subclause 37(1);
- (b) the rule set out in subclause 37(2);
- (c) the rule set out in subclause 37(3);
- (d) the rule set out in subclause 37(4);
- (e) the rule set out in subclause 48(1);
- (f) the rule set out in subclause 48(2);
- (g) the rule set out in subclause 66(2);
- (h) the rule set out in clause 72;
- (i) each of the rules (if any) set out in an online provider determination in force under clause 80.

### 80 Online provider determinations

- (1) The ACMA may make a written determination setting out rules that apply to Internet service providers in relation to the supply of Internet carriage services.
- (2) The ACMA may make a written determination setting out rules that apply to Internet content hosts in relation to the hosting of Internet content in Australia.
- (3) A determination under subclause (1) or (2) is called an *online provider determination*.
- (4) An online provider determination has effect only to the extent that:
  - (a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or
  - (b) both:
    - (i) it is authorised by section 122 of the Constitution; and

- (ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.
- (5) The ACMA must not make an online provider determination unless the determination relates to a matter specified in the regulations.
- (6) The ACMA must not make an online provider determination if the determination relates to a matter specified in regulations in force for the purposes of subsection 99(3) of the *Telecommunications Act 1997*.
- (7) An online provider determination may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.
- (8) An online provider determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **81 Exemptions from online provider determinations**

- (1) The Minister may, by written instrument, determine that a specified Internet service provider, or a specified Internet content host, is exempt from online provider determinations.
- (2) The Minister may, by written instrument, determine that a specified Internet service provider, or a specified Internet content host, is exempt from a specified online provider determination.
- (3) A determination under this clause may be unconditional or subject to such conditions (if any) as are specified in the determination.
- (4) A determination under this clause has effect accordingly.
- (5) A determination under this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

### **82 Compliance with online provider rules**

- (1) A person is guilty of an offence if:
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- (a) an online provider rule is applicable to the person; and
- (b) the person engages in conduct; and
- (c) the person's conduct contravenes the rule.

Penalty: 50 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this clause.

- (2) In this clause:

***engage in conduct*** means:

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

**83 Remedial directions—breach of online provider rules**

- (1) This clause applies if an Internet service provider, or an Internet content host, has contravened, or is contravening, an online provider rule.
- (2) The ACMA may give the provider or host a written direction requiring the provider or host to take specified action directed towards ensuring that the provider or host does not contravene the rule, or is unlikely to contravene the rule, in the future.
- (3) The following are examples of the kinds of direction that may be given to an Internet service provider, or an Internet content host, under subclause (2):
  - (a) a direction that the provider or host implement effective administrative systems for monitoring compliance with an online provider rule;
  - (b) a direction that the provider or host implement a system designed to give the provider's or host's employees, agents and contractors a reasonable knowledge and understanding of the requirements of an online provider rule, in so far as those requirements affect the employees, agents or contractors concerned.

- (4) A person is guilty of an offence if:
- (a) the person is subject to a direction under subclause (2); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 50 penalty units.

Note: Subsection 4B(3) of the *Crimes Act 1914* lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subclause.

- (5) In this clause:

***engage in conduct*** means:

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

#### **84 Formal warnings—breach of online provider rules**

The ACMA may issue a formal warning if a person contravenes an online provider rule.

#### **85 Federal Court may order a person to cease supplying Internet carriage services or cease hosting Internet content**

- (1) If the ACMA is satisfied that:
- (a) a person who is an Internet service provider is supplying an Internet carriage service otherwise than in accordance with an online provider rule; or
  - (b) a person who is an Internet content host is hosting Internet content in Australia otherwise than in accordance with an online provider rule;

the ACMA may apply to the Federal Court for an order that the person cease supplying that Internet carriage service or cease hosting that Internet content in Australia, as the case requires.

- (2) If the Federal Court is satisfied, on such an application, that the person is:
- (a) supplying an Internet carriage service otherwise than in accordance with the online provider rule; or

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(b) hosting Internet content in Australia otherwise than in accordance with the online provider rule;  
the Federal Court may order the person to cease supplying that Internet carriage service or cease hosting that Internet content in Australia, as the case requires.

## **Part 7—Offences**

### **86 Continuing offences**

A person who contravenes clause 82 or subclause 83(4) is guilty of a separate offence in respect of each day (including the day of a conviction for the offence or any later day) during which the contravention continues.

### **87 Conduct by directors, employees and agents**

#### *Body corporate*

- (1) If, in proceedings for an ancillary offence relating to this Schedule, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority; and
  - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in on behalf of a body corporate by a director, employee or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for:
  - (a) an offence against this Schedule; or
  - (b) an ancillary offence relating this Schedule;to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

Clause 87

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*Person other than a body corporate*

- (3) If, in proceedings for an ancillary offence relating to this Schedule, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person within the scope of his or her actual or apparent authority; and
  - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in on behalf of a person other than a body corporate by an employee or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for:
- (a) an offence against this Schedule; or
  - (b) an ancillary offence relating this Schedule;
- to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.
- (5) If:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subclauses (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.

*State of mind*

- (6) A reference in subclause (1) or (3) to the *state of mind* of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.



*Director*

- (7) A reference in this clause to a **director** of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, a State or a Territory.

*Engaging in conduct*

- (8) A reference in this clause to **engaging in conduct** includes a reference to failing or refusing to engage in conduct.

*Ancillary offence relating to this Schedule*

- (9) A reference in this clause to an **ancillary offence relating to this Schedule** is a reference to an offence created by section 6 of the *Crimes Act 1914* or Part 2.4 of the *Criminal Code* that relates to this Schedule.

## **Part 8—Protection from civil and criminal proceedings**

### **88 Protection from civil proceedings—Internet service providers and Internet content hosts**

*Internet service provider*

- (1) Civil proceedings do not lie against an Internet service provider in respect of anything done by the provider in compliance with:
  - (a) a code registered under Part 5 of this Schedule; or
  - (b) a standard determined under Part 5 of this Schedule;in so far as the code or standard deals with procedures referred to in paragraph 60(2)(d) of this Schedule.
- (2) Civil proceedings do not lie against an Internet service provider in respect of anything done by the provider in compliance with clause 48.

*Internet content host*

- (3) Civil proceedings do not lie against an Internet content host in respect of anything done by the host in compliance with clause 37.

### **89 Protection from criminal proceedings—ACMA, Classification Board and Classification Review Board**

- (1) For the purposes of this clause, each of the following is a *protected person*:
  - (a) the ACMA;
  - (b) a member or associate member of the ACMA;
  - (c) a member of the staff of the ACMA;
  - (d) a consultant engaged to assist in the performance of the ACMA's broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*);

- (e) an officer whose services are made available to the ACMA under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*;
  - (f) a member or temporary member of the Classification Board;
  - (g) a member of the staff of the Classification Board;
  - (h) a consultant engaged to assist in the performance of the Classification Board's functions;
  - (i) an officer whose services are made available to the Classification Board under subsection 54(3) of the *Classification (Publications, Films and Computer Games) Act 1995*;
  - (j) a member of the Classification Review Board.
- (2) Criminal proceedings do not lie against a protected person for or in relation to:
- (a) the collection of information or material; or
  - (b) the possession of information or material; or
  - (c) the distribution of information or material; or
  - (d) the delivery of information or material; or
  - (e) the copying of information or material; or
  - (f) the doing of any other thing in relation to information or material;

in connection with the exercise of a power, or the performance of a function, conferred on the ACMA, the Classification Board or the Classification Review Board by this Schedule.

*Definition*

- (3) In this clause:
- possession** includes have in custody or control.

## **Part 9—Operation of State and Territory laws etc.**

### **90 Concurrent operation of State and Territory laws**

It is the intention of the Parliament that this Schedule is not to apply to the exclusion of a law of a State or Territory to the extent to which that law is capable of operating concurrently with this Schedule.

### **91 Liability of Internet content hosts and Internet service providers under State and Territory laws etc.**

- (1) A law of a State or Territory, or a rule of common law or equity, has no effect to the extent to which it:
  - (a) subjects, or would have the effect (whether direct or indirect) of subjecting, an Internet content host to liability (whether criminal or civil) in respect of hosting particular Internet content in a case where the host was not aware of the nature of the Internet content; or
  - (b) requires, or would have the effect (whether direct or indirect) of requiring, an Internet content host to monitor, make inquiries about, or keep records of, Internet content hosted by the host; or
  - (c) subjects, or would have the effect (whether direct or indirect) of subjecting, an Internet service provider to liability (whether criminal or civil) in respect of carrying particular Internet content in a case where the service provider was not aware of the nature of the Internet content; or
  - (d) requires, or would have the effect (whether direct or indirect) of requiring, an Internet service provider to monitor, make inquiries about, or keep records of, Internet content carried by the provider.
- (2) The Minister may, by written instrument, exempt a specified law of a State or Territory, or a specified rule of common law or equity, from the operation of subclause (1).

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

- (3) An exemption under subclause (2) may be unconditional or subject to such conditions (if any) as are specified in the exemption.

*Declaration by Minister*

- (4) The Minister may, by written instrument, declare that a specified law of a State or Territory, or a specified rule of common law or equity, has no effect to the extent to which the law or rule has a specified effect in relation to an Internet content host.

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

- (5) The Minister may, by written instrument, declare that a specified law of a State or Territory, or a specified rule of common law or equity, has no effect to the extent to which the law or rule has a specified effect in relation to an Internet service provider.

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

- (6) A declaration under subclause (4) or (5) has effect only to the extent that:

(a) it is authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution); or

(b) both:

(i) it is authorised by section 122 of the Constitution; and

(ii) it would have been authorised by paragraph 51(v) of the Constitution (either alone or when read together with paragraph 51(xxxix) of the Constitution) if section 51 of the Constitution extended to the Territories.

- (7) An instrument under subclause (2), (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## Part 10—Review of decisions

### 92 Review by the AAT

- (1) An application may be made to the AAT for a review of any of the following decisions made by the ACMA:
  - (a) a decision to give an Internet content host an interim take-down notice;
  - (b) a decision to give an Internet content host a final take-down notice;
  - (c) a decision to give an Internet content host a special take-down notice;
  - (d) a decision under paragraph 30(2)(b) of this Schedule to request the Classification Board to classify Internet content hosted in Australia by an Internet content host;
  - (e) a decision to give an Internet service provider a standard access-prevention notice;
  - (f) a decision to give an Internet service provider a special access-prevention notice;
  - (g) a decision under clause 66 or 83 to:
    - (i) give a direction to an Internet service provider or an Internet content host; or
    - (ii) vary a direction that is applicable to an Internet service provider or an Internet content host; or
    - (iii) refuse to revoke a direction that is applicable to an Internet service provider or an Internet content host;
  - (h) a decision of a kind referred to in subclause 80(7) (which deals with decisions under online provider determinations), where the decision relates to an Internet service provider or an Internet content host.
- (2) An application under subclause (1) may only be made by the Internet content host or Internet service provider concerned.
- (3) An application may be made to the AAT for a review of a decision of the ACMA under clause 62 to refuse to register a code.

- (4) An application under subclause (3) may only be made by the body or association that developed the code.

**93 Notification of decisions to include notification of reasons and appeal rights**

If the ACMA makes a decision that is reviewable under clause 92, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and
- (b) a statement to the effect that an application may be made to the AAT for a review of the decision.

## Part 11—Miscellaneous

### 94 Additional ACMA functions

The ACMA has the following functions:

- (a) to monitor compliance with codes and standards registered under Part 5 of this Schedule;
- (b) to advise and assist parents and responsible adults in relation to the supervision and control of children's access to Internet content;
- (c) to conduct and/or co-ordinate community education programs about Internet content and Internet carriage services, in consultation with relevant industry and consumer groups and government agencies;
- (d) to conduct and/or commission research into issues relating to Internet content and Internet carriage services;
- (e) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the regulation of the Internet industry, including (but not limited to) collaborative arrangements to develop:
  - (i) multilateral codes of practice; and
  - (ii) Internet content labelling technologies;
- (f) to inform itself and advise the Minister on technological developments and service trends in the Internet industry.

### 95 Review before 1 January 2003

- (1) Before 1 January 2003, the Minister must cause to be conducted a review of the operation of this Schedule.
- (2) The following matters are to be taken into account in conducting a review under subclause (1):
  - (a) the general development of Internet content filtering technologies;



- (b) whether Internet content filtering technologies have developed to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system;
  - (c) any other relevant matters.
- (3) The Minister must cause to be prepared a report of a review under subclause (1).
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the preparation of the report.
- (5) The Parliament acknowledges the Government's policy intention that, in the event that Internet content filtering technologies develop to a point where it is practicable to use those technologies to prevent end-users from accessing R-rated information hosted outside Australia that is not subject to a restricted access system, legislation will be introduced into the Parliament to:
  - (a) extend subclause 10(1) to Internet content hosted outside Australia; and
  - (b) repeal subclause 10(2).

**96 Schedule not to affect performance of State or Territory functions**

A power conferred by this Schedule must not be exercised in such a way as to prevent the exercise of the powers, or the performance of the functions, of government of a State, the Northern Territory, the Australian Capital Territory or Norfolk Island.

## **Schedule 6—Datacasting services**

Note: See section 216C.

### **Part 1—Introduction**

#### **1 Simplified outline**

The following is a simplified outline of this Schedule:

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

- (d) content in the form of text or still visual images;
  - (e) Parliamentary broadcasts;
  - (f) ordinary electronic mail;
  - (g) Internet content.
- A group that represents datacasting licensees may develop codes of practice.
  - The ACMA has a reserve power to make a standard if there are no codes of practice or if a code of practice is deficient.
  - The ACMA is to investigate complaints about datacasting licensees.

## 2 Definitions

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

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

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

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

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

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

***educational program*** has the meaning given by clause 3.

Clause 2

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

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

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

***foreign-language news or current affairs program*** has the meaning given by clause 5.

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

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

***interactive computer game*** means a computer game, where:

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

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

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

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

***news or current affairs program*** means any of the following:

- (a) a news bulletin;
- (b) a sports news bulletin;

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

***nominated datacaster declaration*** means a declaration under clause 45.

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

***qualified entity*** means:

- (a) a company that:
- (i) is formed in Australia or in an external Territory; and
  - (ii) has a share capital; or
- (b) the Commonwealth, a State or a Territory; or
- (c) the Australian Broadcasting Corporation; or
- (d) the Special Broadcasting Service Corporation; or
- (e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or Territory.

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

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

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

- (a) coverage of one or more sporting events; or
- (b) analysis, commentary or discussion in relation to one or more sporting events;

or both, but does not include a sports news bulletin.

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

Clause 3

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

**3 Educational programs**

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

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

*ACMA determinations*

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

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

#### **4 Information-only programs**

- (1) For the purposes of this Schedule, an ***information-only program*** is matter the sole or dominant purpose of which is to:
- (a) provide factual information, or directly-related comment, about any of a wide range of matters, including but not limited to any of the following:
    - (i) products;
    - (ii) services;
    - (iii) community activities;
    - (iv) domestic or household matters;
    - (v) private recreational pursuits or hobbies;
    - (vi) legal rights, obligations or responsibilities;
    - (vii) first aid, health or safety matters;
    - (viii) emergencies or natural disasters;
    - (ix) rural matters;
    - (x) travel matters;
    - (xi) crime prevention matters; or
  - (b) enable and/or facilitate the carrying out and/or completion of transactions;
- or both, where there is not a significant emphasis on dramatic impact or entertainment.
- (2) Subclause (1) has effect subject to subclauses (3) and (4).

##### *ACMA determinations*

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

Clause 4

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- (7) A determination under subclause (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

*Definitions*

- (8) In this clause:

***community activity*** means:

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

whether on payment of a charge or otherwise.

***product*** includes real property.

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

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

***transactions*** includes:

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



## **5 Foreign-language news or current affairs programs**

- (1) For the purposes of this Schedule, a *foreign-language news or current affairs program* means a news or current affairs program that is wholly in a language other than English.
- (2) For the purposes of subclause (1), disregard minor and infrequent uses of the English language.
- (3) For the purposes of subclause (1), disregard any English language subtitles or captioning.

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

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

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

## Part 2—Datacasting licences

### 7 Allocation of datacasting licence

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

### 8 When datacasting licence must not be allocated

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

### 9 Unsuitable applicant

- (1) The ACMA may, if it is satisfied that allowing a particular person to provide a datacasting service under a datacasting licence would lead to a significant risk of:
  - (a) an offence against this Act or the regulations being committed; or

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

## **10 Transfer of datacasting licences**

- (1) A datacasting licensee may transfer the licence to another qualified entity.
- (2) A transferee of a datacasting licence must, within 7 days after the transfer, notify the ACMA of the transfer.
- Penalty: 50 penalty units.
- (2A) Subclause (2) is an offence of strict liability.
- Note: For *strict liability*, see section 6.1 of the *Criminal Code*.
- (3) A notification must be in accordance with a form approved in writing by the ACMA.

Clause 11

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**11 Surrender of datacasting licences**

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

**12 ACMA to maintain Register of datacasting licences**

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

## Part 3—Conditions of datacasting licences

### Division 1—Genre conditions

#### 13 Category A television programs

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

#### *ACMA genre determinations*

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

Clause 14

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- (5) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken not to be a *category A television program* covered by a specified paragraph of subclause (1).
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

**14 Condition relating to category A television programs**

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

extracts together constitute the whole or a majority of a particular category A television program.

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

### **15 Category B television programs**

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

#### *ACMA genre determinations*

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

Clause 16

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- (5) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken not to be a **category B television program** covered by a specified paragraph of subclause (1).
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

**16 Condition relating to category B television programs**

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial television broadcasting service, would be:
  - (a) a category B television program; or
  - (b) an extract from a category B television program.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin, or program, (whether presenter-based or not), so long as:
  - (a) the bulletin or program is not longer than 10 minutes; and
  - (b) if:
    - (i) an earlier bulletin or program covered by subclause (1) was transmitted by the licensee; and
    - (ii) the content of the first-mentioned bulletin or program differs in any respect from the content of the earlier bulletin or program;the interval between the start of the transmission of the earlier bulletin or program and the start of the transmission of the first-mentioned bulletin or program is at least 30 minutes; and



- (c) the bulletin or program is not combined with one or more other bulletins or programs in such a way that the bulletins or programs together constitute a bulletin or program longer than 10 minutes; and
  - (d) having regard to:
    - (i) the nature of the bulletin or program; and
    - (ii) the circumstances in which the bulletin or program is provided;it would be concluded that the licensee did not intend that the bulletin or program be combined with one or more other bulletins or programs in such a way that the bulletins or programs together constitute a bulletin or program longer than 10 minutes.
- (3) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin or program, so long as:
- (a) the bulletin or program is not a presenter-based bulletin or program; and
  - (b) one of the following applies:
    - (i) the bulletin or program consists of a single item of news (including a single item of sports news);
    - (ii) the bulletin or program is a financial, market or business information bulletin or program that deals with a single topic;
    - (iia) the bulletin or program is a compilation of items, the subject of which is the same or directly related, and is not longer than 10 minutes;
    - (iii) the bulletin or program is a weather bulletin or program; and
  - (c) the bulletin or program can only be accessed by an end-user who makes a selection from an on-screen menu.

- (4) In this clause:

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

- (a) introductory or closing segments, or both, spoken by a host, or an anchor presenter, who is visible on the screen; and

Clause 17

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- (b) video images (whether or not with accompanying sound).
- (5) If, because of subclause (2) or (3) of this clause, a datacasting licensee can transmit matter without breaching the condition set out in subclause (1) of this clause, the condition set out in subclause 14(1) does not prevent the licensee from transmitting that matter.

**17 Genre conditions do not apply to Parliamentary proceedings etc.**

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

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

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

- (1) The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting matter that consists of no more than:
  - (a) text; or
  - (b) text accompanied by associated sounds; or
  - (c) still visual images; or
  - (d) still visual images accompanied by associated sounds; or
  - (e) any combination of matter covered by the above paragraphs; or
  - (f) any combination of:
    - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
    - (ii) animated images (with or without associated sounds);

where:

- (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
  - (iv) the animated images consist of advertising or sponsorship material.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

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

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

**19 Genre conditions do not apply to interactive computer games**

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

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

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

Clause 20AA

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

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

## **Division 1A—Electronic program guide condition**

### **20A Electronic program guides**

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

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

### **20B Condition relating to electronic program guides**

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

**Clause 20B**

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licensee concerned has requested the datacasting licensee to transmit that information.

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

## **Division 2—Audio content condition**

### **21 Audio content condition**

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

*Designated radio program*

- (2) For the purposes of this clause, a **designated radio program** is a radio program other than:
- (a) an information-only program; or
  - (b) an educational program; or
  - (c) a foreign-language news or current affairs program.
- (3) Subclause (2) has effect subject to subclauses (4) and (5).

*ACMA determinations*

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

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

**Clause 22**

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*Condition does not apply to incidental or background audio content*

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

*Condition does not apply to Internet carriage services*

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

*Condition does not apply to certain content copied from the Internet*

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

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

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

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



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

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

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

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

## Division 2A—Genre conditions: anti-avoidance

### 23B Anti-avoidance—declared Internet carriage services

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

## **Division 3—Other conditions**

### **24 General conditions**

- (1) Each datacasting licence is subject to the following conditions:
- (a) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6 of Schedule 2 (as modified by subclause (4) of this clause);
  - (b) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, transmit a tobacco advertisement within the meaning of that Act;
  - (c) the licensee will comply with standards applicable to the licence under clause 31;
  - (ca) the licensee will comply with any regulations made for the purposes of clause 36B of Schedule 4;
  - (d) the licensee will not use the datacasting service in the commission of an offence against another Act or a law of a State or Territory;
  - (e) the licensee will not transmit datacasting content that has been classified as RC or X 18+ by the Classification Board;
  - (f) the licensee will not transmit datacasting content that has been classified R 18+ by the Classification Board unless:
    - (i) the content has been modified as mentioned in paragraph 28(4)(b); or
    - (ii) access to the program is subject to a restricted access system (within the meaning of clause 27);
  - (g) the licensee will comply with technical standards applicable to the licensee under clause 60;
  - (h) if the whole or a part of the datacasting service consists of an Internet carriage service—the licensee will comply with an online provider rule (within the meaning of Schedule 5) that is applicable to the licensee in relation to the Internet carriage service.
- (2) The conditions set out in paragraphs (1)(a), (c), (e) and (f) do not apply in relation to:

Clause 24

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- (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
  - (b) the transmission of ordinary electronic mail.
- (3) The condition set out in paragraph (1)(b) does not apply in relation to the transmission of ordinary electronic mail.
- (4) Clauses 3, 3A, 4, 5 and 6 of Schedule 2 apply to datacasting services provided under datacasting licences in a corresponding way to the way in which those clauses apply to broadcasting services, and, in particular, those clauses have effect as if:
- (a) a reference in those clauses to a person providing broadcasting services under a class licence included a reference to a person who is a datacasting licensee; and
  - (b) a reference in those clauses to a broadcasting service included a reference to a datacasting service; and
  - (c) a reference in those clauses to broadcast included a reference to provide on a datacasting service; and
  - (d) subclause 4(2) of Schedule 2 were not applicable to political matter provided under a datacasting licence, where the political matter consists of no more than:
    - (i) text; or
    - (ii) still visual images; or
    - (iii) any combination of matter covered by the above subparagraphs; and
  - (e) clause 4 of Schedule 2 also provided that, if a datacasting licensee provides on a datacasting service, at the request of another person, political matter that consists of no more than:
    - (i) text; or
    - (ii) still visual images; or
    - (iii) any combination of matter covered by the above subparagraphs;the licensee must also cause to be displayed to end-users the required particulars in relation to the political matter in a form approved in writing by the ACMA.

- (5) Subclause (4) does not apply to:
- (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
  - (b) the transmission of ordinary electronic mail.

## **25 Suitability condition**

- (1) Each datacasting licence is subject to the condition that the licensee will remain a suitable licensee.
- (2) For the purposes of this clause, a person is a suitable licensee if the ACMA has not decided that subclause (3) applies to the person.
- (3) The ACMA may, if it is satisfied that allowing a particular person to provide, or continue to provide, datacasting services under a datacasting licence would lead to a significant risk of:
  - (a) an offence against this Act or the regulations being committed; or
  - (b) a breach of the conditions of the licence occurring;decide that this subclause applies to the person.
- (4) In deciding whether such a risk exists, the ACMA is to take into account:
  - (a) the business record of the person; and
  - (b) the person's record in situations requiring trust and candour; and
  - (c) the business record of each person who is in a position to control the licence; and
  - (d) the record in situations requiring trust and candour of each such person; and
  - (e) whether the first-mentioned person, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.
- (5) This clause does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

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**26 Additional conditions imposed by the ACMA**

- (1) The ACMA may, by written notice given to a datacasting licensee:
  - (a) impose an additional condition on the licence; or
  - (b) vary or revoke a condition of the licence imposed under this clause.
- (2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must:
  - (a) give to the licensee written notice of its intention; and
  - (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
  - (c) make the proposed changes available on the Internet.
- (3) Action taken under subclause (1) must not be inconsistent with conditions set out in:
  - (a) clause 14; or
  - (b) clause 16; or
  - (c) clause 21; or
  - (d) clause 24; or
  - (e) clause 25.
- (4) Conditions of datacasting licences varied or imposed by the ACMA must be relevant to the datacasting services to which those licences relate.
- (5) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a datacasting licensee:
  - (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
  - (b) designed to ensure that a breach of a condition by the licensee does not recur.

*ACMA to maintain Register of conditions*

- (6) The ACMA is to maintain a register in which it includes particulars of:
  - (a) conditions imposed under this clause; and

- (b) variations of conditions under this clause; and
  - (c) revocations of conditions under this clause.
- (7) The Register may be maintained by electronic means.
- (8) The Register is to be made available for inspection on the Internet.

## **27 Restricted access system**

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

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

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

## **Division 4—Exemption orders for content copied from the Internet**

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

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



## **Part 4—Codes of practice**

### **28 Development of codes of practice**

- (1) The Parliament intends that:
- (a) a group that the ACMA is satisfied represents datacasting licensees should develop codes of practice that are to be applicable to the datacasting operations of datacasting licensees; and
  - (b) those codes of practice should be developed:
    - (i) in consultation with the ACMA; and
    - (ii) taking account of any relevant research conducted by the ACMA.

#### *Content of codes of practice*

- (2) Codes of practice may relate to:
- (a) preventing the transmission of matter that, in accordance with community standards, is not suitable to be transmitted by datacasting licensees; and
  - (b) methods of ensuring that the protection of children from exposure to datacasting content which may be harmful to them is a high priority; and
  - (c) methods of classifying datacasting content that reflect community standards; and
  - (d) promoting accuracy and fairness in datacasting content that consists of news or current affairs; and
  - (e) preventing the transmission of datacasting content that:
    - (i) simulates news or events in a way that misleads or alarms end-users; or
    - (ii) depicts the actual process of putting a person into a hypnotic state; or
    - (iii) is designed to induce a hypnotic state in end-users; or
    - (iv) uses or involves the process known as subliminal perception or any other technique that attempts to

Clause 28

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convey information to end-users by transmitting messages below or near the threshold of normal awareness; and

- (f) datacasting content that consists of:
  - (i) advertising; or
  - (ii) sponsorship announcements; and
- (g) methods of:
  - (i) handling complaints from the public about datacasting content or compliance with codes of practice; and
  - (ii) reporting to the ACMA on complaints so made; and
- (h) in a case where there are customers of datacasting licensees—dealings with those customers, including methods of billing, fault repair, privacy and credit management; and
- (i) such other matters relating to datacasting content as are of concern to the community.

*Classification etc.*

- (3) In developing codes of practice relating to matters referred to in paragraphs (2)(a) and (c), community attitudes to the following matters are to be taken into account:
  - (a) the portrayal in datacasting content of physical and psychological violence;
  - (b) the portrayal in datacasting content of sexual conduct and nudity;
  - (c) the use in datacasting content of offensive language;
  - (d) the portrayal in datacasting content of the use of drugs, including alcohol and tobacco;
  - (e) the portrayal in datacasting content of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity, nationality, race, gender, sexual preference, age, religion or physical or mental disability;
  - (f) such other matters relating to datacasting content as are of concern to the community.

- (4) In developing codes of practice referred to in paragraph (2)(a), (b) or (c), the group that the ACMA is satisfied represents datacasting licensees must ensure that:
- (a) for the purpose of classifying films—those codes apply the film classification system administered by the Classification Board; and
  - (b) those codes provide for methods of modifying films having particular classifications under that system so that the films are suitable to be transmitted; and
  - (c) those codes provide for the provision of advice to consumers on the reasons for films receiving a particular classification; and
  - (d) for the purpose of classifying interactive computer games—those codes apply the computer games classification system administered by the Classification Board; and
  - (e) those codes provide for the provision of advice to consumers on the reasons for interactive computer games receiving a particular classification; and
  - (f) for the purpose of classifying content (other than films or interactive computer games)—those codes apply the film classification system administered by the Classification Board in a corresponding way to the way in which that system applies to films; and
  - (g) those codes provide for methods of modifying content (other than films or interactive computer games) having particular classifications under that system (as correspondingly applied) so that the content is suitable to be transmitted; and
  - (h) those codes provide for the provision of advice to consumers on the reasons for content (other than films or interactive computer games) receiving a particular classification.
- (5) In developing codes of practice referred to in paragraph (2)(a) or (b), the group that the ACMA is satisfied represents datacasting licensees must ensure that films classified as “M” or “MA 15+” do not portray material that goes beyond the previous “AO” classification criteria.

Clause 29

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*Registration of codes of practice*

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

*Interactive computer game*

- (7) In this clause:
- interactive computer game*** includes a computer game within the meaning of the *Classification (Publications, Films and Computer Games) Act 1995*.

**29 Review by the ACMA**

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

**30 ACMA to maintain Register of codes of practice**

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

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

- (1) If:
  - (a) the ACMA is satisfied that there is convincing evidence that a code of practice registered under clause 28 is not operating to provide appropriate community safeguards for a matter referred to in subclause 28(2) in relation to the datacasting operations of datacasting licensees; and
  - (b) the ACMA is satisfied that it should determine a standard in relation to that matter;the ACMA must, in writing, determine a standard in relation to that matter.
- (2) If:
  - (a) no code of practice has been registered under clause 28 for a matter referred to in subclause 28(2); and
  - (b) the ACMA is satisfied that it should determine a standard in relation to that matter;the ACMA must, by notice in writing, determine a standard in relation to that matter.
- (3) A standard determined under this clause is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Clause 32

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**32 Consultation on standards**

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

**33 Notification of determination or variation or revocation of standards**

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

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

**34 Limitation of ACMA's power in relation to standards**

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

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

This Part does not apply to:

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

**35A This Part does not apply to the ABC or SBS**

For the purposes of this Part, the Australian Broadcasting Corporation and the Special Broadcasting Service Corporation are taken not to be datacasting licensees.

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Clause 35A

Note: If the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation is otherwise a datacasting licensee, it is a duty of the Board of the Corporation to develop a code of practice that relates to the service provided under the licence. See paragraph 8(1)(e) of the *Australian Broadcasting Corporation Act 1983* and paragraph 10(1)(j) of the *Special Broadcasting Service Act 1991*.

## **Part 5—Complaints to the ACMA about datacasting services**

### **36 Complaints about offences or breach of licence conditions**

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

### **37 Complaints under codes of practice**

- (1) If:
  - (a) a person has made a complaint to a datacasting licensee about a matter relating to:
    - (i) datacasting content; or
    - (ii) compliance with a code of practice that applies to the datacasting operations of datacasting licensees and that is included in the Register of codes of practice; and
  - (b) if there is a relevant code of practice relating to the handling of complaints of that kind—the complaint was made in accordance with that code of practice; and
  - (c) either:
    - (i) the person has not received a response within 60 days after making the complaint; or
    - (ii) the person has received a response within that period but considers that response to be inadequate;the person may make a complaint to the ACMA about the matter.



- (2) This clause does not apply to:
  - (a) the transmission of so much of a datacasting service as consists of an Internet carriage service; or
  - (b) the transmission of ordinary electronic mail.
- (3) Also, this clause does not apply if the datacasting licensee is the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

Note: Sections 150 to 153 deal with complaints about a datacasting service provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.

### **38 Investigation of complaints by the ACMA**

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

## **Part 6—Control of datacasting transmitter licences**

### **41 Datacasting transmitter licences not to be controlled by ABC or SBS**

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

## **Part 7—Nominated datacaster declarations**

### **42 Object of this Part**

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

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

### **43 Datacasting transmitter licence**

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

### **44 Applications for nominated datacaster declarations**

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

Clause 45

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- (b) in accordance with a form approved in writing by the ACMA.

**45 Making a nominated datacaster declaration**

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

**46 Effect of nominated datacaster declaration**

If:

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

then:

- (c) for the purposes of the *Radiocommunications Act 1992*, the licensee of the datacasting licence is taken not to operate the radiocommunications transmitter for any purpose in connection with that transmission; and
- (d) for the purposes of this Act:

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

#### **47 Revocation of nominated datacaster declaration**

- (1) The ACMA must, by writing, revoke a nominated datacaster declaration if the ACMA is satisfied that:
  - (a) the licensee of the datacasting transmitter licence is not transmitting, or does not propose to transmit, the datacasting service on behalf of the licensee of the datacasting licence; or
  - (b) the licensee of the datacasting transmitter licence is involved, or proposes to become involved, in the selection or provision of datacasting content to be transmitted on the datacasting service.
- (2) The ACMA must, by writing, revoke a nominated datacaster declaration if:
  - (a) the licensee of the datacasting transmitter licence; or
  - (b) the licensee of the datacasting licence;gives the ACMA a written notice stating that the licensee does not consent to the continued operation of the declaration.
- (3) The ACMA must give a copy of the revocation to:
  - (a) the licensee of the datacasting transmitter licence; and
  - (b) the licensee of the datacasting licence.

**Clause 48**

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

**48 Register of nominated datacaster declarations**

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

## **Part 8—Remedies for breaches of licensing provisions**

### **Division 1—Providing a datacasting service without a licence**

#### **49 Prohibition on providing a datacasting service without a licence**

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

Penalty: 20,000 penalty units.

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

Note 1: For exemptions for broadcasters, see clause 51.

Note 2: For exemptions for designated teletext services, see clause 51A.

#### **50 Notice for providing a datacasting service without a licence**

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

Penalty: 20,000 penalty units.

**Schedule 6** Datacasting services

**Part 8** Remedies for breaches of licensing provisions

**Division 1** Providing a datacasting service without a licence

**Clause 51**

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

Note 1: For exemptions for broadcasters, see clause 51.

Note 2: For exemptions for designated teletext services, see clause 51A.

**51 Exemption for broadcasting licensees etc.**

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

**51A Exemption for designated teletext services**

Clauses 49 and 50 do not apply to the provision of a designated teletext service (within the meaning of Schedule 4).



## **Division 2—Breaches of licence conditions**

### **52 Offence for breach of conditions**

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

Penalty: 2,000 penalty units.

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

### **53 Remedial directions—breach of conditions**

- (1) If a datacasting licensee has breached, or is breaching, a condition of the licence (other than the condition set out in clause 25), the ACMA may, by written notice given to the licensee, direct the licensee to take action directed towards ensuring that the licensee does not breach the condition, or is unlikely to breach the condition, in the future.
- (2) The following are examples of the kinds of direction that may be given to a licensee under subclause (1):
  - (a) a direction that the licensee implement effective administrative systems for monitoring compliance with a condition of the licence;
  - (b) a direction that the licensee implement a system designed to give the licensee's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a condition of the licence, in so far as those requirements affect the employees, agents or contractors concerned.

Clause 54

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- (3) A person is not required to comply with a notice under subclause (1) until the end of the period specified in the notice. That period must be reasonable.
- (4) A person is guilty of an offence if:
- (a) a person has been given a notice under subclause (1); and
  - (b) the person intentionally engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.
- Penalty: 20,000 penalty units.
- (5) A person who contravenes subclause (4) is guilty of a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

**54 Suspension and cancellation**

- (1) If a person who is a datacasting licensee:
- (a) fails to comply with a notice under clause 53; or
  - (b) breaches a condition of the licence;
- the ACMA may, by written notice given to the person:
- (c) suspend the licence for such period, not exceeding 3 months, as is specified in the notice; or
  - (d) cancel the licence.
- (2) If a datacasting licence is suspended because of a breach of a condition set out in clause 14, 16, 20B or 21, the ACMA may take such action, by way of suspending one or more datacasting licences held by:
- (a) the licensee; or
  - (b) a related body corporate of the licensee;
- as the ACMA considers necessary to ensure that the same, or a substantially similar, datacasting service is not transmitted by the licensee or the related body corporate, as the case may be, during the period of suspension.

- (3) If a datacasting licence is cancelled because of a breach of a condition set out in clause 14, 16, 20B or 21, the ACMA may take such action, by way of cancelling one or more datacasting licences held by:
- (a) the licensee; or
  - (b) a related body corporate of the licensee;
- as the ACMA considers necessary to ensure that the same, or a substantially similar, datacasting service is not transmitted by the licensee or the related body corporate, as the case may be, at a time after the cancellation.
- (4) If the ACMA proposes to take action against a person under subclause (1), (2) or (3), the ACMA must give to the person:
- (a) written notice of its intention; and
  - (b) a reasonable opportunity to make representations to the ACMA in relation to the proposed action.

## 55 Injunctions

### *Restraining injunctions*

- (1) If a person who is a datacasting licensee has engaged, is engaging or is proposing to engage, in any conduct in contravention of a condition of the licence (other than a condition set out in clause 25), the Federal Court may, on the application of the ACMA, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.
- (2) If a person has engaged, is engaging or is proposing to engage, in any conduct in contravention of clause 49, the Federal Court may, on the application of the ACMA, grant an injunction:
- (a) restraining the person from engaging in the conduct; and
  - (b) if, in the court's opinion, it is desirable to do so—requiring the person to do something.

Clause 56

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*Performance injunctions*

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

the Federal Court may, on the application of the ACMA, grant an injunction requiring the person to do that act or thing.

**56 Federal Court's powers relating to injunctions**

*Grant of interim injunction*

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

*No undertakings as to damages*

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

*Discharge etc. of injunctions*

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

*Certain limits on granting injunctions do not apply*

- (4) The power of the Federal Court under clause 55 to grant an injunction restraining a person from engaging in conduct of a particular kind may be exercised:
- (a) if the court is satisfied that the person has engaged in conduct of that kind—whether or not it appears to the court that the

person intends to engage again, or to continue to engage, in conduct of that kind; or

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

*Other powers of the court unaffected*

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

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

- (1) For the purposes of this clause, an *eligible decision* is:
- (a) a decision under clause 26 to impose or vary a condition of a datacasting licence; or
  - (b) a decision to give a direction under clause 53 (which deals with remedial directions); or
  - (c) a decision to suspend or cancel a datacasting licence under clause 54.

Clause 57

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- (2) An order must not be made under paragraph 15(1)(a) or 15A(1)(a) of the *Administrative Decisions (Judicial Review) Act 1977* in relation to an eligible decision if:
- (a) the order has the effect of suspending the operation of the eligible decision for more than 3 months; or
  - (b) the order and any previous order or orders made under the paragraph concerned have the combined effect of suspending the operation of the eligible decision for more than 3 months.
- (3) An order must not be made under paragraph 15(1)(b) or 15A(1)(b) of the *Administrative Decisions (Judicial Review) Act 1977* in relation to an eligible decision if:
- (a) the order has the effect of staying particular proceedings under the eligible decision for more than 3 months; or
  - (b) the order and any previous order or orders made under the paragraph concerned have the combined effect of staying particular proceedings under the eligible decision for more than 3 months.
- (4) If:
- (a) a person applies to the Federal Court under subsection 39B(1) of the *Judiciary Act 1903* for a writ or injunction in relation to an eligible decision; and
  - (b) an order could be made staying, or otherwise affecting the operation or implementation of, the eligible decision pending the finalisation of the application;
- such an order must not be made if:
- (c) the order has the effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months; or
  - (d) the order and any previous order or orders covered by paragraph (b) have the combined effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months.
- (5) If:
- (a) a person applies to the Administrative Appeals Tribunal for review of an eligible decision; and

- (b) an order could be made under subsection 41(2) of the *Administrative Appeals Tribunal Act 1975* staying, or otherwise affecting the operation or implementation of, the eligible decision;

such an order must not be made if:

- (c) the order has the effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months; or
- (d) the order and any previous order or orders covered by paragraph (b) have the combined effect of staying, or otherwise affecting the operation or implementation of, the eligible decision for more than 3 months.

Clause 58

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## Part 9—Review of decisions

### 58 Review by the Administrative Appeals Tribunal

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

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<b>Reviewable decisions</b>			
<b>Item</b>	<b>Decision</b>	<b>Provision</b>	<b>Person who may apply</b>
1	refusal to allocate datacasting licence	clause 7 or 8	the applicant
2	that a person is not a suitable applicant	subclause 9(1)	the person
2A	that an Internet carriage service is a declared Internet carriage service	subclause 23B(1)	the licensee
3	that a person is not a suitable licensee	subclause 25(3)	the licensee
4	Variation of datacasting licence conditions or imposition of new conditions	subclause 26(1)	the licensee
4A	refusal to make an exemption order	clause 27B	the licensee
5	refusal to include a code of practice in the Register	subclause 28(6)	the relevant industry group
6	refusal to make a nominated datacaster declaration	clause 45	the licensee of the datacasting transmitter licence or the licensee of the datacasting licence

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<b>Reviewable decisions</b>			
<b>Item</b>	<b>Decision</b>	<b>Provision</b>	<b>Person who may apply</b>
7	revocation of a nominated datacaster declaration	clause 47	the licensee of the datacasting transmitter licence or the licensee of the datacasting licence
8	to give or vary, or to refuse to revoke, a direction	clause 53	the licensee
9	suspension or cancellation of datacasting licence	clause 54	the licensee

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

If the ACMA makes a decision that is reviewable under clause 58, the ACMA is to include in the document by which the decision is notified:

- (a) a statement setting out the reasons for the decision; and
- (b) a statement to the effect that an application may be made to the Administrative Appeals Tribunal for a review of the decision.

## Part 10—Miscellaneous

### 60 Datacasting technical standards

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

(4) Section 589 of the *Telecommunications Act 1997* applies to regulations made for the purposes of this clause in a corresponding way to the way in which it applies to an instrument under that Act.

(5) In this clause:

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

***conditional access system*** means a conditional access system that:

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

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

***eligible datacasting service*** means:

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



**Table of Acts****Notes to the *Broadcasting Services Act 1992*****Note 1**

The *Broadcasting Services Act 1992* as shown in this compilation comprises Act No. 110, 1992 amended as indicated in the Tables below.

For transitional provisions relating to the implementation of this Act see the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* (No. 105, 1992) (as amended).

For application, saving or transitional provisions made by the *Corporations (Repeals, Consequential and Transitional) Act 2001*, see Act No. 55, 2001.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

For all other relevant information pertaining to application, saving or transitional provisions see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Broadcasting Services Act 1992</i>	110, 1992	14 July 1992	Ss. 4, 5, 7–92 and 117–218: 5 Oct 1992 (see <i>Gazette</i> 1992, No. GN38) Remainder: Royal Assent	
<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>	167, 1992	11 Dec 1992	1 July 1993	—
<i>Broadcasting Services (Subscription Television Broadcasting) Amendment Act 1992</i>	171, 1992	11 Dec 1992	11 Dec 1992	—
<i>Transport and Communications Legislation Amendment Act (No. 3) 1992</i>	216, 1992	24 Dec 1992	Ss. 10–13, 15–18 and 20: Royal Assent (a) Ss. 14 and 19: 24 June 1993 (a)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Tobacco Advertising Prohibition Act 1992</i>	218, 1992	24 Dec 1992	Ss. 36 and 37: 1 July 1993 (b)	—
<i>Broadcasting Services Amendment Act 1993</i>	1, 1993	14 May 1993	14 May 1993	—
<i>Broadcasting Services Amendment Act (No. 2) 1993</i>	2, 1993	14 May 1993	14 May 1993	—
<i>Communications and the Arts Legislation Amendment Act (No. 1) 1995</i>	32, 1995	12 Apr 1995	S. 3 (items 6–51): Royal Assent (c)	—
<i>Competition Policy Reform Act 1995</i>	88, 1995	20 July 1995	S. 77: 6 Nov 1995 (see <i>Gazette</i> 1995, No. S423) (d)	—
<i>Broadcasting Services Amendment Act 1995</i>	139, 1995	8 Dec 1995	Ss. 1, 2, 8, 9, 12(1), 13 and 14: Royal Assent Remainder: 5 Jan 1996	Ss. 3(2) and 14–16
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	Schedule 1 (items 7–12): 1 July 1997 (e) Schedule 1 (items 13, 14): (e)	—
<i>Broadcasting Services Amendment Act 1997</i>	115, 1997	7 July 1997	7 July 1997	Sch. 1 (item 5)
<i>Communications Legislation Amendment Act (No. 1) 1997</i>	119, 1997	7 July 1997	4 Aug 1997	—
<i>Broadcasting Services Legislation Amendment Act 1997</i>	143, 1997	8 Oct 1997	8 Oct 1997	Sch. 1 (items 8, 9)
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 597–604): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (f)	—
<i>Broadcasting Services Amendment Act (No. 2) 1997</i>	180, 1997	27 Nov 1997	25 Dec 1997	—
<i>Financial Sector Reform (Consequential Amendments) Act 1998</i>	48, 1998	29 June 1998	Schedule 1 (item 24): 1 July 1998 (see <i>Gazette</i> 1998, No. S316) (g)	—
<i>Television Broadcasting Services (Digital Conversion) Act 1998</i>	99, 1998	27 July 1998	27 July 1998	Sch. 1 (item 7)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Broadcasting Services Amendment (Online Services) Act 1999</i>	90, 1999	16 July 1999	16 July 1999	—
<i>Broadcasting Services Amendment Act (No. 2) 1999</i>	122, 1999	13 Oct 1999	13 Oct 1999	—
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 282, 283): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (h)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (item 68): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (i)	—
<i>Broadcasting Services Amendment Act (No. 1) 1999</i>	197, 1999	23 Dec 1999	Schedule 2: 20 Jan 2000 Schedule 3 (Part 2): (j) Remainder: Royal Assent	Sch. 3 (items 10, 11, 19)
<i>Broadcasting Services Amendment Act (No. 3) 1999</i>	198, 1999	23 Dec 1999	Schedule 1 (items 6–19): 1 July 2000 Schedule 1 (items 20, 22): 1 July 2001 Schedule 1 (item 21): (k) Remainder: Royal Assent	Sch. 1 (items 5, 19, 22)
<i>Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000</i>	108, 2000	3 Aug 2000	Schedule 1 (items 75, 137, 137A, 142, 143): Royal Assent Schedule 1 (items 134A–134D, 136A, 136B, 136D–136J, 139A, 139D, 139E): 3 Feb 2001 Remainder: 1 Jan 2001 (see <i>Gazette</i> 2000, No. GN50)	Sch. 1 (items 141–145)

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000</i>	137, 2000	24 Nov 2000	Ss. 1–3 and Schedule 1 (items 1, 4, 6, 7, 9–11, 32): Royal Assent Remainder: 24 May 2001	Sch. 2 (items 418, 419)
<i>Broadcasting Services Amendment Act 2000</i>	172, 2000	21 Dec 2000	Schedule 2: (l) Remainder: Royal Assent	Sch. 1 (item 36)
<i>Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001</i>	5, 2001	20 Mar 2001	Schedule 1 (items 18–26, 28–38): (m) Schedule 1 (item 27): 1 July 2001 (m)	S. 4
<i>Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2001</i>	13, 2001	22 Mar 2001	22 Mar 2002	—
<i>Broadcasting Legislation Amendment Act 2001</i>	23, 2001	6 Apr 2001	6 Apr 2001	—
<i>Corporations (Repeals, Consequential and Transitionals) Act 2001</i>	55, 2001	28 June 2001	Ss. 4–14 and Schedule 3 (items 88–93): 15 July 2001 (see <i>Gazette</i> 2001, No. S285) (n)	Ss. 4–14
<i>Broadcasting Legislation Amendment Act (No. 2) 2001</i>	92, 2001	20 July 2001	20 July 2001	Ss. 4 and 5
<i>Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001</i>	121, 2001	24 Sept 2001	Ss. 1–3: Royal Assent Remainder: 1 July 2002 (see s. 2(2) and <i>Gazette</i> 2002, No. GN24)	—
<i>Broadcasting Legislation Amendment Act (No. 2) 2002</i>	120, 2002	2 Dec 2002	Schedules 1 and 2: 30 Dec 2002 Remainder: Royal Assent	Sch. 1 (item 16) and Sch. 2 (items 11, 12)
<i>Broadcasting Legislation Amendment Act (No. 1) 2002</i>	126, 2002	10 Dec 2002	10 Dec 2002	—
<i>Broadcasting Legislation Amendment Act (No. 1) 2003</i>	4, 2003	26 Feb 2003	26 Feb 2003	—



**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Therapeutic Goods Amendment Act (No. 1) 2003</i>	39, 2003	27 May 2003	Schedule 2: 27 Nov 2003	Sch. 2 (item 3)
<i>Communications Legislation Amendment Act (No. 3) 2003</i>	108, 2003	24 Oct 2003	Schedule 1 (items 1–7): 12 Dec 2003 (see <i>Gazette</i> 2003, No. GN49) Schedule 1 (items 25–48): 21 Nov 2003 Remainder: Royal Assent	Sch. 1 (item 24)
<i>Classification (Publications, Films and Computer Games) Amendment Act 2004</i>	61, 2004	26 May 2004	Schedules 1 and 2: 26 May 2005 Remainder: Royal Assent	Sch. 2 (items 30–32)
<i>US Free Trade Agreement Implementation Act 2004</i>	120, 2004	16 Aug 2004	Schedule 10: Royal Assent	—
<i>Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004</i>	127, 2004	31 Aug 2004	Schedule 1 (item 2): 1 Mar 2005	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	S. 4 and Schedule 1 (items 109, 496): Royal Assent	S. 4 and Sch. 1 (item 496)
<i>Broadcasting Services Amendment (Anti-Siphoning) Act 2005</i>	43, 2005	1 Apr 2005	2 Apr 2005	Sch. 1 (item 2)
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 6–58) and Schedule 4: 1 July 2005 (o) Schedule 2: (o)	Sch. 4

## Act Notes

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- (a) The *Broadcasting Services Act 1992* was amended by sections 10–20 only of the *Transport and Communications Legislation Amendment Act (No. 3) 1992*, subsections 2(1) and (10) of which provide as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
  - (10) If the commencement of sections 14 and 19 is not fixed by Proclamation published in the *Gazette* within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those sections commence on the first day after the end of that period.
- (b) The *Broadcasting Services Act 1992* was amended by sections 36 and 37 only of the *Tobacco Advertising Prohibition Act 1992*, subsection 2(3) of which provides as follows:
- (3) Part 5 commences on 1 July 1993.
- (c) The *Broadcasting Services Act 1992* was amended by section 3 (items 6–51) only of the *Communications and the Arts Legislation Amendment Act (No. 1) 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (d) The *Broadcasting Services Act 1992* was amended by section 77 only of the *Competition Policy Reform Act 1995*, subsection 2(2) of which provides as follows:
- (2) Part 3 commences on a day to be fixed by Proclamation. However, if Part 3 does not commence by Proclamation within the period of 6 months beginning on the day on which this Act receives the Royal Assent, then it commences on the first day after the end of that period.
- (e) The *Broadcasting Services Act 1992* was amended by Schedule 1 (items 7–14) only of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, subsections 2(2)(d) and (5) of which provide as follows:
- (2) The following provisions commence on 1 July 1997:
    - (d) Schedule 1;
  - (5) If the *Broadcasting Services Amendment Act 1997* does not commence before 1 July 1997, the amendments of section 171 of the *Broadcasting Services Act 1992* made by this Act commence immediately after the commencement of the *Broadcasting Services Amendment Act 1997*.
- The *Broadcasting Services Amendment Act 1997* came into operation on 7 July 1997.
- (f) The *Broadcasting Services Act 1992* was amended by Schedule 2 (items 597–604) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (g) The *Broadcasting Services Act 1992* was amended by Schedule 1 (item 24) only of the *Financial Sector Reform (Consequential Amendments) Act 1998*, subsection 2(2) of which provides as follows:
- (2) Subject to subsections (3) to (14), Schedules 1, 2 and 3 commence on the commencement of the *Australian Prudential Regulation Authority Act 1998*.
- (h) The *Broadcasting Services Act 1992* was amended by Schedule 1 (items 282 and 283) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.

**Act Notes**

- (i) The *Broadcasting Services Act 1992* was amended by Schedule 10 (item 68) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
- (c) the items in Schedules 10, 11 and 12.
- (j) Subsection 2(3) of the *Broadcasting Services Amendment Act (No. 1) 1999* provides as follows:
- (3) Part 2 of Schedule 3 commences immediately after the commencement of the *Copyright Amendment (Digital Agenda) Act 2000*.
- The *Copyright Amendment (Digital Agenda) Act 2000* came into operation on 4 March 2001.
- (k) Subsection 2(3)(a) of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001* provides as follows:
- (3) If section 1 of this Act commences before 1 July 2001:
- (a) item 21 of Schedule 1 to the *Broadcasting Services Amendment Act (No. 3) 1999* does not commence (despite section 2 of that Act); and
- Section 1 commenced on 24 May 2001.
- (l) Subsection 2(2) of the *Broadcasting Services Amendment Act 2000* provides as follows:
- (2) Schedule 2 commences immediately after the commencement of item 140 of Schedule 1 to the *Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000*.
- Schedule 1 (item 140) commenced on 1 January 2001 (see *Gazette* 2000, No. GN50).
- (m) The *Broadcasting Services Act 1992* was amended by Schedule 1 (items 18–38) only of the *Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001*, subsections 2(1)(a) and (3)(b) of which provide as follows:
- (1) Subject to this section, this Act commences at the latest of the following times:
- (a) immediately after the commencement of item 15 of Schedule 1 to the *Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000*;
- (3) If section 1 of this Act commences before 1 July 2001:
- (b) item 27 of Schedule 1 to this Act commences on 1 July 2001.
- Item 15 commenced on 24 May 2001.
- (n) The *Broadcasting Services Act 1992* was amended by Schedule 3 (items 88–93) only of the *Corporations (Repeals, Consequential and Transitional) Act 2001*, subsection 2(3) of which provides as follows:
- (3) Subject to subsections (4) to (10), Schedule 3 commences, or is taken to have commenced, at the same time as the *Corporations Act 2001*.
- (o) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

## Act Notes

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Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Title .....	am. No. 115, 1997; No. 90, 1999; No. 108, 2000
<b>Part 1</b>	
S. 3 .....	am. No. 90, 1999; Nos. 108 and 172, 2000
S. 4 .....	am. No. 90, 1999; Nos. 108 and 172, 2000; No. 45, 2005
Heading to s. 5 .....	am. No. 45, 2005
S. 5 .....	am. No. 90, 1999; No. 108, 2000; No. 45, 2005
S. 6 .....	am. Nos. 167 and 216, 1992; No. 1, 1993; No. 32, 1995; Nos. 59 and 119, 1997; No. 198, 1999; Nos. 108, 137 and 172, 2000; No. 120, 2002; No. 45, 2005
Note to s. 7 .....	ad. No. 108, 2000
S. 8A .....	ad. No. 108, 2000
S. 8B .....	ad. No. 120, 2002 am. No. 45, 2005
S. 10A .....	ad. No. 5, 2001
<b>Part 2</b>	
S. 11 .....	am. No. 172, 2000
S. 11A .....	ad. No. 172, 2000
S. 12 .....	am. No. 172, 2000
S. 17 .....	am. No. 216, 1992
S. 18 .....	am. No. 216, 1992; No. 108, 2000
S. 18A .....	ad. No. 172, 2000
Heading to s. 19 .....	am. No. 45, 2005
S. 19 .....	am. No. 172, 2000; No. 45, 2005
Heading to s. 21 .....	am. No. 45, 2005
S. 21 .....	am. No. 172, 2000; No. 45, 2005
Heading to s. 22 .....	am. No. 45, 2005
S. 22 .....	am. No. 45, 2005
<b>Part 3</b>	
S. 23 .....	am. No. 45, 2005
Heading to s. 24 .....	am. No. 45, 2005
S. 24 .....	am. No. 45, 2005
S. 25 .....	am. No. 167, 1992; No. 45, 2005
Ss. 26, 27 .....	am. No. 45, 2005
S. 28 .....	rs. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
Heading to s. 28A .....	am. No. 108, 2000
S. 28A .....	ad. No. 99, 1998 am. No. 108, 2000
S. 29 .....	am. No. 119, 1997; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to s. 30 .....	am. No. 45, 2005
S. 30 .....	am. No. 45, 2005
S. 31 .....	am. No. 119, 1997; No. 45, 2005
S. 33 .....	am. No. 45, 2005
S. 34 .....	am. No. 119, 1997; No. 99, 1998; No. 108, 2000; No. 45, 2005
S. 35 .....	am. No. 45, 2005
<b>Part 4</b>	
Heading to s. 36 .....	am. No. 45, 2005
Ss. 36, 37 .....	am. No. 45, 2005
Heading to s. 38 .....	am. No. 45, 2005
S. 38 .....	am. No. 45, 2005
Subhead. to s. 38A(2) .....	am. No. 45, 2005
S. 38A .....	ad. No. 139, 1995 am. No. 99, 1998; No. 108, 2000; No. 45, 2005
S. 38B .....	ad. No. 108, 2000 am. No. 92, 2001; No. 108, 2003; No. 45, 2005
Subhead. to s. 39(4) .....	am. No. 45, 2005
S. 39 .....	rs. No. 139, 1995 am. No. 45, 2005
S. 40 .....	am. No. 45, 2005
S. 41 .....	am. No. 108, 2000; No. 45, 2005
Heading to s. 43 .....	am. No. 45, 2005
Ss. 43, 44 .....	am. No. 45, 2005
S. 46 .....	am. No. 45, 2005
Heading to s. 47 .....	am. No. 45, 2005
S. 47 .....	am. No. 45, 2005
S. 49 .....	am. No. 45, 2005
<b>Part 5</b>	
Heading to Part 5 .....	rs. No. 108, 2000
<b>Division 1</b>	
S. 52 .....	am. No. 45, 2005
<b>Division 2</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A .....	ad. No. 108, 2000
of Div. 2 of Part 5	
<b>Subdivision B</b>	
Heading to Subdiv. B .....	ad. No. 108, 2000
of Div. 2 of Part 5	
S. 54A .....	ad. No. 108, 2000
<b>Division 3</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A .....	ad. No. 108, 2000
of Div. 3 of Part 5	

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision B</b>	
Heading to Subdiv. B ..... of Div. 3 of Part 5	ad. No. 108, 2000
S. 56A.....	ad. No. 108, 2000
<b>Division 4</b>	
S. 57 .....	am. No. 139, 1995
S. 58 .....	am. No. 45, 2005
<b>Division 5</b>	
S. 59 .....	am. No. 143, 1997; No. 45, 2005
<b>Division 6</b>	
Ss. 62, 63 .....	am. No. 32, 1995; No. 108, 2000; No. 45, 2005
Heading to s. 64.....	am. No. 108, 2000; No. 45, 2005
S. 64 .....	am. No. 32, 1995; No. 108, 2000; No. 45, 2005
Heading to s. 65.....	am. No. 45, 2005
S. 65 .....	am. No. 32, 1995; No. 45, 2005
<b>Division 7</b>	
S. 66 .....	am. No. 32, 1995; No. 108, 2000; No. 5, 2001; No. 45, 2005
Ss. 67, 68 .....	am. No. 45, 2005
S. 69 .....	am. No. 32, 1995; No. 108, 2000
<b>Division 8</b>	
Heading to Div. 8..... of Part 5	am. No. 45, 2005
Heading to s. 70.....	am. No. 45, 2005
Ss. 70, 71 .....	am. No. 45, 2005
S. 72 .....	am. No. 32, 1995; No. 108, 2000
<b>Division 9</b>	
S. 73 .....	rs. No. 139, 1995; No. 99, 1998 am. No. 108, 2000
S. 73A .....	ad. No. 108, 2000 rs. No. 92, 2001
<b>Division 10</b>	
Heading to Div. 10..... of Part 5	am. No. 45, 2005
Heading to s. 74.....	am. No. 45, 2005
S. 74 .....	am. No. 108, 2000; No. 45, 2005
<b>Division 11</b>	
S. 75 .....	am. No. 139, 1995; No. 99, 1998; No. 108, 2000; No. 45, 2005
<b>Part 6</b>	
S. 79A .....	ad. No. 119, 1997
Heading to s. 80.....	am. No. 45, 2005
S. 80 .....	am. No. 45, 2005
S. 81 .....	am. No. 120, 2002; No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 82 .....	am. No. 45, 2005
S. 83 .....	am. No. 108, 2000; No. 120, 2002; No. 45, 2005
S. 84 .....	am. No. 45, 2005
Heading to s. 85 .....	am. No. 45, 2005
S. 85 .....	am. No. 45, 2005
S. 86 .....	am. No. 120, 2002
Heading to s. 87 .....	am. No. 45, 2005
S. 87 .....	am. No. 120, 2002; No. 45, 2005
S. 87A .....	ad. No. 120, 2002 am. No. 45, 2005
S. 88 .....	am. No. 45, 2005
S. 90 .....	am. No. 120, 2002; No. 45, 2005
Heading to s. 91 .....	rs. No. 120, 2002 am. No. 45, 2005
S. 91 .....	am. No. 120, 2002; No. 45, 2005
S. 92 .....	am. No. 45, 2005
<b>Part 6A</b>	
Part 6A .....	ad. No. 119, 1997
Ss. 92A–92C .....	ad. No. 119, 1997 am. No. 45, 2005
S. 92D .....	ad. No. 119, 1997 am. No. 108, 2000; No. 45, 2005
S. 92E .....	ad. No. 119, 1997 am. No. 45, 2005
S. 92F .....	ad. No. 119, 1997 am. No. 99, 1998; No. 45, 2005
S. 92G .....	ad. No. 119, 1997 am. No. 45, 2005
S. 92H .....	ad. No. 119, 1997
Heading to s. 92J .....	am. No. 45, 2005
S. 92J .....	ad. No. 119, 1997 am. No. 45, 2005
S. 92K .....	ad. No. 119, 1997
S. 92L .....	ad. No. 119, 1997 am. No. 45, 2005
<b>Part 7</b>	
Part 7 .....	ad. No. 171, 1992
<b>Division 1</b>	
S. 93 .....	ad. No. 171, 1992 am. No. 88, 1995 rep. No. 45, 2005
S. 94 .....	ad. No. 171, 1992 am. No. 1, 1993
S. 95 .....	ad. No. 171, 1992 am. No. 45, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 96 .....	ad. No. 171, 1992 am. No. 1, 1993; No. 88, 1995; No. 45, 2005
S. 96A .....	ad. No. 1, 1993 am. No. 88, 1995; No. 45, 2005
S. 97 .....	ad. No. 171, 1992 am. No. 88, 1995; No. 45, 2005
S. 98 .....	ad. No. 171, 1992 am. No. 108, 2000; No. 45, 2005
Ss. 98A, 98B .....	ad. No. 2, 1993 am. No. 88, 1995 rep. No. 45, 2005
S. 98C .....	ad. No. 2, 1993 rep. No. 45, 2005
S. 98D .....	ad. No. 2, 1993
<b>Division 2</b>	
S. 99 .....	ad. No. 171, 1992 am. No. 45, 2005
S. 100 .....	ad. No. 171, 1992 am. No. 1, 1993; No. 45, 2005
S. 101 .....	ad. No. 171, 1992 rep. No. 45, 2005
S. 102 .....	ad. No. 171, 1992 rep. No. 198, 1999
S. 103 .....	ad. No. 171, 1992 rep. No. 45, 2005
<b>Division 2A</b>	
Div. 2A of Part 7 .....	ad. No. 198, 1999
<b>Subdivision A</b>	
S. 103A .....	ad. No. 198, 1999
S. 103B .....	ad. No. 198, 1999 am. No. 198, 1999; No. 55, 2001
Ss. 103C–103H, 103J, 103K....	ad. No. 198, 1999
Heading to s. 103L .....	am. No. 45, 2005
S. 103L .....	ad. No. 198, 1999 am. No. 45, 2005
S. 103M .....	ad. No. 198, 1999
<b>Subdivision B</b>	
Ss. 103N, 103P .....	ad. No. 198, 1999
<b>Subdivision C</b>	
Ss. 103R, 103S .....	ad. No. 198, 1999
<b>Subdivision D</b>	
S. 103T .....	ad. No. 198, 1999
Note to s. 103T .....	rep. No. 198, 1999
<b>Subdivision E</b>	
Ss. 103U–103W .....	ad. No. 198, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Subdivision F</b>	
Ss. 103X, 103Y .....	ad. No. 198, 1999
<b>Subdivision G</b>	
S. 103Z .....	ad. No. 198, 1999
Note to s. 103Z .....	rep. No. 198, 1999
<b>Subdivision H</b>	
Ss. 103ZA, 103ZB .....	ad. No. 198, 1999 am. No. 45, 2005
Heading to s. 103ZC .....	am. No. 45, 2005
S. 103ZC .....	ad. No. 198, 1999 am. No. 45, 2005
S. 103ZD .....	ad. No. 198, 1999
<b>Subdivision I</b>	
Heading to s. 103ZE .....	am. No. 45, 2005
Ss. 103ZE, 103ZF .....	ad. No. 198, 1999 am. No. 45, 2005
<b>Subdivision J</b>	
S. 103ZG .....	ad. No. 198, 1999 am. No. 45, 2005
Ss. 103ZH, 103ZJ .....	ad. No. 198, 1999
Ss. 103ZK, 103ZL .....	ad. No. 198, 1999 rep. No. 198, 1999
Subdiv. K of Div. 2A of Part 7 ...	rep. No. 198, 1999
Ss. 103ZM, 103ZN .....	ad. No. 198, 1999 rep. No. 198, 1999
<b>Division 3</b>	
<b>Subdivision A</b>	
S. 104 .....	ad. No. 171, 1992
S. 105 .....	ad. No. 171, 1992 am. No. 45, 2005
<b>Subdivision B</b>	
Ss. 106–110 .....	ad. No. 171, 1992
<b>Division 4</b>	
S. 111 .....	ad. No. 171, 1992 am. No. 32, 1995
<b>Division 5</b>	
S. 112 .....	ad. No. 171, 1992 am. No. 32, 1995; No. 45, 2005
<b>Division 6</b>	
S. 113 .....	ad. No. 171, 1992
S. 114 .....	ad. No. 171, 1992 am. No. 45, 2005
S. 115 .....	ad. No. 171, 1992 am. No. 139, 1995; No. 92, 2001; No. 43, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 116 .....	ad. No. 171, 1992 am. No. 139, 1995
Ss. 116A–116C .....	ad. No. 171, 1992
<b>Part 8</b>	
Ss. 117–120 .....	am. No. 45, 2005
<b>Part 8A</b>	
Part 8A .....	ad. No. 197, 1999
S. 121A.....	ad. No. 197, 1999 am. No. 45, 2005
S. 121B.....	ad. No. 197, 1999 am. No. 55, 2001
Ss. 121C, 121D.....	ad. No. 197, 1999
Heading to s. 121E.....	am. No. 45, 2005
S. 121E.....	ad. No. 197, 1999 am. No. 45, 2005
<b>Part 8B</b>	
Part 8B.....	ad. No. 172, 2000
<b>Division 1</b>	
S. 121F .....	ad. No. 172, 2000 am. No. 45, 2005
S. 121FAA .....	ad. No. 172, 2000
<b>Division 2</b>	
Ss. 121FA–121FE.....	ad. No. 172, 2000 am. No. 45, 2005
<b>Division 3</b>	
S. 121FF.....	ad. No. 172, 2000 am. No. 45, 2005
<b>Division 4</b>	
S. 121FG .....	ad. No. 172, 2000
S. 121FH.....	ad. No. 172, 2000 am. No. 5, 2001; No. 45, 2005
S. 121FJ .....	ad. No. 172, 2000 am. No. 5, 2001
Ss. 121FK, 121FL.....	ad. No. 172, 2000 am. No. 45, 2005
<b>Division 4A</b>	
S. 121FLA.....	ad. No. 172, 2000
Ss. 121FLB–121FLE.....	ad. No. 172, 2000 am. No. 45, 2005
S. 121FLF .....	ad. No. 172, 2000 am. No. 5, 2001
Ss. 121FLG, 121FLH, ..... 121FLJ	ad. No. 172, 2000 am. No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 5</b>	
Heading to Div. 5 ..... of Part 8B	am. No. 45, 2005
Ss. 121FM, 121FN.....	ad. No. 172, 2000 am. No. 45, 2005
<b>Division 6</b>	
Ss. 121FP–121FR.....	ad. No. 172, 2000 am. No. 45, 2005
S. 121FS.....	ad. No. 172, 2000
<b>Part 9</b>	
S. 122.....	am. No. 120, 2002; No. 120, 2004; No. 45, 2005
S. 123.....	am. No. 216, 1992; No. 180, 1997; No. 120, 2002; No. 61, 2004; No. 45, 2005
Heading to s. 123A.....	am. No. 45, 2005
S. 123A.....	ad. No. 216, 1992 am. No. 180, 1997; No. 45, 2005
Heading to s. 124.....	am. No. 45, 2005
S. 124.....	am. No. 45, 2005
Heading to s. 125.....	am. No. 45, 2005
Ss. 125–127.....	am. No. 45, 2005
S. 128.....	rs. No. 171, 1992
Heading to s. 129.....	am. No. 45, 2005
S. 129.....	am. No. 45, 2005
<b>Part 10</b>	
<b>Division 1</b>	
Ss. 131–135.....	am. No. 32, 1995
<b>Division 2</b>	
Heading to Div. 2 ..... of Part 10	am. No. 45, 2005
S. 137.....	am. No. 45, 2005
S. 138.....	am. No. 32, 1995
<b>Division 3</b>	
S. 139.....	am. No. 32, 1995; No. 119, 1997; No. 198, 1999 rs. No. 5, 2001 am. No. 5, 2001
S. 141.....	am. No. 45, 2005
S. 142.....	am. No. 32, 1995
S. 143.....	am. No. 198, 1999; No. 55, 2001; No. 45, 2005
<b>Division 4</b>	
S. 144.....	am. No. 45, 2005
<b>Division 5</b>	
S. 146.....	am. No. 45, 2005
<b>Part 10A</b>	
Part 10A.....	ad. No. 197, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 1</b>	
S. 146A.....	ad. No. 197, 1999
S. 146B.....	ad. No. 197, 1999 am. No. 55, 2001
S. 146C.....	ad. No. 197, 1999
S. 146CA.....	ad. No. 197, 1999
Subhead. to s. 146D(4).....	am. No. 45, 2005
S. 146D.....	ad. No. 197, 1999 am. No. 45, 2005
<b>Division 2</b>	
Ss. 146E–146H, 146J, ..... 146K, 146KA	ad. No. 197, 1999
<b>Division 3</b>	
Ss. 146L–146N, 146P–146R....	ad. No. 197, 1999
<b>Division 4</b>	
S. 146S.....	ad. No. 197, 1999
<b>Part 11</b>	
Heading to Part 11 .....	am. No. 45, 2005
<b>Division 1</b>	
Ss. 147, 148 .....	am. No. 45, 2005
Heading to s. 149 .....	am. No. 45, 2005
S. 149 .....	am. No. 45, 2005
<b>Division 2</b>	
Heading to Div. 2 of Part 11 .....	rs. No. 23, 2001
Heading to s. 150 .....	am. No. 23, 2001
S. 150 .....	am. No. 23, 2001; No. 45, 2005
Heading to s. 151 .....	am. No. 45, 2005
S. 151 .....	am. No. 23, 2001; No. 45, 2005
Heading to s. 152 .....	am. No. 45, 2005
S. 152 .....	am. No. 45, 2005
Heading to s. 153 .....	am. No. 45, 2005
S. 153 .....	am. No. 45, 2005
Part 12 .....	rep. No. 45, 2005
S. 154 .....	rep. No. 45, 2005
Note to s. 154(2) .....	ad. No. 152, 1997 rep. No. 45, 2005
S. 155 .....	rep. No. 45, 2005
S. 156 .....	am. No. 32, 1995 rep. No. 45, 2005
S. 157 .....	am. No. 216, 1992; No. 32, 1995 rep. No. 45, 2005
S. 158 .....	am. No. 167, 1992; Nos. 59 and 115, 1997; No. 108, 2000 rep. No. 45, 2005
S. 159.....	rep. No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 160 .....	am. No. 152, 1997; No. 198, 1999 rep. No. 45, 2005
S. 161 .....	rep. No. 152, 1997
Ss. 162–164.....	rep. No. 45, 2005
S. 165 .....	am. No. 146, 1999 rep. No. 45, 2005
Ss. 166, 167.....	rep. No. 45, 2005
<b>Part 13</b>	
Heading to Part 13 .....	am. No. 45, 2005
<b>Division 1</b>	
Heading to s. 168.....	am. No. 45, 2005
S. 168 .....	am. No. 45, 2005
Heading to s. 169.....	am. No. 45, 2005
S. 169 .....	am. No. 45, 2005
<b>Division 2</b>	
Heading to s. 170.....	am. No. 45, 2005
S. 170 .....	am. No. 45, 2005
Heading to s. 171.....	am. No. 45, 2005
S. 171 .....	rs. No. 115, 1997 am. No. 59, 1997; No. 45, 2005
Heading to s. 172.....	am. No. 45, 2005
S. 172 .....	am. No. 115, 1997; No. 45, 2005
Ss. 173, 174.....	am. No. 45, 2005
Ss. 176–180.....	am. No. 45, 2005
<b>Division 3</b>	
S. 181 .....	rep. No. 45, 2005
S. 182 .....	am. No. 45, 2005
Heading to s. 183.....	am. No. 45, 2005
Ss. 183, 184.....	am. No. 45, 2005
Heading to s. 185.....	am. No. 45, 2005
Ss. 185–190.....	am. No. 45, 2005
Heading to s. 191.....	am. No. 45, 2005
Ss. 191–196.....	am. No. 45, 2005
Heading to s. 197.....	am. No. 45, 2005
Ss. 197–199.....	am. No. 45, 2005
<b>Division 4</b>	
S. 200 .....	am. No. 45, 2005
S. 202 .....	am. No. 216, 1992; No. 108, 2000; No. 5, 2001
S. 203 .....	am. No. 45, 2005
<b>Part 14</b>	
S. 204 .....	am. No. 216, 1992; No. 139, 1995; Nos. 119 and 143, 1997; No. 99, 1998; Nos. 197 and 198, 1999; Nos. 108 and 172, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 205 .....	am. No. 45, 2005
<b>Part 14A</b>	
Part 14A .....	ad. No. 143, 1997
S. 205A .....	ad. No. 143, 1997
S. 205B–205D .....	ad. No. 143, 1997 am. No. 45, 2005
<b>Part 15</b>	
Heading to s. 206 .....	am. No. 108, 2000
S. 206 .....	am. No. 108, 2000
S. 207 .....	am. No. 45, 2005
S. 208 .....	am. No. 198, 1999 rep. No. 137, 2000
S. 209 .....	am. No. 32, 1995
S. 210 .....	am. No. 45, 2005
S. 212 .....	am. No. 197, 1999; No. 45, 2005
S. 212A .....	ad. No. 197, 1999 am. No. 55, 2001
S. 212B .....	ad. No. 197, 1999
S. 214 .....	am. Nos. 108 and 172, 2000
S. 215 .....	rs. No. 1, 1993 am. No. 139, 1995 rep. No. 99, 1998
S. 216A .....	ad. No. 99, 1998
S. 216B .....	ad. No. 90, 1999
S. 216C .....	ad. No. 108, 2000
Ss. 216D, 216E .....	ad. No. 108, 2000 rep. No. 45, 2005
S. 217 .....	am. No. 32, 1995
S. 218 .....	am. No. 45, 2005
<b>Schedule 1</b>	
<b>Part 1</b>	
C. 1 .....	am. No. 139, 1995; Nos. 108 and 172, 2000; No. 45, 2005
<b>Part 2</b>	
C. 2 .....	am. No. 108, 2000
C. 4 .....	am. No. 48, 1998; Nos. 108 and 172, 2000; No. 121, 2001; No. 45, 2005
<b>Part 3</b>	
Cc. 6, 7 .....	am. No. 139, 1995
<b>Part 4</b>	
C. 8 .....	am. No. 139, 1995; No. 45, 2005
<b>Schedule 2</b>	
<b>Part 1</b>	
C. 1 .....	am. No. 167, 1992; No. 13, 2001; No. 39, 2003; No. 45, 2005
C. 2 .....	am. No. 218, 1992; No. 120, 2002

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 2</b>	
C. 3A .....	ad. No. 216, 1992
Cc. 4, 5 .....	am. No. 45, 2005
C. 6 .....	am. No. 39, 2003
<b>Part 3</b>	
C. 7 .....	am. Nos. 167, 216 and 218, 1992; No. 143, 1997; No. 99, 1998; No. 197, 1999; No. 108, 2000; No. 13, 2001; No. 61, 2004; No. 45, 2005
<b>Part 4</b>	
C. 8 .....	am. Nos. 167, 216 and 218, 1992; No. 143, 1997; No. 197, 1999; No. 45, 2005
<b>Part 5</b>	
C. 9 .....	am. Nos. 216 and 218, 1992; No. 197, 1999; No. 13, 2001; No. 120, 2002; No. 61, 2004; No. 45, 2005
<b>Part 6</b>	
C. 10 .....	am. Nos. 216 and 218, 1992; No. 2, 1993; No. 139, 1995; No. 197, 1999; No. 13, 2001; No. 61, 2004; No. 45, 2005
<b>Part 7</b>	
C. 11 .....	am. Nos. 216 and 218, 1992; No. 180, 1997; No. 197, 1999; No. 13, 2001; No. 61, 2004; No. 45, 2005
Schedule 3 .....	rep. No. 45, 2005
Cc. 1–5 .....	rep. No. 45, 2005
C. 6 .....	rep. No. 152, 1997
Cc. 7, 8 .....	rep. No. 45, 2005
C. 9 .....	am. No. 152, 1997; No. 156, 1999 rep. No. 45, 2005
Cc. 10–12 .....	rep. No. 45, 2005
Cc. 13, 14 .....	rep. No. 152, 1997
C. 15 .....	rep. No. 45, 2005
C. 16 .....	am. No. 152, 1997 rep. No. 45, 2005
C. 17 .....	rep. No. 45, 2005
C. 18 .....	am. No. 119, 1997; Nos. 90 and 198, 1999; No. 108, 2000 rep. No. 45, 2005
<b>Schedule 4</b>	
Schedule 4 .....	ad. No. 99, 1998
<b>Part 1</b>	
C. 1 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 4, 2003; No. 45, 2005
C. 2 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
Cc. 3, 4 .....	ad. No. 99, 1998
Cc. 4A, 4B .....	ad. No. 108, 2000
C. 5 .....	ad. No. 99, 1998 am. No. 45, 2005



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
C. 5A .....	ad. No. 108, 2000 am. No. 23, 2001
<b>Part 2</b>	
C. 6 .....	ad. No. 99, 1998 am. Nos. 108 and 172, 2000; No. 23, 2001; No. 108, 2003; No. 45, 2005
Heading to c. 7 .....	am. No. 45, 2005
C. 7 .....	ad. No. 99, 1998 am. No. 45, 2005
C. 7A .....	ad. No. 108, 2000 am. No. 45, 2005
Subhead. to c. 8(7) .....	am. No. 108, 2000
C. 8 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
Heading to c. 9 .....	am. No. 45, 2005
Cc. 9–12 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 13 .....	am. No. 45, 2005
C. 13 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 14 .....	am. No. 45, 2005
C. 14 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 15 .....	am. No. 45, 2005
C. 15 .....	ad. No. 99, 1998 am. No. 45, 2005
Cc. 16, 17 .....	ad. No. 99, 1998
C. 18 .....	ad. No. 99, 1998 am. No. 45, 2005
<b>Part 3</b>	
C. 19 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 23, 2001; No. 45, 2005
C. 20 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 45, 2005
C. 21 .....	ad. No. 99, 1998
Heading to c. 22 .....	am. No. 45, 2005
C. 22 .....	ad. No. 99, 1998 am. No. 45, 2005
C. 22A .....	ad. No. 108, 2000 am. No. 45, 2005
Subhead. to c. 23(7) .....	am. No. 108, 2000
C. 23 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
Cc. 24–26 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 27 .....	am. No. 45, 2005

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
C. 27 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 28 .....	am. No. 45, 2005
C. 28 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 29 .....	am. No. 45, 2005
C. 29 .....	ad. No. 99, 1998 am. No. 45, 2005
Cc. 30–32 .....	ad. No. 99, 1998
C. 33 .....	ad. No. 99, 1998 am. No. 45, 2005
C. 34 .....	ad. No. 99, 1998
C. 35 .....	ad. No. 99, 1998 rs. No. 108, 2000
C. 35A .....	ad. No. 108, 2000
C. 36 .....	ad. No. 99, 1998 am. No. 108, 2000
C. 36A .....	ad. No. 99, 1998 rep. No. 108, 2000
<b>Part 3A</b>	
Part 3A .....	ad. No. 108, 2000
Cc. 36B, 36C .....	ad. No. 108, 2000
<b>Part 4</b>	
<b>Division 1</b>	
Heading to Div. 1 of..... Part 4	ad. No. 108, 2000
C. 37 .....	ad. No. 99, 1998 rs. No. 108, 2000
Cc. 37A–37D .....	ad. No. 108, 2000
<b>Division 2</b>	
Div. 2 of Part 4 .....	ad. No. 108, 2000
C. 37E.....	ad. No. 108, 2000 am. No. 23, 2001; No. 126, 2002; Nos. 4 and 108, 2003
Subhead. to c. 37EA(2) .....	am. No. 45, 2005
C. 37EA .....	ad. No. 92, 2001 am. No. 126, 2002; No. 4, 2003; No. 45, 2005
C. 37F .....	ad. No. 108, 2000 am. No. 23, 2001; No. 126, 2002; No. 4, 2003
Subhead. to c. 37FA(2) .....	am. No. 45, 2005
C. 37FA .....	ad. No. 92, 2001 am. No. 126, 2002; No. 4, 2003; No. 45, 2005
Cc. 37G, 37H .....	ad. No. 108, 2000 am. No. 92, 2001; No. 45, 2005
Cc. 37J, 37K .....	ad. No. 108, 2000
C. 37L .....	ad. No. 108, 2000 rs. No. 4, 2003

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
C. 37M .....	ad. No. 108, 2000
<b>Division 3</b>	
Heading to Div. 3 of Part 4 .....	ad. No. 108, 2000
C. 38 .....	ad. No. 99, 1998 am. No. 108, 2000
<b>Division 4</b>	
Heading to Div. 4 of Part 4 .....	ad. No. 108, 2000
C. 39 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
C. 40 .....	ad. No. 99, 1998 rep. No. 108, 2000
<b>Division 5</b>	
Heading to Div. 5 of Part 4 .....	ad. No. 108, 2000
C. 41 .....	ad. No. 99, 1998
C. 41A .....	ad. No. 99, 1998 rep. No. 108, 2000
<b>Part 5</b>	
Cc. 42, 43.....	ad. No. 99, 1998 am. No. 108, 2000
C. 43A.....	ad. No. 108, 2000
C. 44 .....	ad. No. 99, 1998 am. No. 108, 2000
C. 45 .....	ad. No. 99, 1998 am. No. 45, 2005
C. 45A.....	ad. No. 108, 2000 am. No. 45, 2005
C. 46 .....	ad. No. 99, 1998 am. No. 45, 2005
Cc. 47, 48 .....	ad. No. 99, 1998 am. No. 108, 2000
Cc. 49, 50 .....	ad. No. 99, 1998
<b>Part 6</b>	
Subhead. to c. 51(8).....	rs. No. 8, 2005
C. 51 .....	ad. No. 99, 1998 am. Nos. 8 and 45, 2005
C. 52 .....	ad. No. 99, 1998
C. 53 .....	ad. No. 99, 1998 am. No. 108, 2000 rep. No. 45, 2005
<b>Part 7</b>	
C. 54 .....	ad. No. 99, 1998 am. No. 45, 2005
Cc. 55–58 .....	ad. No. 99, 1998

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 8</b>	
C. 59 .....	ad. No. 99, 1998 rep. No. 45, 2005
C. 59A .....	ad. No. 108, 2000 rep. No. 45, 2005
Heading to c. 60 .....	am. No. 108, 2000
C. 60 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 45, 2005
Heading to c. 60A .....	am. No. 4, 2003
C. 60A .....	ad. No. 108, 2000 am. No. 4, 2003
C. 60B .....	ad. No. 108, 2000
C. 60C .....	ad. No. 108, 2000 rep. No. 45, 2005
<b>Part 9</b>	
Heading to Part 9 .....	am. No. 45, 2005
C. 61 .....	ad. No. 99, 1998 am. No. 122, 1999; No. 108, 2000 rep. No. 45, 2005
<b>Part 10</b>	
C. 62 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005
C. 63 .....	ad. No. 99, 1998 am. No. 45, 2005
<b>Part 11</b>	
C. 64 .....	ad. No. 99, 1998
<b>Schedule 5</b>	
Schedule 5.....	ad. No. 90, 1999
<b>Part 1</b>	
Subhead. to c. 1(3).....	am. No. 127, 2004
C. 1 .....	ad. No. 90, 1999 am. No. 127, 2004
C. 2 .....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005
Cc. 3, 4 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 5 .....	ad. No. 90, 1999
Heading to c. 6 .....	am. No. 61, 2004
C. 6 .....	ad. No. 90, 1999 am. No. 61, 2004
C. 7 .....	ad. No. 90, 1999
<b>Part 2</b>	
Cc. 8, 9 .....	ad. No. 90, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 3</b>	
<b>Division 1</b>	
C. 10 .....	ad. No. 90, 1999 am. No. 61, 2004
Cc. 11–13.....	ad. No. 90, 1999
<b>Division 2</b>	
Cc. 14, 15.....	ad. No. 90, 1999 am. No. 45, 2005
<b>Division 3</b>	
<b>Subdivision A</b>	
C. 16 .....	ad. No. 90, 1999 am. No. 13, 2001; No. 61, 2004; No. 45, 2005
C. 17 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 18 .....	ad. No. 90, 1999
<b>Subdivision B</b>	
C. 19 .....	ad. No. 90, 1999
<b>Division 4</b>	
C. 20 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 21 .....	ad. No. 90, 1999 am. No. 13, 2001
<b>Part 4</b>	
Heading to Part 4 .....	am. No. 45, 2005
<b>Division 1</b>	
Heading to Div. 1 .....	am. No. 45, 2005 of Part 4
Cc. 22–24 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 25 .....	ad. No. 90, 1999
<b>Division 2</b>	
Heading to Div. 2 .....	am. No. 45, 2005 of Part 4
Heading to c. 26 .....	am. No. 45, 2005
C. 26 .....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 27 .....	am. No. 45, 2005
C. 27 .....	ad. No. 90, 1999 am. No. 45, 2005
Cc. 28, 29.....	ad. No. 90, 1999 am. No. 45, 2005
<b>Division 3</b>	
C. 30 .....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005
C. 31 .....	ad. No. 90, 1999

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
	am. No. 45, 2005
Heading to c. 32 .....	am. No. 61, 2004
C. 32 .....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005
Cc. 33–36.....	ad. No. 90, 1999 am. No. 45, 2005
Cc. 37–39.....	ad. No. 90, 1999
<b>Division 4</b>	
C. 40 .....	ad. No. 90, 1999 am. No. 45, 2005
Note to c. 40(1) .....	am. No. 45, 2005
Cc. 41–44.....	ad. No. 90, 1999 am. No. 45, 2005
Note to c. 44(2) .....	am. No. 45, 2005
C. 45 .....	ad. No. 90, 1999 am. No. 45, 2005
Note to c. 45(2) .....	am. No. 45, 2005
Cc. 46, 47.....	ad. No. 90, 1999 am. No. 45, 2005
Note to c. 47(1) .....	am. No. 45, 2005
Cc. 48–50.....	ad. No. 90, 1999
Heading to c. 51 .....	am. No. 45, 2005
C. 51 .....	ad. No. 90, 1999 am. No. 45, 2005
Note to c. 51(2) .....	am. No. 45, 2005
<b>Part 5</b>	
<b>Division 1</b>	
C. 52 .....	ad. No. 90, 1999 am. No. 45, 2005
<b>Division 2</b>	
Cc. 53–58.....	ad. No. 90, 1999
<b>Division 3</b>	
Cc. 59, 60.....	ad. No. 90, 1999 am. No. 45, 2005
C. 61 .....	ad. No. 90, 1999
<b>Division 4</b>	
C. 62 .....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 63 .....	am. No. 45, 2005
Cc. 63, 64.....	ad. No. 90, 1999 am. No. 45, 2005
C. 65 .....	ad. No. 90, 1999
Cc. 66, 67.....	ad. No. 90, 1999 am. No. 45, 2005
<b>Division 5</b>	

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to c. 68 .....	am. No. 45, 2005
C. 68 .....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 69 .....	am. No. 45, 2005
C. 69 .....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 70 .....	am. No. 45, 2005
C. 70 .....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 71 .....	am. No. 45, 2005
C. 71 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 72 .....	ad. No. 90, 1999
Cc. 73–77.....	ad. No. 90, 1999 am. No. 45, 2005
<b>Division 6</b>	
Heading to c. 78 .....	am. No. 45, 2005
C. 78 .....	ad. No. 90, 1999 am. No. 45, 2005
<b>Part 6</b>	
C. 79 .....	ad. No. 90, 1999
C. 80 .....	ad. No. 90, 1999 am. No. 45, 2005
C. 81 .....	ad. No. 90, 1999
C. 82 .....	ad. No. 90, 1999 am. No. 5, 2001
C. 83 .....	ad. No. 90, 1999 am. No. 5, 2001; No. 45, 2005
Cc. 84, 85 .....	ad. No. 90, 1999 am. No. 45, 2005
<b>Part 7</b>	
C. 86 .....	ad. No. 90, 1999
C. 87 .....	ad. No. 90, 1999 am. No. 5, 2001
<b>Part 8</b>	
C. 88 .....	ad. No. 90, 1999
Heading to c. 89 .....	am. No. 45, 2005
C. 89 .....	ad. No. 90, 1999 am. No. 45, 2005
<b>Part 9</b>	
Cc. 90, 91.....	ad. No. 90, 1999
<b>Part 10</b>	
Cc. 92, 93.....	ad. No. 90, 1999 am. No. 45, 2005
<b>Part 11</b>	

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
Heading to c. 94 .....	am. No. 45, 2005
C. 94 .....	ad. No. 90, 1999 am. No. 45, 2005
Cc. 95, 96.....	ad. No. 90, 1999
<b>Schedule 6</b>	
Schedule 6 .....	ad. No. 108, 2000
<b>Part 1</b>	
C. 1 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 2 .....	ad. No. 108, 2000 am. Nos. 55 and 92, 2001
Subhead. to c. 3(3) .....	am. No. 45, 2005
C. 3 .....	ad. No. 108, 2000 am. No. 45, 2005
Subhead. to c. 4(3) .....	am. No. 45, 2005
C. 4 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 5.....	rs. No. 92, 2001
C. 5 .....	ad. No. 108, 2000 am. No. 92, 2001
C. 6.....	ad. No. 108, 2000
<b>Part 2</b>	
Cc. 7–9 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 10 .....	ad. No. 108, 2000 am. No. 5, 2001; No. 45, 2005
C. 11 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 12 .....	am. No. 45, 2005
C. 12 .....	ad. No. 108, 2000 am. No. 45, 2005
<b>Part 3</b>	
<b>Division 1</b>	
Subhead. to c. 13(4) .....	am. No. 45, 2005
C. 13 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 14 .....	ad. No. 108, 2000
Subhead. to c. 15(4) .....	am. No. 45, 2005
C. 15 .....	ad. No. 108, 2000 am. No. 92, 2001; No. 45, 2005
C. 16 .....	ad. No. 108, 2000 am. No. 92, 2001
Cc. 17–20AA.....	ad. No. 108, 2000
<b>Division 1A</b>	
Cc. 20A, 20B .....	ad. No. 108, 2000



**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Division 2</b>	
Subhead. to c. 21(4) .....	am. No. 45, 2005
C. 21 .....	ad. No. 108, 2000 am. No. 92, 2001; No. 45, 2005
Cc. 22–23A .....	ad. No. 108, 2000
<b>Division 2A</b>	
C. 23B .....	ad. No. 108, 2000 am. No. 45, 2005
<b>Division 3</b>	
C. 24 .....	ad. No. 108, 2000 am. No. 61, 2004; No. 45, 2005
C. 25 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 26 .....	am. No. 45, 2005
Subhead. to c. 26(6) .....	am. No. 45, 2005
Cc. 26, 27 .....	ad. No. 108, 2000 am. No. 45, 2005
<b>Division 4</b>	
C. 27A .....	ad. No. 108, 2000 am. No. 23, 2001; No. 45, 2005
<b>Part 4</b>	
C. 28 .....	ad. No. 108, 2000 am. No. 61, 2004; No. 45, 2005
Heading to c. 29 .....	am. No. 45, 2005
C. 29 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 30 .....	am. No. 45, 2005
C. 30 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 31 .....	am. No. 45, 2005
Cc. 31–33 .....	ad. No. 108, 2000 am. No. 45, 2005
Heading to c. 34 .....	am. No. 45, 2005
C. 34 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 35 .....	ad. No. 108, 2000
C. 35A .....	ad. No. 23, 2001
<b>Part 5</b>	
Heading to Part 5 .....	am. No. 45, 2005
C. 36 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 37 .....	ad. No. 108, 2000 am. No. 23, 2001; No. 45, 2005
Heading to c. 38 .....	am. No. 45, 2005
C. 38 .....	ad. No. 108, 2000

**Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
	am. No. 45, 2005
<b>Part 6</b>	
Heading to Part 6 .....	rs. No. 23, 2001
Cc. 39, 40 .....	ad. No. 108, 2000 rep. No. 23, 2001
Heading to c. 41 .....	rs. No. 23, 2001
C. 41 .....	ad. No. 108, 2000
<b>Part 7</b>	
Cc. 42, 43 .....	ad. No. 108, 2000
Cc. 44, 45 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 46 .....	ad. No. 108, 2000
Cc. 47, 48 .....	ad. No. 108, 2000 am. No. 45, 2005
<b>Part 8</b>	
<b>Division 1</b>	
C. 49 .....	ad. No. 108, 2000
Note to c. 49	
Renumbered Note 1 .....	No. 172, 2000
Note 2 to c. 49 .....	ad. No. 172, 2000
C. 50 .....	ad. No. 108, 2000 am. No. 45, 2005
Note to c. 50	
Renumbered Note 1 .....	No. 172, 2000
Note 2 to c. 50 .....	ad. No. 172, 2000
C. 51 .....	ad. No. 108, 2000 am. No. 45, 2005
C. 51A .....	ad. No. 172, 2000
<b>Division 2</b>	
C. 52 .....	ad. No. 108, 2000
Cc. 53–55 .....	ad. No. 108, 2000 am. No. 45, 2005
Cc. 56, 57 .....	ad. No. 108, 2000
<b>Part 9</b>	
C. 58 .....	ad. No. 108, 2000
C. 59 .....	ad. No. 108, 2000 am. No. 45, 2005
<b>Part 10</b>	
C. 60 .....	ad. No. 108, 2000
C. 61 .....	ad. No. 108, 2000 rep. No. 45, 2005

**Table A****Table A****Application, saving or transitional provision**

*Broadcasting Services Amendment Act 1995* (No. 139, 1995)

**3 Insertion of new section**

- (2) If the ABA granted a permission to a licensee under section 73 of the Principal Act before the commencement of this section:
- (a) the ABA must grant an additional licence to the licensee under section 38A of the Principal Act for the same licence area; and
  - (b) the licensee is not required to pay a fee under section 38A of the Principal Act for the additional licence; and
  - (c) subsections 38A(9) and (10) of the Principal Act do not apply to the additional licence or parent licence.

**14 Application**

The amendments of clause 10 of Schedule 2 of the Principal Act extend to subscription television broadcasting licences issued before the commencement of this Act.

**15 Grandfathering for changes to the control rules**

- (1) If:
- (a) apart from this section, a person (the *relevant person*) would be in breach of a particular control rule at a particular time (the *test time*) after the commencement of this section; and
  - (b) all the circumstances that are relevant to the breach were in existence at the end of 27 June 1995 (the *grandfather time*); and
  - (c) the relevant person would not be in breach of that control rule at the test time if the amendments made by section 5 and subsection 12(2) of this Act had not been made; and
  - (d) the relevant person was not in breach of that control rule immediately before the grandfather time;
- then the relevant person is taken not to be in breach of that control rule at the test time.

- (2) If:

**Table A**

---

(a) particular circumstances that are relevant to the breach arose after the grandfather time; and

(b) the relevant person was not in a position to prevent those circumstances arising;

those circumstances are taken for the purposes of subsection (1) to have been in existence at the grandfather time.

(3) If:

(a) particular circumstances (the *new circumstances*) that are relevant to the breach resulted from the allotment or issue, after the grandfather time, of shares (the *new shares*) in a company to a person (the *recipient*) who, immediately before the grandfather time, held shares (the *old shares*) in the company; and

(b) the recipient received the new shares in accordance with rights of a kind enjoyed by the recipient in common with other holders of shares of the same class as the old shares;

the new circumstances are taken for the purposes of subsection (1) to have been in existence at the grandfather time.

(4) If:

(a) particular circumstances that are relevant to the breach consist of the holding by a person of company interests in a company that are greater than the company interests in that company that were held by that person at the grandfather time; and

(b) that person was in a position to control that company immediately before the grandfather time, and at all times from the grandfather time to the test time;

those circumstances are taken for the purposes of subsection (1) to have been in existence at the grandfather time. For the purposes of this subsection, the question whether a person is in a position to control a company is to be determined in accordance with the Principal Act as in force immediately before the commencement of this section, but without regard to clause 6 of Schedule 1 to the Principal Act.

(5) In this section:

*circumstances that are relevant to the breach* includes the holding of all company interests in any company by any person, so far as the company interests can be relied on in establishing the breach,

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**Table A**

including company interests that do not have to be relied on to establish the breach.

*control rule* means:

- (a) a provision of Division 2, 3, 4 or 5 of Part 5 of the Principal Act; and
- (b) a provision of Division 3 of Part 7 of the Principal Act (other than section 109).

*shares* means shares in, or debentures of, a company.

**16 Compensation for acquisition of property**

(1) If:

- (a) this Act, or the Principal Act as amended by this Act, would result in an acquisition of property; and
- (b) the whole or any part of this Act, or of the Principal Act as amended by this Act, would not be valid (apart from this section) because a particular person has not been compensated;

the Commonwealth must pay the person:

- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
- (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.

(2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.

(3) In this section:

*acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

## **Table A**

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*Broadcasting Services Amendment Act 1997* (No. 115, 1997)

### **Schedule 1**

#### **5 Saving**

If, immediately before the commencement of this Act, the ABA was conducting, or was about to conduct, an investigation at the direction of the Minister under section 171 of the *Broadcasting Services Act 1992* as then in force, that Act as amended by this Act applies to the investigation as if the direction to conduct the investigation had been given by the Minister under section 171 of that Act as amended.

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*Broadcasting Services Legislation Amendment Act 1997* (No. 143, 1997)

### **Schedule 1**

#### **8 Application**

- (1) The amendment of clause 7 of Schedule 2 to the *Broadcasting Services Act 1992* that is made by this Act extends to:
  - (a) a commercial television broadcasting licence referred to in paragraph 5(1)(b) or (e) of the Transitional Provisions Act; or
  - (b) a commercial television broadcasting licence allocated or renewed under the *Broadcasting Services Act 1992* before, on or after the commencement of this Act.
- (2) The amendment of clause 8 of Schedule 2 to the *Broadcasting Services Act 1992* that is made by this Act extends to:
  - (a) a commercial radio broadcasting licence referred to in paragraph 5(1)(a), (d) or (f) of the Transitional Provisions Act; or
  - (b) a commercial radio broadcasting licence allocated or renewed under the *Broadcasting Services Act 1992* before, on or after the commencement of this Act.
- (3) In this item:

***Transitional Provisions Act*** means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

**Table A****9 Transitional**

(1) If:

- (a) a decision has been made under subsection 59(3) of the *Broadcasting Services Act 1992* as in force at any time before the commencement day to enter the name of a newspaper in the Associated Newspaper Register as a newspaper associated with the licence area of a commercial radio broadcasting licence; and
- (b) the decision has not been revoked or rescinded before that day;

the decision has effect, on and after that day, as if it were a decision to the same effect made under subsection 59(4A) of that Act as amended by this Act.

(2) If:

- (a) a decision has been made under subsection 59(4) of the *Broadcasting Services Act 1992* as in force at any time before the commencement day to refuse to remove the name of a newspaper from the Associated Newspaper Register as a newspaper associated with the licence area of a commercial radio broadcasting licence; and
- (b) the decision has not been revoked or rescinded before that day;

the decision has effect, on and after that day, as if it were a decision to the same effect made under subsection 59(4B) of that Act as amended by this Act.

(3) If:

- (a) a direction, requirement, approval or leave is given, or is taken to have been given, by the ABA under a continued section of the *Broadcasting Act 1942*; and
- (b) the direction, requirement, approval or leave is in force immediately before the commencement day;

the direction, requirement, approval or leave continues in force, on and after that day, as if it were a direction, requirement, approval or permission given under the corresponding provision of Part 14A of the *Broadcasting Services Act 1992*.

**Table A**

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- (4) If, before the commencement day, a request has been made, or is taken to have been made, by the ABA under subsection 123(4) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, for books or documents to be made available, or particulars to be furnished, that request has effect, on and after that day, for the purposes of Part 14A of the *Broadcasting Services Act 1992*:
- (a) as if it were a request made under subsection 205B(1) of the last-mentioned Act; and
  - (b) as if the books or documents required to be made available, or the particulars required to be furnished, were financial accounts or other records required under subsection 205B(1) of the last-mentioned Act to be provided to the ABA.
- (5) If, before the commencement day, a request has been made, or is taken to have been made, by the ABA under subsection 123(4AA) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, that request has effect, on or after that day, for the purposes of the *Broadcasting Services Act 1992* as if it were a notice in writing under section 173 of the last-mentioned Act to provide the information to the ABA for the purposes of an investigation under section 170 of the last-mentioned Act.
- (6) If, before the commencement day, a notice has been given by the ABA under subsection 123AA(3) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act:
- (a) the notice has effect, on and after that day, for the purposes of Part 14A of the *Broadcasting Services Act 1992*, as if it were a notice given under subsection 205C(2) of the last-mentioned Act; but
  - (b) for the purpose of working out the period of 21 days beginning on the day the notice was issued, Part 14A of the last-mentioned Act has effect as if it had been in force at the time of issue of the notice.
- (7) If, immediately before the commencement day, an additional fee, by way of penalty, was payable under subsection 123A(1A) or (1B) of the *Broadcasting Act 1942* as that subsection is continued in force by section 22 of the Transitional Provisions Act, that additional fee is treated, on and after that day, as if:



**Table A**

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- (a) it were payable under subsection 205D(1) or (2) of the *Broadcasting Services Act 1992*, whichever is appropriate; and
  - (b) Part 14A of the last-mentioned Act had been in force since the additional fee first became payable.
- (8) Any action taken before the commencement day by a licensee under a provision of a continued section of the *Broadcasting Act 1942* has effect, on and after that day, as if it had been taken by the licensee under the corresponding provision of Part 14A of the *Broadcasting Services Act 1992*.
- (9) Any action taken before the commencement day by a corporation that is related to a licensee in response to a request made under subsection 123(4AA) of the *Broadcasting Act 1942* as that subsection is continued in force under section 22 of the Transitional Provisions Act has effect, on and after that day, as if it had been taken by the corporation in response to a notice under section 173 of the *Broadcasting Services Act 1992*.
- (10) In this item:

***commencement day*** means the day on which this Act receives the Royal Assent.

***continued section of the Broadcasting Act 1942*** means section 123, 123AA or 123A of the *Broadcasting Act 1942* as that section is continued in force by section 22 of the Transitional Provisions Act.

***Transitional Provisions Act*** means the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*.

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## **Table A**

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*Television Broadcasting Services (Digital Conversion) Act 1998*  
(No. 99, 1998)

### **Schedule 1**

#### **7 Transitional—section 34 of the Broadcasting Services Act 1992**

- (1) This item applies to a decision of the ABA under subsection 34(1) of the *Broadcasting Services Act 1992* if the decision was in effect immediately before the commencement of this item.
- (2) The decision has effect as if it had been made in the form of a written determination under subsection 34(1) of that Act immediately after the commencement of this item.

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*Broadcasting Services Amendment Act (No. 1) 1999* (No. 197, 1999)

### **Schedule 3**

#### **10 Transitional—re-transmission of programs by licensee outside licence area**

- (1) This item applies if:
  - (a) a permission was given to a commercial broadcasting licensee or a community broadcasting licensee under subparagraph 212(1)(b)(ii) of the *Broadcasting Services Act 1992*; and
  - (b) the permission was in force immediately before the commencement of this item; and
  - (c) the permission authorised the licensee to re-transmit, outside the licence area of the licence, programs transmitted by the licensee's commercial broadcasting service or community broadcasting service, as the case may be.
- (2) If, apart from this subitem, the permission would expire before the end of the period of 12 months beginning at the commencement of this item, the permission is taken to expire at the end of that period.

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**Table A**

- (3) Despite the amendments of section 212 of the *Broadcasting Services Act 1992* made by this Part, that section continues to apply, after the commencement of this item, in relation to the re-transmission by the licensee of programs as mentioned in paragraph (1)(c) of this item during the period:
- (a) beginning at the commencement of this item; and
  - (b) ending at the expiration of the permission;
- as if those amendments had not been made.

**11 Transitional—pre-commencement re-transmission of programs**

Despite the amendments of section 212 of the *Broadcasting Services Act 1992* made by this Part, that section continues to apply, after the commencement of this item, in relation to a re-transmission that occurred before the commencement of this item, as if those amendments had not been made.

**19 Transitional—pre-commencement re-transmission of programs**

Despite the amendments of section 212 of the *Broadcasting Services Act 1992* made by this Part, that section continues to apply, after the commencement of this item, in relation to a re-transmission that occurred before the commencement of this item, as if those amendments had not been made.

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*Broadcasting Services Amendment Act (No. 3) 1999* (No. 198, 1999)

**Schedule 1**

**5 Transitional—section 102 of the Broadcasting Services Act 1992**

Despite the repeal of section 102 of the *Broadcasting Services Act 1992* by this Part, that section continues to apply, in relation to program expenditure for a financial year earlier than the financial year beginning on 1 July 1999, as if that repeal had not happened.

## **Table A**

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### **19 Transitional—expenditure incurred before 1 July 2000**

- (1) Despite the amendments of sections 6 and 204 of the *Broadcasting Services Act 1992* made by this Part, those sections continue to apply, in relation to expenditure incurred during:
  - (a) the financial year beginning on 1 July 1999; or
  - (b) an earlier financial year;as if those amendments had not been made.
- (2) Despite the amendments of Division 2A of Part 7 of the *Broadcasting Services Act 1992* made by this Part, that Act continues to apply, in relation to expenditure incurred during the financial year beginning on 1 July 1999, as if those amendments had not been made.

### **22 Transitional—expenditure incurred before 1 July 2001**

Despite the amendments of the *Broadcasting Services Act 1992* made by this Part, that Act continues to apply, in relation to expenditure incurred before the financial year beginning on 1 July 2001, as if those amendments had not been made.

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*Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000* (No. 108, 2000)

## **Schedule 1**

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

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

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**Table A****142 Transitional—variation of digital conversion schemes**

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

**143 Transitional—allocation of datacasting licences**

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

**144 Transitional—validation of digital channel plans**

- (1) If, before the commencement of this item, the ABA purported to make a scheme under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992* that included provisions relating directly or indirectly to digital channel plans:
  - (a) those provisions are as valid, and are taken to have been as valid, as they would have been; and

**Table A**

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- (b) anything done under those provisions (including the making or variation of a digital channel plan) is as valid, and is taken to have been as valid, as it would have been; and
  - (c) anything done under a digital channel plan is as valid, and is taken to have been as valid, as it would have been;
- if clause 7A of Schedule 4 to the *Broadcasting Services Act 1992* had:
  - (d) been in force at the time the scheme was made; and
  - (e) contained an additional subclause that authorised the scheme to provide that a digital channel plan may deal with the allotment of channels to national broadcasters.
- (2) If, before the commencement of this item, the ABA purported to make a scheme under clause 19 of Schedule 4 to the *Broadcasting Services Act 1992* that included provisions relating directly or indirectly to digital channel plans:
  - (a) those provisions are as valid, and are taken to have been as valid, as they would have been; and
  - (b) anything done under those provisions (including the making, adoption or variation of a digital channel plan) is as valid, and is taken to have been as valid, as it would have been; and
  - (c) anything done under a digital channel plan is as valid, and is taken to have been as valid, as it would have been;
- if:
  - (d) clause 22A of Schedule 4 to the *Broadcasting Services Act 1992* had been in force at the time the scheme was made; and
  - (e) clause 7A of Schedule 4 to the *Broadcasting Services Act 1992* had:
    - (i) been in force at the time the commercial television conversion scheme was made; and
    - (ii) contained an additional subclause that authorised the commercial television conversion scheme to provide that a digital channel plan may deal with the allotment of channels to national broadcasters.
- (3) Section 13 of the *National Television Conversion Scheme 1999* has effect, and is taken to have had effect, as if the reference in that section to a digital channel plan made by the ABA under subsection 12(1) of the *Commercial Television Conversion Scheme 1999* were, by express

**Table A**

words, confined to so much of the digital channel plan as relates to national broadcasters.

- (4) A notice published in the *Gazette* on 16 February 2000 purporting to be in accordance with section 13 of the *National Television Conversion Scheme 1999* has effect, and is taken to have had effect, as if the reference in that notice to a digital channel plan made by the ABA pursuant to subsection 12(1) of the commercial scheme were, by express words, confined to so much of the digital channel plan as relates to national broadcasters.

**145 Transitional—regulations**

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

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*Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000* (No. 137, 2000)

**Schedule 2****418 Transitional—pre-commencement offences**

- (1) Despite the amendment or repeal of a provision by this Schedule, that provision continues to apply, after the commencement of this item, in relation to:
- (a) an offence committed before the commencement of this item; or
  - (b) proceedings for an offence alleged to have been committed before the commencement of this item; or
  - (c) any matter connected with, or arising out of, such proceedings;
- as if the amendment or repeal had not been made.
- (2) Subitem (1) does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.

## **Table A**

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### **419 Transitional—pre-commencement notices**

If:

- (a) a provision in force immediately before the commencement of this item required that a notice set out the effect of one or more other provisions; and
  - (b) any or all of those other provisions are repealed by this Schedule; and
  - (c) the first-mentioned provision is amended by this Schedule;
- the amendment of the first-mentioned provision by this Schedule does not affect the validity of such a notice that was given before the commencement of this item.

---

*Broadcasting Services Amendment Act 2000* (No. 172, 2000)

## **Schedule 1**

### **36 Transitional—existing providers of international broadcasting services**

- (1) If a person was providing an international broadcasting service immediately before the commencement of this item, sections 121FG and 121FH of the *Broadcasting Services Act 1992* and paragraph 108(2)(da) of the *Radiocommunications Act 1992* do not apply to the provision of the service by the person at any time during the period:
  - (a) beginning at the commencement of this item; and
  - (b) ending at whichever of the following times is applicable:
    - (i) if the person does not apply for an international broadcasting licence for the service within 30 days after the commencement of this item—the end of 30 days after the commencement of this item;
    - (ii) if the person applies for an international broadcasting licence for the service within 30 days after the commencement of this item, but an international broadcasting licence is not allocated to the person—the time when the person receives the relevant notification under subsection 121FB(3) or (7) or 121FD(6) of the *Broadcasting Services Act 1992*;



**Table A**

- 
- (iii) if the person applies for an international broadcasting licence for the service within 30 days after the commencement of this item and such a licence is allocated to the person—the time when the licence is allocated.
  - (1A) For the purposes of subitem (1), if an application for an international broadcasting licence is made on behalf of a person (the *content provider*) under subsection 121FA(1A) of the *Broadcasting Services Act 1992*, the content provider is taken to have made the application.
  - (2) If a person was providing an international broadcasting service immediately before the commencement of this item, sections 121FB and 121FD of the *Broadcasting Services Act 1992* have effect as if the service were a proposed service.

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*Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001* (No. 5, 2001)

**4 Application of amendments**

- (1) Each amendment made by this Act applies to acts and omissions that take place after the amendment commences.
- (2) For the purposes of this section, if an act or omission is alleged to have taken place between 2 dates, one before and one on or after the day on which a particular amendment commences, the act or omission is alleged to have taken place before the amendment commences.

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*Broadcasting Legislation Amendment Act (No. 2) 2001* (No. 92, 2001)

**4 Transitional—additional commercial television licences in 2-station markets**

Despite the amendments made by items 1, 2 and 3 of Schedule 1, section 38B of the *Broadcasting Services Act 1992* continues to apply, in relation to a notice given under subsection 38B(1) of that Act before the commencement of this Act, as if those amendments had not been made.

## **Table A**

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### **5 Application—free availability of certain types of programs**

The amendments made by items 5 and 6 of Schedule 1 apply in relation to events specified in a notice under subsection 115(1) of the *Broadcasting Services Act 1992* either before or after the commencement of this Act.

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*Broadcasting Legislation Amendment Act (No. 2) 2002* (No. 120, 2002)

### **Schedule 1**

#### **16 Saving provision relating to item 9**

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

### **Schedule 2**

#### **11 Application of items 2 and 3**

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

#### **12 Transitional provision relating to items 6 and 7**

- (1) After the commencement of this Act, the code of practice (the *existing code*) that was, immediately before the commencement of this Act:
  - (a) applicable to the broadcasting operations of all community radio broadcasting licensees; and
  - (b) included in the Register of codes of practice under section 123 of the *Broadcasting Services Act 1992*;

**Table A**

continues to be applicable to the broadcasting operations of each community radio broadcasting licensee until it ceases to be applicable to that licensee under subitem (2) or (3).

- (2) The existing code ceases to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are not targeted, to a significant extent, to one or more remote Indigenous communities when the earlier of the following occurs:
  - (a) a code of practice applicable only to those licensees is first included in the Register of codes of practice;
  - (b) a replacement code of practice (see subitem (7)) is first included in the Register of codes of practice.
- (3) The existing code ceases to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities when the earlier of the following occurs:
  - (a) a code of practice applicable only to those licensees is first included in the Register of codes of practice;
  - (b) a replacement code of practice (see subitem (7)) is first included in the Register of codes of practice.
- (4) If a replacement code of practice is included in the Register of codes of practice, the replacement code of practice is applicable to all community radio broadcasting licensees as if the amendments made by items 6 and 7 had not been made.
- (5) The replacement code of practice continues to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are not targeted, to a significant extent, to one or more remote Indigenous communities until a code of practice applicable only to those licensees is first included in the Register of codes of practice.
- (6) The replacement code of practice continues to be applicable to the broadcasting operations of community radio broadcasting licensees whose services are targeted, to a significant extent, to one or more remote Indigenous communities until a code of practice applicable only to those licensees is first included in the Register of codes of practice.
- (7) In this item:  
*replacement code of practice*, means a code of practice:

## Table A

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- (a) developed under section 123 of the *Broadcasting Services Act 1992*, either before or after the commencement of this Act, which is applicable to the broadcasting operations of all community radio broadcasting licensees; and
- (b) included in the Register of codes of practice under that section within 3 months after the commencement of this Act.

---

*Therapeutic Goods Amendment Act (No. 1) 2003* (No. 39, 2003)

## Schedule 2

### 3 Saving and transitional provisions

- (1) If, before the date of commencement of items 1 and 2 of this Schedule:
  - (a) a person has applied, under clause 6 of Schedule 2 to the *Broadcasting Services Act 1992*, to the Secretary (the **Health Secretary**) of the Department whose Minister (the **Health Minister**) is responsible for the administration of the *Therapeutic Goods Act 1989* for approval of an advertisement proposed for broadcasting; and
  - (b) a decision has not been made by the Health Secretary before that date;

that application is to be treated, on and after that date, for all purposes as if it were an application for approval under the *Therapeutic Goods Regulations 1990*.

- (2) If, before the date of commencement of items 1 and 2 of this Schedule:
  - (a) the Health Secretary has made a decision in relation to an application, under clause 6 of Schedule 2 to the *Broadcasting Services Act 1992*, for approval of an advertisement proposed for broadcasting; and
  - (b) an appeal from that decision has not been made to the Minister responsible for the administration of the *Broadcasting Services Act 1992*;

the person who sought that approval has the same right to appeal to the Health Minister under the *Therapeutic Goods Regulations 1990*, on and after that date, as if that decision had been made under those regulations.

**Table A**

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- (3) If, before the date of commencement of items 1 and 2 of this Schedule:
- (a) the Health Secretary has made a decision in relation to an application, under clause 6 of Schedule 2 to the *Broadcasting Services Act 1992*, for approval of an advertisement proposed for broadcasting; and
  - (b) an appeal from that decision has been made to the Minister responsible for the administration of the *Broadcasting Services Act 1992*; and
  - (c) the appeal has not been finally determined before that date;
- that appeal is to continue to be dealt with under the *Broadcasting Services Act 1992*, on and after that date, as if the amendments made by items 1 and 2 had not been made.

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*Communications Legislation Amendment Act (No. 3) 2003* (No. 108, 2003)

**Schedule 1**

**24 Application**

The amendment made by this Part applies to variations given to the Minister either before or after the commencement of this Part.

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*Classification (Publications, Films and Computer Games) Amendment Act 2004*  
(No. 61, 2004)

**Schedule 2**

**30 Application**

The amendments made by this Schedule apply to the doing of things at or after the commencement of this Schedule.

**31 Conversion of certain pre-commencement classifications relating to films etc. to equivalent new classifications**

If, just before this Schedule commenced:

- (a) a film; or
- (b) a program; or
- (c) Internet content not consisting of a computer game; or

**Table A**

(d) datacasting content not consisting of an interactive computer game;

had a classification of a type mentioned in column 2 of the following table in relation to an item, then, for the purpose of applying the *Broadcasting Services Act 1992* after this Schedule commences, the film, program, Internet content or datacasting content is taken to have, and to have had at all times before this Schedule commenced, the classification of the type mentioned in column 3 of the table in relation to the item:

<b>Classifications relating to films etc.</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former type of classification</b>	<b>New type of classification</b>
1	MA	MA 15+
2	R	R 18+
3	X	X 18+

### **32 Conversion of certain pre-commencement classifications relating to computer games etc. to equivalent new classifications**

If, just before this Schedule commenced:

- (a) Internet content consisting of a computer game; or
- (b) datacasting content consisting of an interactive computer game;

had a classification of a type mentioned in column 2 of the following table in relation to an item, then, for the purpose of applying the *Broadcasting Services Act 1992* after this Schedule commences, Internet content or datacasting content is taken to have, and to have had at all times before this Schedule commenced, the classification of the type mentioned in column 3 of the table in relation to the item:

<b>Classifications relating to computer games etc.</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former type of classification</b>	<b>New type of classification</b>
1	G (8+)	PG
2	M (15+)	M

**Table A**


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<b>Classifications relating to computer games etc.</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Item</b>	<b>Former type of classification</b>	<b>New type of classification</b>
3	MA (15+)	MA 15+

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*Financial Framework Legislation Amendment Act 2005* (No. 8, 2005)

#### **4 Saving of matters in Part 2 of Schedule 1**

- (1) If:
- (a) a decision or action is taken or another thing is made, given or done; and
  - (b) the thing is taken, made, given or done under a provision of a Part 2 Act that had effect immediately before the commencement of this Act;
- then the thing has the corresponding effect, for the purposes of the Part 2 Act as amended by this Act, as if it had been taken, made, given or done under the Part 2 Act as so amended.

- (2) In this section:

**Part 2 Act** means an Act that is amended by an item in Part 2 of Schedule 1.

#### **Schedule 1**

##### **496 Saving provision—Finance Minister’s determinations**

If a determination under subsection 20(1) of the *Financial Management and Accountability Act 1997* is in force immediately before the commencement of this item, the determination continues in force as if it were made under subsection 20(1) of that Act as amended by this Act.

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**Table A**

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*Broadcasting Services Amendment (Anti-Siphoning) Act 2005* (No. 43, 2005)

**Schedule 1**

**2 Effect of item 1**

- (1) The amendment made by item 1 applies in relation to events:
  - (a) specified in a notice under subsection 115(1) of the *Broadcasting Services Act 1992* before the commencement of that item and still specified in the notice at that commencement; or
  - (b) specified in a notice under subsection 115(1) of the *Broadcasting Services Act 1992* at or after the commencement of that item.
  
- (2) However, if the amendment made by item 1 would have the effect that an event is taken to have been removed from a notice before the commencement of that item, then, despite that amendment, the event is taken to have been removed from the notice only from the time immediately after the commencement of that item.