



# Broadcasting Services Act 1992

No. 110, 1992 as amended

**Compilation start date:** 29 June 2013

**Includes amendments up to:** Act No. 103, 2013

This compilation has been split into 2 volumes

**Volume 1:** sections 1–218  
Schedules 1 and 2

**Volume 2:** **Schedules 4–7**  
**Endnotes**

Each volume has its own contents

Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### The compiled Act

This is a compilation of the *Broadcasting Services Act 1992* as amended and in force on 29 June 2013. It includes any amendment affecting the compiled Act to that date.

This compilation was prepared on 9 July 2013.

The notes at the end of this compilation (the *endnotes*) include information about amending Acts and instruments and the amendment history of each amended provision.

### Uncommenced provisions and amendments

If a provision of the compiled Act is affected by an uncommenced amendment, the text of the uncommenced amendment is set out in the endnotes.

### Application, saving and transitional provisions for amendments

If the operation of an amendment is affected by an application, saving or transitional provision, the provision is identified in the endnotes.

### Modifications

If a provision of the compiled Act is affected by a textual modification that is in force, the text of the modifying provision is set out in the endnotes.

### Provisions ceasing to have effect

If a provision of the compiled Act has expired or otherwise ceased to have effect in accordance with a provision of the Act, details of the provision are set out in the endnotes.

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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 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.
- 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.

Clause 2

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***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.

Note: For overlapping coverage areas, see clause 5J.

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

***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.

***digital-only local market area*** has the meaning given by clause 5F.

***exempt licence*** means a commercial television broadcasting licence allocated under section 38B for a remote licence area.

***exempt remote area service*** has the meaning given by subclause 6(7F).

***HDTV commercial television format standard*** means:

- (a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(8); or
- (b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(10A).

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

***HDTV multi-channelled commercial television broadcasting service*** has the meaning given by clause 5B.

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

***HDTV national television format standard*** means:

- (a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(8); or
- (b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(10A).

Clause 2

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

**local market area** has the meaning given by clause 5F.

**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;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38c.

**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.

**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.

**parent licence** means a commercial television broadcasting licence referred to in subsection 38B(1) as a parent licence.

**primary commercial television broadcasting service**, in relation to a commercial television broadcasting licence, has the meaning given by clause 41G.

**primary national television broadcasting service**, in relation to a national broadcaster, has the meaning given by clause 41M.

**primary satellite national television broadcasting service**, in relation to a national broadcaster, has the meaning given by clause 41N.

**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, but does not include the licence area of a commercial television broadcasting licence allocated under section 38c.

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

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

**satellite delivery area** means an area that corresponds to the licence area of a commercial television broadcasting licence allocated under section 38c.

**SDTV commercial television format standard** means:

- (a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area; or
- (b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area.

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

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Clause 2

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

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

***SDTV national television format standard*** means:

- (a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area; or
- (b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area.

***simulcast-equivalent period***:

- (a) in relation to a commercial television broadcasting service—has the meaning given by clause 4C; or
- (b) in relation to a national television broadcasting service—has the meaning given by clause 4D.

***simulcast period***:

- (a) in relation to a commercial television broadcasting service where the licence area concerned is a metropolitan licence area or a regional licence area, but 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.

#### **4C Simulcast-equivalent period for a licence area**

- (1) If there is no simulcast period for a licence area of a commercial television broadcasting licence, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the licence area.
- (2) Subclause (1) does not apply to a commercial television broadcasting licence allocated under section 38c.

Clause 4D

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**4D Simulcast-equivalent period for a coverage area**

If there is no simulcast period for a coverage area in relation to a national television broadcasting service, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the coverage area.

**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.
- (1A) Subclause (1) does not apply to the licence area of a commercial television broadcasting licence allocated under section 38c.
- (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 SDTV multi-channelled commercial television broadcasting service**

- (1) For the purposes of this Schedule, a commercial television broadcasting service is a *SDTV multi-channelled commercial television broadcasting service* if:
  - (a) the service is provided by a commercial television broadcasting licensee; and
  - (b) the service is transmitted in SDTV digital mode:
    - (i) using multi-channelling transmission capacity; or
    - (ii) with the use of a satellite; and
  - (c) the service is promoted as a service that is distinct from any other commercial television broadcasting service provided by the licensee; and
  - (d) the service is not the core commercial television broadcasting service.
- (2) Paragraph (1)(d) ceases to have effect at the end of the simulcast period, or simulcast-equivalent period, for the licence area concerned.

**5B HDTV multi-channelled commercial television broadcasting service**

For the purposes of this Schedule, a commercial television broadcasting service is a ***HDTV multi-channelled commercial television broadcasting service*** if:

- (a) the service is provided by a commercial television broadcasting licensee; and
- (b) the service is transmitted in HDTV digital mode:
  - (i) using multi-channelling transmission capacity; or
  - (ii) with the use of a satellite; and
- (c) the service is promoted as a service that is distinct from any other commercial television broadcasting service provided by the licensee.

**5C SDTV multi-channelled national television broadcasting service**

(1) For the purposes of this Schedule, a national television broadcasting service is a ***SDTV multi-channelled national television broadcasting service*** if:

- (a) the service is provided by:
    - (i) the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
    - (ii) the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; and
  - (b) the service is transmitted in SDTV digital mode:
    - (i) using multi-channelling transmission capacity; or
    - (ii) with the use of a satellite; and
  - (c) the service is promoted as a service that is distinct from any other national television broadcasting service provided by the Corporation concerned; and
  - (d) the Corporation concerned has given the Minister a written notice electing that this subclause apply to the service.
- (2) A notice under paragraph (1)(d) has no effect if:
- (a) the notice relates to a national television broadcasting service transmitted by the Corporation concerned in a coverage area; and

Clause 5D

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- (b) as a result of the notice being given, clause 19 would not apply to any national television broadcasting service provided by the Corporation in the coverage area.
- (3) Subclause (2) ceases to have effect at the end of the simulcast period, or simulcast-equivalent period, for the coverage area concerned.
- (4) Paragraph (1)(d) does not apply to a national television broadcasting service provided with the use of a satellite.

**5D HDTV multi-channelled national television broadcasting service**

For the purposes of this Schedule, a national television broadcasting service is a ***HDTV multi-channelled national television broadcasting service*** if:

- (a) the service is provided by:
  - (i) the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
  - (ii) the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; and
- (b) the service is transmitted in HDTV digital mode:
  - (i) using multi-channelling transmission capacity; or
  - (ii) with the use of a satellite; and
- (c) the service is promoted as a service that is distinct from any other national television broadcasting service provided by the Corporation concerned.

**5E Designated HDTV multi-channelled national television broadcasting service**

- (1) For the purposes of this Schedule, a ***designated HDTV multi-channelled national television broadcasting service*** provided by a national broadcaster in a coverage area is:
  - (a) if the national broadcaster provides a single HDTV multi-channelled national television broadcasting service in the coverage area—that service; or
  - (b) subject to subclauses (2) and (3), if the national broadcaster provides 2 or more HDTV multi-channelled national

television broadcasting services in the coverage area—each of those services.

- (2) Paragraph (1)(b) does not apply to a HDTV multi-channelled national television broadcasting service provided by a national broadcaster in a coverage area if the national broadcaster gives the Minister a written notice electing that paragraph (1)(b) not apply to the service.
- (3) A notice under subclause (2) has no effect if, as a result of the notice being given, paragraph (1)(b) would not apply to any of the HDTV multi-channelled national television broadcasting services provided by the national broadcaster in the coverage area.

### **5F Local market areas and digital-only local market areas**

- (1) The Minister may, by legislative instrument:
  - (a) determine that a specified area is a *local market area* for the purposes of this Schedule; and
  - (b) determine that that area becomes a *digital-only local market area* for the purposes of this Schedule at a specified time.
- (2) An area must not be specified under paragraph (1)(a) unless it is wholly included in a licence area.
- (3) A time must not be specified under paragraph (1)(b) unless it falls within the simulcast period for the licence area concerned.
- (4) A subclause (1) determination is irrevocable.

#### *Variation*

- (5) The Minister may, by legislative instrument, vary a subclause (1) determination.
- (6) The Minister must not vary a subclause (1) determination after the time specified in the determination.
- (10) Subclause (5) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

Clause 5H

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*Consultation*

- (11) Before making or varying a subclause (1) determination, the Minister must consult the ACMA.

**5H Reports on transmission blackspots**

On the first sitting day of each House of the Parliament after each 1 January, 1 April, 1 July and 1 October from 1 April 2009 until 1 September 2014, the Minister must cause a report to be laid before each House of the Parliament containing the following information:

- (a) action taken to identify and rectify transmission infrastructure that would otherwise prevent the transmission of free to air television broadcasting services in SDTV digital mode in any area achieving the same level of coverage and potential reception quality as was achieved by the transmission of those services in analog mode; and
- (b) the local market areas and regions where transmission issues have been identified and how many households will be affected.

**5J Overlapping coverage areas**

If:

- (a) apart from this clause, a coverage area (the *first coverage area*) overlaps with another coverage area; and
- (b) the last day of the simulcast period for the first coverage area is earlier than the last day of the simulcast period for the other coverage area;

this Schedule has effect as if the area of overlap were not part of the first coverage area.

## 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 metropolitan licence area or a regional licence area, that is:
    - (i) to be known as the ***simulcast period***; and

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- (ii) in the case of a metropolitan licence area—to run for 9 years or for such other period as is determined under subclause 6A(1) in relation to that area; and
- (ia) in the case of a regional licence area—to run until the end of 31 December 2013 or for such other period as is determined under subclause 6A(2) 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 so much of that area as is not a digital-only local market 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 so much of that area as is not a digital-only local market 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 so much of that area as is not a digital-only local market 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 so much of that area as is not a digital-only local market area; and
- (ii) transmitters used by the holder to transmit that service in analog mode in so much of that area as is not a digital-only local market area;
- (ga) the objective that, during the simulcast period for a licence area, no transmissions of commercial television broadcasting services in analog mode are to be made using a transmitter located in so much of that area as is a digital-only local market 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, if the television licence area plan for a licence area comes into force immediately after the end of the simulcast period for that 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 after the end of the simulcast period using such channel or channels as are allotted under the television licence area plan for that area;
  - (hb) the objective that, if the television licence area plan for a licence area does not come into force immediately after the end of the simulcast period for that 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 during the period:
    - (i) beginning at the end of the simulcast period; and
    - (ii) ending immediately before the television licence area plan comes into force;using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:
    - (iii) the need to plan the most efficient use of the spectrum; and
    - (iv) the other relevant policy objectives of the scheme;
  - (hc) the objective that, if the television licence area plan for a licence area does not come into force immediately after the end of the simulcast period for that area, each holder of a commercial television broadcasting licence for that area is to
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Clause 6

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transmit the commercial television broadcasting service concerned in digital mode in that area after the television licence area plan comes into force using such channel or channels as are allotted under the television licence area plan for that area;

- (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 so much of that area as was not a digital-only local market 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 so much of that area as was not a digital-only local market area immediately before the end of that period;
- (ja) the objective that, after a local market area becomes a digital-only local market area, the transmission of a commercial television broadcasting service in SDTV digital mode in the digital-only local market 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 the local market area immediately before the local market area became a digital-only local market area;
- (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 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) either:
    - (i) if the other licence was allocated before the commencement of section 38C—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; or
    - (ii) if the other licence was allocated after the commencement of section 38C—before the end of the simulcast period for the licence area of the other licence, the holder gave the ACMA a written notice electing that
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**Clause 6**

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this subclause apply to the commercial television broadcasting services provided under the licences;

then:

- (e) paragraphs (3)(d), (e), (ha), (hb) and (hc) do not apply to the commercial television broadcasting services provided under the licences; 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), (ha), (hb) and (hc) do not apply to the commercial television broadcasting services provided under the licences; 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 the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable 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, if the television licence area plan for that area comes into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area after the end of the simulcast period using multi-channelling transmission capacity of a channel or channels allotted under the television licence area plan for the licence area;
  - (d) the objective that, if the television licence area plan for the licence area does not come into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area during the period:
    - (i) beginning at the end of the simulcast period; and
    - (ii) ending immediately before the television licence area plan comes into force;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:
    - (iii) the need to plan the most efficient use of the spectrum; and
    - (iv) the other relevant policy objectives of the scheme;
  - (e) the objective that, if the television licence area plan for the licence area does not come into force immediately after the end of the simulcast period for the licence area, the holder is to transmit the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable in digital mode in that area after the television licence area plan comes into force using multi-channelling transmission capacity of a channel or channels allotted under the television licence area plan for that area.
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(5BA) An election made under subclause (5A) or (5AA) remains in force until:

- (a) it is revoked, by written notice given to the ACMA, by:
  - (i) if neither of the licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable has been transferred since the making of the election—the holder of the licence allocated under section 38A or 38B; or
  - (ii) if the licence allocated under section 38A or 38B has been transferred since the making of the election—the holder of that licence; or
  - (iii) if a parent licence referred to in whichever of section 38A or 38B is applicable has been transferred since the making of the election—the holder of that parent licence; and
- (b) the ACMA approves the revocation under clause 7B.

(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.

(5CA) For the purposes of paragraphs (3)(f), (j) and (ja), ignore any commercial television broadcasting service provided under a licence allocated under section 38c.

(5D) For the purposes of paragraphs (3)(hb) and (n) and (5B)(d), 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.

Note: See also clause 6B.

*Special rules for section 38B licences in remote licence areas*

- (7B) Special rules apply to an exempt remote area service for a remote licence area for which an exempt licence has been allocated if written notice is given to the ACMA electing that this subclause applies by:
  - (a) the 2 existing licensees for that licence area (where the exempt licence is allocated to a joint-venture company under subsection 38B(5)); or

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- (b) the licensee to whom the exempt licence is allocated (where the exempt licence is allocated under subsection 38B(6), (7), (8) or (9)).

The notice must be given within the 12-month period beginning at the later of the following:

- (c) when the exempt licence is allocated;
- (d) the commencement of this paragraph.

(7C) The election remains in force for a company until:

- (a) it is revoked, by written notice given to the ACMA, by:
  - (i) a company that made the election; or
  - (ii) if the election was made in relation to an exempt licence allocated under subsection 38B(5) and a parent licence has been transferred—by the licensee of the parent licence; or
  - (iii) if the election was made in relation to an exempt licence allocated under subsection 38B(6), (7), (8) or (9) and the exempt licence has been transferred—by the licensee of the exempt licence; and
- (b) the ACMA approves the revocation under clause 7B.

(7F) An *exempt remote area service* for a remote licence area is:

- (a) each of these:
  - (i) a commercial television broadcasting service provided by a joint-venture company under an exempt licence that was allocated to the company under subsection 38B(5) for that licence area; and
  - (ii) the commercial television broadcasting services provided under the parent licences for that licence area; or
- (b) each of these:
  - (i) a commercial television broadcasting service provided by a licensee under an exempt licence that was allocated to the licensee under subsection 38B(6), (7), (8) or (9) for that licence area; and
  - (ii) each other commercial television broadcasting service provided by that licensee for that licence area; or
- (c) a commercial television broadcasting service provided by a licensee under an exempt licence for that licence area that is transferred to the licensee; or



(d) a commercial television broadcasting service provided under a parent licence for that licence area that is transferred to the licensee.

(7G) Subclauses (7) and (7A) do not apply to an exempt remote area service provided under an exempt licence while an election under subclause (7B) is in force for the service.

(7H) Part B of the commercial television conversion scheme must be directed towards ensuring the achievement of the policy objective that each exempt remote area service for a remote licence area should be authorised to be transmitted in SDTV digital mode using multi-channelling transmission capacity while an election under subclause (7B) is in force for the service.

*HDTV multi-channelled commercial television broadcasting services*

(7J) This clause does not apply to a HDTV multi-channelled commercial television broadcasting service.

*SDTV multi-channelled commercial television broadcasting services*

(7JA) This clause does not apply to a SDTV multi-channelled commercial television broadcasting service.

*Licences allocated under section 36 on or after 1 January 2007*

(7K) This clause does not apply in relation to a commercial television broadcasting licence if the licence was allocated under section 36 on or after 1 January 2007.

*Licences allocated under section 38C*

(7KA) This clause does not apply to a commercial television broadcasting licence allocated under section 38c.

*Licences allocated under subsection 40(1) on or after 1 January 2007*

(7L) This clause does not apply in relation to a commercial television broadcasting licence if the licence was allocated under subsection 40(1) on or after 1 January 2007.

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*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 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 13(3) of the *Legislative Instruments Act 2003*.

(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 13(3) of the *Legislative Instruments Act 2003*.

(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:

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- (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:

- (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 13(3) of the *Legislative Instruments Act 2003*.

- (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.

**6A Determination of simulcast period—metropolitan and regional licence areas**

- (1) The Minister may, by legislative instrument, determine a period for the purposes of the application of subparagraph 6(3)(c)(ii) to a specified metropolitan licence area.
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- (2) The Minister may, by legislative instrument, determine a period for the purposes of the application of subparagraph 6(3)(c)(ia) to a specified regional licence area.
- (3) A period determined under subclause (1) must end before the end of 31 December 2013.  
Note: See subclause (11).
- (4) A period determined under subclause (2) must end before the end of 31 December 2013.  
Note: See subclause (11).
- (5) A subclause (1) determination is irrevocable.
- (6) A subclause (2) determination is irrevocable.

*Variation*

- (7) The Minister may, by legislative instrument, vary:  
(a) a subclause (1) determination; or  
(b) a subclause (2) determination.
- (8) The Minister must not vary:  
(a) a subclause (1) determination; or  
(b) a subclause (2) determination;  
after the end of the period specified in the determination.
- (10) If there is a variation of:  
(a) a subclause (1) determination; or  
(b) a subclause (2) determination;  
the end of the period specified in the varied determination must not be later than the end of 31 December 2013.  
Note: See subclause (11).
- (11) If there is a variation (the *current variation*) of:  
(a) a subclause (1) determination; or  
(b) a subclause (2) determination;  
subclauses (3), (4) and (10) do not apply, so long as:  
(c) the end of the period specified in the determination, as it stood before the current variation, would be likely to result in significant difficulties of a technical or engineering nature for:

- (i) a commercial television broadcasting licensee for the licence area concerned; or
  - (ii) a national broadcaster; and
  - (d) those difficulties could not reasonably have been foreseen by the commercial television broadcasting licensee or the national broadcaster, as the case requires, as at 6 months before the end of the period specified in the determination as it stood before the current variation; and
  - (e) the end of the period specified in the varied determination is not later than the end of 30 June 2014.
- (12) Subclause (7) does not limit the application of subsection 33(3) of the *Acts Interpretation Act 1901* to other instruments under this Act.

*Consultation*

- (13) Before making or varying:
- (a) a subclause (1) determination; or
  - (b) a subclause (2) determination;
- the Minister must consult the ACMA.

**6B Determination of simulcast period—remote licence areas**

- (1) The ACMA must not determine a period for the purposes of paragraph 6(7A)(b) if the period ends after 31 December 2013.
- (2) Subclause (1) does not apply in such circumstances (if any) as are specified in a legislative instrument made by the Minister.

**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

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- (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.
- (4) Subclause (1) does not apply in relation to a commercial television broadcasting licence allocated under section 38c.

**7AA Allotment of channels after the television licence area plan comes into force**

- (1) A digital channel plan, to the extent to which it relates to a particular licence area, ceases to have effect when the television licence area plan for that area comes into force.
- (2) The commercial television conversion scheme, to the extent to which it allots channels for a particular licence area, ceases to have effect when the television licence area plan for that area comes into force.

**7B Revocation of multi-channelling election**

*Scope*

- (1) This clause applies if a commercial television broadcasting licensee gives the ACMA a notice of revocation under subclause 6(5BA) or (7C).

*Approval of revocation*

- (2) If the ACMA is satisfied that there is sufficient radiofrequency spectrum available, the ACMA must, by notice in writing given to the licensee:
  - (a) approve the revocation; and
  - (b) specify a day as the day on which the revocation takes effect; and



- (c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee.
- (3) For the purposes of subclause (2), any part of the spectrum covered by a determination under subsection 34(3) is taken not to be available.
- (4) The ACMA may, before the day specified under paragraph (2)(b), by notice in writing, vary the day on which the revocation takes effect.

*Refusal to approve revocation*

- (5) If the ACMA refuses to approve the revocation, the ACMA must give written notice of the refusal to the licensee.

## **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

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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 if format and HDTV requirements 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:
    - (i) paragraph 7(1)(ma) of Schedule 2; or
    - (ii) a SDTV commercial television format standard; or
    - (iii) a HDTV commercial television format standard; or
    - (iv) subclause 37E(1); or
    - (v) a standard under subclause 37E(3); and
  - (b) under the scheme, the ACMA gives the holder a written direction to comply with that provision or 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.

- (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 provision or standard mentioned in subparagraph (7)(a)(i), (iii), (iv) or (v). 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
  - (aa) paragraph 7(1)(ma) of Schedule 2; or
  - (b) paragraph 7(1)(mb) of Schedule 2; or
  - (c) a SDTV commercial television format standard; or
  - (d) a HDTV commercial television format standard; or
  - (e) a standard applicable to the holder under subclause 37G(1);  
or
  - (f) a standard applicable to the holder under subclause 37G(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 the provision mentioned in paragraph (10)(b) or a standard mentioned in paragraph (10)(d), (e) or (f). 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.

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**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.
- (1A) Subclause (1) does not apply to a HDTV multi-channelled commercial television broadcasting service.
- (1AA) Subclause (1) does not apply to a SDTV multi-channelled commercial television broadcasting service.
- (1B) Subclause (1) does not apply in relation to a commercial television broadcasting licence if the licence was allocated under section 36 on or after 1 January 2007.
- (1BA) Subclause (1) does not apply in relation to a commercial television broadcasting licence allocated under section 38c.
- (1C) Subclause (1) does not apply in relation to a commercial television broadcasting licence if the licence was allocated under subsection 40(1) on or after 1 January 2007.
- (2) The commercial television conversion scheme may provide for variation of implementation plans submitted to the ACMA by holders of commercial television broadcasting licences.

**9A Areas exempt from digital transmission requirements—  
commercial television broadcasting licensees**

*Areas exempt from digital transmission requirements*

- (1) If an area is an exempt digital transmission area in relation to a commercial television broadcasting licence, the licensee is not required to comply with:
  - (a) the commercial television conversion scheme; or
  - (b) an implementation plan;to the extent that the scheme or plan would require the licensee to transmit a commercial television broadcasting service in digital mode in the exempt digital transmission area.

*Determination*

- (2) On application by the holder of a commercial television broadcasting licence, the Minister may, by legislative instrument, determine that, for the purposes of this clause, a specified area that is within the licence area is an ***exempt digital transmission area*** in relation to the licence.
- (3) The Minister must not make a determination under subclause (2) that specifies an area that is within the licence area of a commercial television broadcasting licence unless, when the determination is made:
- (a) the specified area does not have coverage of any commercial television broadcasting service that is:
    - (i) provided by the commercial television broadcasting licensee in the licence area; and
    - (ii) transmitted in digital mode; and
  - (b) the Minister is satisfied that:
    - (i) fewer than 500 people reside in the specified area; or
    - (ii) the specified area is an underserviced area; and
  - (c) either:
    - (i) commercial television broadcasting services are provided in the specified area under a commercial television broadcasting licence allocated under section 38C; or
    - (ii) the Minister is satisfied that there is another way in which people in the specified area can, or will be able to, view an adequate and comprehensive range of commercial television broadcasting services and national television broadcasting services.
- (4) In considering, for the purposes of subparagraph (3)(b)(i), whether fewer than 500 people reside in a specified area, the Minister must have regard to the latest resident population statistics published by the Australian Statistician.

*Underserviced areas*

- (5) For the purposes of subparagraph (3)(b)(ii), a specified area within a licence area is an ***underserviced area*** if:
- (a) the specified area does not have coverage of one or more commercial television broadcasting services that are:
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- (i) provided in the licence area; and
    - (ii) transmitted in analog mode; or
  - (b) the specified area does not have coverage of one or more national television broadcasting services that are:
    - (i) provided in the coverage area that corresponds to the licence area; and
    - (ii) transmitted in analog mode.
- (6) For the purposes of subclause (5), disregard a service that does no more than:
- (a) re-transmit programs that are transmitted by a commercial television broadcasting service; or
  - (b) re-transmit programs that are transmitted by a national television broadcasting service.
- (7) For the purposes of subparagraph (3)(b)(ii), a specified area within a licence area is an ***underserviced area*** if:
- (a) the specified area does not, or will not, have coverage of the commercial television broadcasting services that are:
    - (i) provided in the licence area by a person other than the commercial television broadcasting licensee; and
    - (ii) transmitted in digital mode; or
  - (b) the specified area does not, or will not, have coverage of the national television broadcasting services that are:
    - (i) provided in the coverage area that corresponds to the licence area; and
    - (ii) transmitted in digital mode.
- (8) A reference in subclause (7) to a ***commercial television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a commercial television broadcasting service.
- (9) A reference in subclause (7) to a ***national television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a national television broadcasting service.

## **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 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.

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**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

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- (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 so much of that coverage area as is not a digital-only local market 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 so much of that area as is not a digital-only local market 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 so much of that area as is not a digital-only local market 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 so much of that area as is not a digital-only local market area; and
  - (ii) transmitters used by the national broadcaster to transmit that service in analog mode in so much of that area as is not a digital-only local market area;
- (ga) the objective that, during the simulcast period for a coverage area, no transmissions of national television broadcasting services in analog mode are to be made using a transmitter located in so much of that area as is a digital-only local market 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, if the television licence area plan for the licence area that corresponds to a coverage area comes into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area after the end of the simulcast period using such channel or channels as are allotted under the television licence area plan for that licence area;
- (hb) the objective that, if the television licence area plan for the licence area that corresponds to a coverage area does not come into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area during the period:
  - (i) beginning at the end of the simulcast period; and
  - (ii) ending immediately before the television licence area plan comes into force;using such channel or channels as the ACMA allots under the scheme or a digital channel plan, having regard to:
  - (iii) the need to plan the most efficient use of the spectrum; and
  - (iv) the other relevant policy objectives of the scheme;
- (hc) the objective that, if the television licence area plan for the licence area that corresponds to a coverage area does not come into force immediately after the end of the simulcast period for that coverage area, each national broadcaster is to transmit the national television broadcasting service concerned in digital mode in that coverage area after the television licence area plan comes into force using such channel or channels as are allotted under the television licence area plan for that licence area;
- (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 so much of that area as was not a digital-only local market area should

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- achieve the same level of coverage and potential reception quality as was achieved by the transmission of that service in analog mode in so much of that area as was not a digital-only local market area immediately before the end of that period;
- (ja) the objective that, after a local market area becomes a digital-only local market area, the transmission of a national television broadcasting service in SDTV digital mode in the digital-only local market 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 the local market area immediately before the local market area became a digital-only local market area;
  - (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)(hb) 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

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implementation plan that was given by the broadcaster, and is in force, under clause 20.

*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.

*SDTV multi-channelled national television broadcasting services*

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

*HDTV multi-channelled national television broadcasting services*

- (7C) This clause does not apply to a HDTV 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

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may consist of the simulcast period for the coverage area concerned.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

- (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 13(3) of the *Legislative Instruments Act 2003*.

- (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



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- (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 13(3) of the *Legislative Instruments Act 2003*.

- (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 SDTV multi-channelled national television broadcasting service.

*HDTV multi-channelled national television broadcasting services*
- (1B) This clause does not apply to a HDTV 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;

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- (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;
  - (ca) whether there are other means by which people in the coverage area to which the implementation plan relates can view an adequate and comprehensive range of:
    - (i) commercial television broadcasting services transmitted in digital mode; and
    - (ii) national television broadcasting services transmitted in digital mode;
  - (cb) the extent to which commercial television broadcasting services are being, or will be, transmitted in digital mode in the coverage area to which the implementation plan relates;
  - (cc) the extent to which national television broadcasting services are being, or will be, transmitted in digital mode in the coverage area to which the implementation plan relates by a national broadcaster other than the national broadcaster to whom the implementation plan relates;
  - (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:
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- (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:
  - (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.

### **21A Areas exempt from digital transmission requirements—national broadcasters**

#### *Areas exempt from digital transmission requirements*

- (1) If an area is an exempt digital transmission area in relation to a national broadcaster, the national broadcaster is not required:
  - (a) to comply with:
    - (i) the national television conversion scheme; or
    - (ii) an implementation plan;to the extent that the scheme or plan would require the national broadcaster to transmit a national television

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broadcasting service in digital mode in the exempt digital transmission area; or

- (b) to submit an implementation plan under clause 20 that relates to the exempt digital transmission area.

*Determination*

- (2) On application by a national broadcaster, the Minister may, by legislative instrument, determine that, for the purposes of this clause, a specified area that is within a coverage area is an **exempt digital transmission area** in relation to the national broadcaster.
- (3) The Minister must not make a determination under subclause (2) that specifies an area that is within a coverage area unless, when the determination is made:
- (a) the specified area does not have coverage of any national television broadcasting service that is:
    - (i) provided by the national broadcaster in the coverage area; and
    - (ii) transmitted in digital mode; and
  - (b) the Minister is satisfied that:
    - (i) fewer than 500 people reside in the specified area; or
    - (ii) the specified area is an underserviced area; and
  - (c) either:
    - (i) national television broadcasting services are provided in the coverage area with the use of a satellite; or
    - (ii) the Minister is satisfied that there is another way in which people in the specified area can, or will be able to, view an adequate and comprehensive range of commercial television broadcasting services and national television broadcasting services.
- (4) In considering, for the purposes of subparagraph (3)(b)(i), whether fewer than 500 people reside in a specified area, the Minister must have regard to the latest resident population statistics published by the Australian Statistician.

*Underserviced areas*

- (5) For the purposes of subparagraph (3)(b)(ii), a specified area within a coverage area is an **underserviced area** if:
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- (a) the specified area does not have coverage of one or more commercial television broadcasting services that are:
    - (i) provided in a licence area that corresponds to the coverage area; and
    - (ii) transmitted in analog mode; or
  - (b) the specified area does not have coverage of one or more national television broadcasting services that are:
    - (i) provided in the coverage area; and
    - (ii) transmitted in analog mode.
- (6) For the purposes of subclause (5), disregard a service that does no more than:
- (a) re-transmit programs that are transmitted by a commercial television broadcasting service; or
  - (b) re-transmit programs that are transmitted by a national television broadcasting service.
- (7) For the purposes of subparagraph (3)(b)(ii), a specified area within a coverage area is an ***underserviced area*** if:
- (a) the specified area does not, or will not, have coverage of the commercial television broadcasting services that are:
    - (i) provided in a licence area that corresponds to the coverage area; and
    - (ii) transmitted in digital mode; or
  - (b) the specified area does not, or will not, have coverage of the national television broadcasting services that are:
    - (i) provided in the coverage area; and
    - (ii) transmitted in digital mode.
- (8) A reference in subclause (7) to a ***commercial television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a commercial television broadcasting service.
- (9) A reference in subclause (7) to a ***national television broadcasting service*** includes a reference to a service that does no more than re-transmit programs that are transmitted by a national television broadcasting service.

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**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.

**22AA Allotment of channels after the television licence area plan comes into force**

- (1) A digital channel plan, to the extent to which it relates to a particular coverage area, ceases to have effect when the television licence area plan for the licence area that corresponds to the coverage area comes into force.
- (2) The national television conversion scheme, to the extent to which it allots channels for a particular coverage area, ceases to have effect when the television licence area plan for the licence area that corresponds to the coverage area comes into force.

**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 if format and HDTV requirements 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:

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- (i) subclause 35AA(1); or
  - (ii) a SDTV national television format standard; or
  - (iii) a HDTV national television format standard; or
  - (iv) subclause 37F(1); or
  - (v) a standard under subclause 37F(3); and
- (b) under the scheme, the ACMA gives the national broadcaster a written direction to comply with that provision or 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 provision or standard mentioned in subparagraph (7)(a)(i), (iii), (iv) or (v). 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 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) subclause 35AA(2); or
  - (c) a SDTV national television format standard; or
  - (d) a HDTV national television format standard; or
  - (e) a standard applicable to the national broadcaster under subclause 37H(1); or
  - (f) a standard applicable to the national broadcaster under subclause 37H(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 the provision mentioned in paragraph (10)(b) or a standard mentioned in paragraph (10)(d), (e) or (f). 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).

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- (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.

**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 so much of that coverage area as is not a digital-only local market area during the simulcast period for that coverage area unless the program is broadcast simultaneously by the national broadcaster in analog mode in so much of that coverage area as is not a digital-only local market 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 SDTV multi-channelled national television broadcasting service.

### **35A Certain transmissions to be disregarded**

- (1) For the purposes of clauses 34 and 35, if:
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Clause 35AA

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- (a) a transmitter licence was issued under section 100 of the *Radiocommunications Act 1992*; and
  - (b) the transmitter licence authorises the operation of one or more transmitters for transmitting one or more national television broadcasting services in digital mode;
- ignore any transmission of those services in digital mode by those transmitters.
- (2) For the purposes of clauses 34 and 35, ignore the broadcast of a national television broadcasting service in analog mode in a digital-only local market area if:
    - (a) the broadcast of the service in the digital-only local market area occurs accidentally; or
    - (b) the broadcast of the service in the digital-only local market area occurs as a necessary result of the provision of national television broadcasting services outside the digital-only local market area.

**35AA National broadcasters must provide HDTV multi-channelled national television broadcasting service during simulcast period etc.**

- (1) If there is a simulcast period for a coverage area, a national broadcaster must provide at least one HDTV multi-channelled national television broadcasting service in the coverage area during that period.
- (2) If:
  - (a) there is a simulcast-equivalent period for a coverage area; and
  - (b) under the regulations, a national broadcaster is required to provide a HDTV multi-channelled national television broadcasting service in the coverage area during that period;the national broadcaster must comply with that requirement.

**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 national television broadcasting services 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 4—Standards and HDTV quotas

### Division 2—HDTV quotas and standards

#### **37DAA This Division does not apply in relation to section 38C licences**

This Division does not apply in relation to a commercial television broadcasting licence allocated under section 38c.

#### **37DA This Division does not apply in relation to licences allocated under subsection 40(1)**

This Division does not apply in relation to a commercial television broadcasting licence if the licence was allocated under subsection 40(1).

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

- (1) During the HDTV quota period for a commercial television broadcasting licence, the licensee must transmit at least the HDTV quota of high-definition television programs in HDTV digital mode on the HDTV multi-channelled commercial television broadcasting service provided by the licensee in the licence area.
- (2) For the purposes of subclause (1), the *HDTV quota period* for a commercial television broadcasting licence is the period:
  - (a) beginning:
    - (i) if the licence was in force immediately before 1 January 2007 and is not the licence with the service licence number SL1150827—at the start of 1 January 2007; or
    - (ii) if the licence is in force immediately before 1 January 2008 and the service licence number of the licence is SL1150827—at the start of 1 January 2008; or
    - (iii) in any other case—at the start of the first day after the end of the 2-year period that begins when the licensee is required to commence transmitting a commercial television broadcasting service in the licence area concerned; and



- (b) ending at the end of the simulcast period, or the simulcast-equivalent period, for the licence area concerned.

Note: The licence referred to in subparagraph (a)(ii) was allocated to Mildura Digital Television Pty Ltd for the Mildura/Sunraysia TV1 licence area.

- (2A) For the purposes of subclause (1), the **HDTV quota** for a calendar year, or a part of a calendar year, included in the HDTV quota period is as follows:
- (a) for a calendar year—1040 hours;
  - (b) for a part of a calendar year—1040 hours reduced on a pro-rata basis.

*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 multi-channelled commercial television broadcasting service provided by the licensee in the licence area.

*Application*

- (4) Subclauses (1), (2) and (3) apply in relation to the transmission of a HDTV multi-channelled commercial television broadcasting service in a licence area that is not a remote licence area, if the service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8).
- (5) Subclauses (1), (2) and (3) do not apply to a commercial television broadcasting licence if an election under subclause 6(5A) or (5AA) is in force for a commercial television broadcasting service provided under the licence.

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

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

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

- (1) During the HDTV quota period for a national broadcaster, the national broadcaster must transmit at least the HDTV quota of
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**Part 4** Standards and HDTV quotas

**Division 2** HDTV quotas and standards

Clause 37F

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high-definition television programs in HDTV digital mode on a designated HDTV multi-channelled national television broadcasting service provided by the broadcaster in the coverage area.

- (2) For the purposes of subclause (1), the *HDTV quota period* for a national broadcaster is the period:
- (a) beginning at the start of 1 January 2007; and
  - (b) ending after the end of the simulcast period, or the simulcast-equivalent period, for the coverage area concerned.
- (2A) For the purposes of subclause (1), the *HDTV quota* for a calendar year, or a part of a calendar year, included in the HDTV quota period is as follows:
- (a) for a calendar year—1040 hours;
  - (b) for a part of a calendar year—1040 hours reduced on a pro-rata basis.

*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 a designated HDTV multi-channelled national television broadcasting service.

*Application*

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

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

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

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

- (1) The regulations may determine standards that require each commercial television broadcasting licensee 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 multi-channelled commercial television broadcasting service provided by the licensee in the licence area.

*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 multi-channelled commercial television broadcasting service provided by the licensee in the licence area.

*Application*

- (3) Subclauses (1) and (2) apply in relation to the transmission of a HDTV multi-channelled commercial television broadcasting service in a remote licence area, if the service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(10A).
- (4) Subclauses (1) and (2) do not apply to a licence if:
- (a) the licensee provides an exempt remote area service under the licence; and
  - (b) an election under subclause 6(7B) is in force for the service.
- (5) If there is a simulcast period for the licence area of a commercial television broadcasting licence, subclauses (1) and (2) cease to apply to the licence at the end of that period.
- (6) If there is a simulcast-equivalent period for the licence area of a commercial television broadcasting licence, subclauses (1) and (2) cease to apply to the licence at the end of that period.

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 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 a designated HDTV multi-channelled national television broadcasting service provided by the broadcaster in a coverage area.

*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 a designated HDTV multi-channelled national television broadcasting service.

*Application*

- (3) Subclauses (1) and (2) apply in relation to the transmission of a designated HDTV multi-channelled national television broadcasting service in a remote coverage area, if the service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(10A).
- (4) If there is a simulcast period for a coverage area, subclauses (1) and (2) cease to apply to the coverage area at the end of that period.
- (5) If there is a simulcast-equivalent period for a coverage area, subclauses (1) and (2) cease to apply to the coverage area at the end of that period.

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

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

**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.

### **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:

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- (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).
  - (4) The following provisions apply to determinations of a day under subparagraph (3)(a)(ii):
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- (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.

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**Division 5** Miscellaneous

Clause 41

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## **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 4A—Restrictions on televising anti-siphoning events**

### **Division 1—Commercial television broadcasting services**

#### **41A SDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period if there is a core service etc.**

##### *Scope*

- (1) This clause applies to a commercial television broadcasting licensee if:
  - (a) there is a simulcast period, or a simulcast-equivalent period, for the licence area of the licence; and
  - (b) during that period, the licensee provides a core commercial television broadcasting service in the licence area.

##### *Televising the whole of an anti-siphoning event*

- (2) During that period, the licensee must not televise on a SDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the whole of the event on the core commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the core commercial television broadcasting service; and
    - (ii) the SDTV multi-channelled commercial television broadcasting service.

##### *Televising a part of an anti-siphoning event*

- (3) During that period, the licensee must not televise on a SDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:

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- (a) the licensee has previously televised in the licence area the part of the event on the core commercial television broadcasting service; or
- (b) the licensee will televise simultaneously in the licence area the part of the event on both:
  - (i) the core commercial television broadcasting service; and
  - (ii) the SDTV multi-channelled commercial television broadcasting service; or
- (c) the licensee televises the part of the event in a news or current affairs program broadcast on the SDTV multi-channelled commercial television broadcasting service.

Note: For *anti-siphoning event*, see subsection 6(1).

*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

**41B SDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period if there is a primary service etc.**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if:
  - (a) subsection 41B(2), (2C) or (2CB) applies to the licence; and
  - (b) there is a simulcast period, or a simulcast-equivalent period, for the licence area of the licence; and
  - (c) during that period, the licensee provides:
    - (i) a SDTV multi-channelled commercial television broadcasting service that is the licensee's primary commercial television broadcasting service; and
    - (ii) another SDTV multi-channelled commercial television broadcasting service (the *secondary commercial television broadcasting service*).

*Televising the whole of an anti-siphoning event*

- (2) During that period, the licensee must not televise on the secondary commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the whole of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the secondary commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) During that period, the licensee must not televise on the secondary commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the part of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the secondary commercial television broadcasting service; or
  - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the secondary commercial television broadcasting service.

Note 1: For **primary commercial television broadcasting service**, see subclause 41G(1).

Note 2: For **anti-siphoning event**, see subsection 6(1).

*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

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**41C HDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period if there is a core service etc.**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if:
- (a) there is a simulcast period, or a simulcast-equivalent period, for the licence area of the licence; and
  - (b) during that period, the licensee provides a core commercial television broadcasting service in the licence area.

*Televising the whole of an anti-siphoning event*

- (2) During that period, the licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the whole of the event on the core commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the core commercial television broadcasting service; and
    - (ii) the HDTV multi-channelled commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) During that period, the licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the part of the event on the core commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on both:
    - (i) the core commercial television broadcasting service; and

- (ii) the HDTV multi-channelled commercial television broadcasting service; or
- (c) the licensee televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled commercial television broadcasting service.

Note: For *anti-siphoning event*, see subsection 6(1).

*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

**41D HDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period if there is a primary service etc.**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if:
  - (a) subsection 41B(2), (2C) or (2CB) applies to the licence; and
  - (b) there is a simulcast period, or a simulcast-equivalent period, for the licence area of the licence; and
  - (c) during that period, the licensee provides a primary commercial television broadcasting service in the licence area.

*Televising the whole of an anti-siphoning event*

- (2) During that period, the licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the whole of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and

**Clause 41E**

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- (ii) the HDTV multi-channelled commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) During that period, the licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the part of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the HDTV multi-channelled commercial television broadcasting service; or
  - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(1).

Note 2: For *anti-siphoning event*, see subsection 6(1).

*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

**41E SDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events after the end of the simulcast period etc.**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee after the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the licence if the licensee provides:
  - (a) a SDTV multi-channelled commercial television broadcasting service that is the licensee's primary

commercial television broadcasting service in the licence area; and

- (b) one or more other SDTV multi-channelled commercial television broadcasting services (the ***secondary commercial television broadcasting services***) in the licence area.

*Televising the whole of an anti-siphoning event*

- (2) The licensee must not televise on a secondary commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the whole of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the secondary commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The licensee must not televise on a secondary commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the part of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the secondary commercial television broadcasting service; or
  - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the secondary commercial television broadcasting service.

Note 1: For ***primary commercial television broadcasting service***, see subclause 41G(2).

Note 2: For ***anti-siphoning event***, see subsection 6(1).

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*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

**41F HDTV multi-channelled commercial television broadcasting service—restrictions on televising anti-siphoning events after the end of the simulcast period etc.**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee after the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the licence.

*Televising the whole of an anti-siphoning event*

- (2) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the whole of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and
    - (ii) the HDTV multi-channelled commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the part of the event on the licensee's primary commercial television broadcasting service; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on both:
    - (i) the licensee's primary commercial television broadcasting service; and



- (ii) the HDTV multi-channelled commercial television broadcasting service; or
- (c) the licensee televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(2).

Note 2: For *anti-siphoning event*, see subsection 6(1).

*Licences allocated under section 38C*

- (4) This clause does not apply in relation to a licence allocated under section 38c.

**41FA SDTV multi-channelled commercial television broadcasting service provided under a section 38C licence—restrictions on televising anti-siphoning events**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if:
  - (a) the licence was allocated under section 38C; and
  - (b) the licensee provides:
    - (i) a SDTV multi-channelled commercial television broadcasting service that is one of the licensee's primary commercial television broadcasting services in the licence area; and
    - (ii) one or more SDTV multi-channelled commercial television broadcasting services that are not the licensee's primary commercial television broadcasting services (the *secondary commercial television broadcasting services*) in the licence area.

*Televising the whole of an anti-siphoning event*

- (2) The licensee must not televise on a secondary commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:

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- (a) the licensee has previously televised in the licence area the whole of the event on one or more of the licensee's primary commercial television broadcasting services; or
- (b) the licensee will televise simultaneously in the licence area the whole of the event on:
  - (i) one or more of the licensee's primary commercial television broadcasting services; and
  - (ii) the secondary commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The licensee must not televise on a secondary commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
  - (a) the licensee has previously televised in the licence area the part of the event on one or more of the licensee's primary commercial television broadcasting services; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on:
    - (i) one or more of the licensee's primary commercial television broadcasting service; and
    - (ii) the secondary commercial television broadcasting service; or
  - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the secondary commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(3).

Note 2: For *anti-siphoning event*, see subsection 6(1).

**41FB HDTV multi-channelled commercial television broadcasting service provided under a section 38C licence—restrictions on televising anti-siphoning events**

*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if the licence was allocated under section 38c.

*Televising the whole of an anti-siphoning event*

- (2) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the whole of the event on one or more of the licensee's primary commercial television broadcasting services; or
  - (b) the licensee will televise simultaneously in the licence area the whole of the event on:
    - (i) one or more of the licensee's primary commercial television broadcasting services; and
    - (ii) the HDTV multi-channelled commercial television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the part of the event on one or more of the licensee's primary commercial television broadcasting services; or
  - (b) the licensee will televise simultaneously in the licence area the part of the event on:
    - (i) one or more of the licensee's primary commercial television broadcasting services; and
    - (ii) the HDTV multi-channelled commercial television broadcasting service; or
  - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(3).

Note 2: For *anti-siphoning event*, see subsection 6(1).

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**41G Primary commercial television broadcasting service**

*Service provided during the simulcast period etc.*

- (1) If subsection 41B(2), (2C), (2CB), (2D) or (2DB) applies to a commercial television broadcasting licence, the ACMA may, by legislative instrument, declare that a specified SDTV multi-channelled commercial television broadcasting service provided by the licensee during the simulcast period, or the simulcast-equivalent period, for the licence area of the licence is the licensee's **primary commercial television broadcasting service** in the licence area.
- (1A) The ACMA must ensure that a declaration under subclause (1):
  - (a) comes into force as soon as practicable after the later of the following:
    - (i) when the licensee commences to provide a SDTV multi-channelled commercial television broadcasting service in the licence area;
    - (ii) the commencement of this subclause; and
  - (b) is in force at all times during the period:
    - (i) beginning at the time worked out under paragraph (a); and
    - (ii) ending at the end of the simulcast period, or simulcast-equivalent period, for the licence area.

*Service provided after the end of the simulcast period etc.*

- (2) The ACMA may, by legislative instrument, declare that a specified SDTV multi-channelled commercial television broadcasting service provided by a commercial television broadcasting licensee after the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the licence is the licensee's **primary commercial television broadcasting service** in the licence area.
- (3) The ACMA must ensure that a declaration under subclause (2) is in force at all times after the later of the following:
  - (a) the end of the simulcast-period, or simulcast equivalent period, for the licence area;
  - (b) when the licensee commences to provide a SDTV multi-channelled commercial television broadcasting service in the licence area.

*Service provided under a section 38C licence*

- (4) The ACMA may, by legislative instrument, declare that one or more specified SDTV multi-channelled commercial television broadcasting services provided by a commercial television broadcasting licensee whose licence was allocated under section 38C are the licensee's **primary commercial television broadcasting services** in the licence area.
- (5) The number of services declared under subclause (4) in relation to a particular licensee must not exceed 3.
- (6) The ACMA must ensure that a declaration under subclause (4) is in force at all times on and after the start date for the licence area concerned.

*Definition*

- (7) In this clause:  
**start date** has the same meaning as in clause 7H of Schedule 2.

## Division 2—National television broadcasting services

### 41H SDTV multi-channelled national television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period etc.

#### *Scope*

- (1) This clause applies to a national broadcaster if there is a simulcast period, or a simulcast-equivalent period, for a coverage area.

#### *Televising the whole of an anti-siphoning event*

- (2) During that period, the national broadcaster must not televise on a SDTV multi-channelled national television broadcasting service in the coverage area the whole of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the coverage area the whole of the event on the national television broadcasting service to which clause 19 applies; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the whole of the event on both:
    - (i) the national television broadcasting service to which clause 19 applies; and
    - (ii) the SDTV multi-channelled national television broadcasting service.

#### *Televising a part of an anti-siphoning event*

- (3) During that period, the national broadcaster must not televise on a SDTV multi-channelled national television broadcasting service in the coverage area a part of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the coverage area the part of the event on the national television broadcasting service to which clause 19 applies; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the part of the event on both:
    - (i) the national television broadcasting service to which clause 19 applies; and
    - (ii) the SDTV multi-channelled national television broadcasting service; or

- (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the SDTV multi-channelled national television broadcasting service.

Note: For *anti-siphoning event*, see subsection 6(1).

*National television broadcasting services provided with the use of a satellite*

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

**41J HDTV multi-channelled national television broadcasting service—restrictions on televising anti-siphoning events during the simulcast period etc.**

*Scope*

- (1) This clause applies to a national broadcaster if there is a simulcast period, or a simulcast-equivalent period, for a coverage area.

*Televising the whole of an anti-siphoning event*

- (2) During that period, the national broadcaster must not televise on a HDTV multi-channelled national television broadcasting service in the coverage area the whole of an anti-siphoning event unless:
- (a) the national broadcaster has previously televised in the coverage area the whole of the event on the national television broadcasting service to which clause 19 applies; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the whole of the event on both:
    - (i) the national television broadcasting service to which clause 19 applies; and
    - (ii) the HDTV multi-channelled national television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) During that period, the national broadcaster must not televise on a HDTV multi-channelled national television broadcasting service in the coverage area a part of an anti-siphoning event unless:

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- (a) the national broadcaster has previously televised in the coverage area the part of the event on the national television broadcasting service to which clause 19 applies; or
- (b) the national broadcaster will televise simultaneously in the coverage area the part of the event on both:
  - (i) the national television broadcasting service to which clause 19 applies; and
  - (ii) the HDTV multi-channelled national television broadcasting service; or
- (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled national television broadcasting service.

Note: For *anti-siphoning event*, see subsection 6(1).

*National television broadcasting services provided with the use of a satellite*

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

**41K SDTV multi-channelled national television broadcasting service—restrictions on televising anti-siphoning events after the end of the simulcast period etc.**

*Scope*

- (1) This clause applies to a national broadcaster after the end of the simulcast period, or the simulcast-equivalent period, for a coverage area if the national broadcaster provides:
  - (a) a SDTV multi-channelled national television broadcasting service that is the broadcaster's primary national television broadcasting service in the coverage area; and
  - (b) one or more other SDTV multi-channelled national television broadcasting services (the *secondary national television broadcasting services*) in the coverage area.

*Televising the whole of an anti-siphoning event*

- (2) The national broadcaster must not televise on a secondary national television broadcasting service in the coverage area the whole of an anti-siphoning event unless:



- (a) the national broadcaster has previously televised in the coverage area the whole of the event on the broadcaster's primary national television broadcasting service; or
- (b) the national broadcaster will televise simultaneously in the coverage area the whole of the event on both:
  - (i) the broadcaster's primary national television broadcasting service; and
  - (ii) the secondary national television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The national broadcaster must not televise on a secondary national television broadcasting service in the coverage area a part of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the coverage area the part of the event on the broadcaster's primary national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the part of the event on both:
    - (i) the broadcaster's primary national television broadcasting service; and
    - (ii) the secondary national television broadcasting service; or
  - (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the secondary national television broadcasting service.

Note 1: For **primary national television broadcasting service**, see clause 41M.

Note 2: For **anti-siphoning event**, see subsection 6(1).

*National television broadcasting services provided with the use of a satellite*

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

Clause 41L

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**41L HDTV multi-channelled national television broadcasting service—restrictions on televising anti-siphoning events after the end of the simulcast period etc.**

*Scope*

- (1) This clause applies to a national broadcaster after the end of the simulcast period, or the simulcast-equivalent period, for a coverage area.

*Televising the whole of an anti-siphoning event*

- (2) The national broadcaster must not televise on a HDTV multi-channelled national television broadcasting service in the coverage area the whole of an anti-siphoning event unless:
- (a) the national broadcaster has previously televised in the coverage area the whole of the event on the broadcaster's primary national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the whole of the event on both:
    - (i) the broadcaster's primary national television broadcasting service; and
    - (ii) the HDTV multi-channelled national television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The national broadcaster must not televise on a HDTV multi-channelled national television broadcasting service in the coverage area a part of an anti-siphoning event unless:
- (a) the national broadcaster has previously televised in the coverage area the part of the event on the broadcaster's primary national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the coverage area the part of the event on both:
    - (i) the broadcaster's primary national television broadcasting service; and
    - (ii) the HDTV multi-channelled national television broadcasting service; or

- (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled national television broadcasting service.

Note 1: For *primary national television broadcasting service*, see clause 41M.

Note 2: For *anti-siphoning event*, see subsection 6(1).

*National television broadcasting services provided with the use of a satellite*

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

#### **41LA SDTV multi-channelled national television broadcasting service provided with the use of a satellite—restrictions on televising anti-siphoning events**

*Scope*

- (1) This clause applies to a national broadcaster if the national broadcaster provides, with the use of a satellite:
- (a) a SDTV multi-channelled national television broadcasting service that is the broadcaster's primary satellite national television broadcasting service in a satellite delivery area; and
  - (b) one or more other SDTV multi-channelled national television broadcasting services (the *secondary national television broadcasting services*) in the satellite delivery area.

*Televising the whole of an anti-siphoning event*

- (2) The national broadcaster must not televise on a secondary national television broadcasting service in the satellite delivery area the whole of an anti-siphoning event unless:
- (a) the national broadcaster has previously televised in the satellite delivery area the whole of the event on the broadcaster's primary satellite national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the satellite delivery area the whole of the event on both:
    - (i) the broadcaster's primary satellite national television broadcasting service; and

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- (ii) the secondary national television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The national broadcaster must not televise on a secondary national television broadcasting service in the satellite delivery area a part of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the satellite delivery area the part of the event on the broadcaster's primary satellite national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the satellite delivery area the part of the event on both:
    - (i) the broadcaster's primary satellite national television broadcasting service; and
    - (ii) the secondary national television broadcasting service; or
  - (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the secondary national television broadcasting service.

Note 1: For *primary satellite national television broadcasting service*, see clause 41N.

Note 2: For *anti-siphoning event*, see subsection 6(1).

**41LB HDTV multi-channelled national television broadcasting service provided with the use of a satellite—restrictions on televising anti-siphoning events**

*Scope*

- (1) This clause applies to a national broadcaster if the national broadcaster provides, with the use of a satellite, a HDTV multi-channelled national television broadcasting service.

*Televising the whole of an anti-siphoning event*

- (2) The national broadcaster must not televise on the HDTV multi-channelled national television broadcasting service in a satellite delivery area the whole of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the satellite delivery area the whole of the event on the

broadcaster's primary satellite national television broadcasting service; or

- (b) the national broadcaster will televise simultaneously in the satellite delivery area the whole of the event on both:
  - (i) the broadcaster's primary satellite national television broadcasting service; and
  - (ii) the HDTV multi-channelled national television broadcasting service.

*Televising a part of an anti-siphoning event*

- (3) The national broadcaster must not televise on the HDTV multi-channelled national television broadcasting service in a satellite delivery area a part of an anti-siphoning event unless:
  - (a) the national broadcaster has previously televised in the satellite delivery area the part of the event on the broadcaster's primary satellite national television broadcasting service; or
  - (b) the national broadcaster will televise simultaneously in the satellite delivery area the part of the event on both:
    - (i) the broadcaster's primary satellite national television broadcasting service; and
    - (ii) the HDTV multi-channelled national television broadcasting service; or
  - (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled national television broadcasting service.

Note 1: For *primary satellite national television broadcasting service*, see clause 41N.

Note 2: For *anti-siphoning event*, see subsection 6(1).

#### **41M Primary national television broadcasting service**

- (1) A national broadcaster must, by written notice given to the Minister, declare that a specified SDTV multi-channelled national television broadcasting service provided by the national broadcaster after the end of the simulcast period, or the simulcast-equivalent period, for a coverage area is the broadcaster's *primary national television broadcasting service* in the coverage area.

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- (2) The national broadcaster must ensure that a declaration under subclause (1) is in force at all times after the end of the simulcast period, or the simulcast-equivalent period, for the coverage area concerned.

**41N Primary satellite national television broadcasting service**

*Primary national television broadcasting service*

- (1) A national broadcaster must, by written notice given to the Minister, declare that a specified SDTV multi-channelled national television broadcasting service provided by the national broadcaster, with the use of a satellite, in a specified satellite delivery area is the broadcaster's **primary satellite national television broadcasting service** in the satellite delivery area.
- (2) The national broadcaster must ensure that a declaration under subclause (1):
- (a) comes into force as soon as practicable after the national broadcaster commences to provide a SDTV multi-channelled national television broadcasting service, with the use of a satellite, in the satellite delivery area; and
  - (b) is in force at all times after that commencement.

## **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.

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*commercial television broadcasting licence* does not include a commercial television broadcasting licence allocated under section 38c.

*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
  - (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 or services 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

Clause 45A

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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.

*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 or services 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:
  - (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

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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.

*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 or services 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.

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- (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.

**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).

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**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*.

**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.

*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
  - (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

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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**

## 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**

#### **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.
- 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 the internet service provider section 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.

### 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.

**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.

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

**civil proceeding** includes a civil action.

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

**classified** means classified under Schedule 7.

**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.

### Clause 3

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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.

**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.

**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 same meaning as in Schedule 7.

*prohibited content* has the same meaning as in Schedule 7.

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

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

## **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.

## **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 legislative 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 13(3) of the *Legislative Instruments Act 2003*.

### 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 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



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- (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 determination made by the Minister by legislative instrument.
- (7) In this clause:
- content service** has the same meaning as in the *Telecommunications Act 1997*.

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

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

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

If a person has reason to believe that an internet service provider:

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

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**

If the ACMA thinks that it is desirable to do so, the ACMA may investigate whether an internet service provider:

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

### **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.

**Schedule 5** Online services

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

**Division 2** Investigations by the ACMA

**Clause 29**

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- (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 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 of Part 3 of Schedule 7, 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 a 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.
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**Schedule 5** Online services

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

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

Clause 40

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*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 legislative 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 13(3) of the *Legislative Instruments Act 2003*.

- (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.

*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.
- (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 of Part 3 of Schedule 7, 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 24(1) or (2) of Schedule 7); 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

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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.

**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
- (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:

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- (a) internet content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2) of Schedule 7); 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

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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.

(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

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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.

**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 a website, or a distinct part of a website, specified in the notification.

Note: For specification by class, see subsection 33(3AB) 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 legislative instrument, formulate a scheme:
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- (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.
- 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.

## **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 the internet service provider section 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 supplying an internet carriage service.

### **56 Section of the internet industry**

- (1) For the purposes of this Part, a *section of the internet industry* is to be ascertained in accordance with this clause.
- (2) For the purposes of this Part, the group consisting of internet service providers constitutes a *section of the internet industry*.

### **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.

### **58 Designated body**

The Minister may, by legislative instrument, declare that a specified body or association is the *designated body* for the purposes of this Part. The declaration has effect accordingly.

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

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

- (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).

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

##### *General matters*

- (1) 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) 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 23;



- (h) procedures to be followed in order to assist customers to make complaints under clause 23;
- (i) procedures to be followed in order to deal with complaints about unsolicited electronic mail that promotes or advertises one or more:
  - (i) websites; or
  - (ii) distinct parts of websites;that enable, or purport to enable, end-users to access information that is likely to cause offence to a reasonable adult;
- (j) subject to subclause (8A), action to be taken to assist in the development and implementation of internet content filtering technologies (including labelling technologies);
- (k) subject to subclause (8A), giving customers information about the availability, use and appropriate application of internet content filtering software;
- (l) subject to subclause (8A), procedures directed towards the achievement of the objective of ensuring that customers have the option of subscribing to a filtered internet carriage service;
- (la) if a determination is in force under subclause (8A) in relation to a device:
  - (i) procedures to be followed in order to inform the users of such a device of the unavailability of internet content filtering; and
  - (ii) procedures directed towards the achievement of the objective of ensuring that customers have the option of blocking access to the internet using such a device;
- (m) procedures directed towards the achievement of the objective of ensuring that, in the event that a participant in the internet service provider 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.

*Other matters*

- (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

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(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) subject to subclause (8A), 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 33(3AB) of the *Acts Interpretation Act 1901*.

(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 13(3) of the *Legislative Instruments Act 2003*.

- (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).

*Internet content filtering—devices*

- (8A) If the Minister is satisfied that internet content filtering is not viable in relation to access to internet content using a particular device (for example, a mobile telephone handset), the Minister may, by legislative instrument, determine that paragraphs (1)(j), (k) and (l) and (2)(d) do not apply in relation to access to internet content using that device.

*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.

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**Part 5** Industry codes and industry standards

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

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**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

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- (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
- (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.

**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.

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

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**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 legislative 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).
- (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.
- (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.

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**74 Variation of industry standards**

The ACMA may, by legislative 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.

**75 Revocation of industry standards**

- (1) The ACMA may, by legislative 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.

**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.
- (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*:

- (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, by legislative instrument, make a determination setting out rules that apply to internet service providers in relation to the supply of internet carriage services.
- (3) A determination under subclause (1) 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

## Clause 81

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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.

### 81 Exemptions from online provider determinations

- (1) The Minister may, by legislative instrument, determine that a specified internet service provider is exempt from online provider determinations.
- (2) The Minister may, by legislative instrument, determine that a specified internet service provider 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.

### 82 Compliance with online provider rules

- (1) A person is guilty of an offence if:
- (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 has contravened, or is contravening, an online provider rule.
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- (2) The ACMA may give the provider a written direction requiring the provider to take specified action directed towards ensuring that the provider 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 under subclause (2):
- (a) a direction that the provider implement effective administrative systems for monitoring compliance with an online provider rule;
  - (b) a direction that the provider implement a system designed to give the provider'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**

- (1) If the ACMA is satisfied that a person who is an internet service provider is supplying an internet carriage service otherwise than in accordance with an online provider rule, the ACMA may apply to
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the Federal Court for an order that the person cease supplying that internet carriage service.

- (2) If the Federal Court is satisfied, on such an application, that the person is supplying an internet carriage service otherwise than in accordance with the online provider rule, the Federal Court may order the person to cease supplying that internet carriage service.

## **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.

#### *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

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- (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**

- (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.



## **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 legislative 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).

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

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- (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 legislative 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 13(3) of the *Legislative Instruments Act 2003*.

- (5) The Minister may, by legislative 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 13(3) of the *Legislative Instruments Act 2003*.

- (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.

## **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:
  - (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
    - (ii) vary a direction that is applicable to an internet service provider; or
    - (iii) refuse to revoke a direction that is applicable to an internet service provider;
  - (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.
- (2) An application under subclause (1) may only be made by the 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 (other than restricted 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.

- Restricted datacasting licensees will not be allowed to provide content in a form that is specified in a legislative instrument made by the Minister.
- 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.

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

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

Clause 2

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***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 registered under Part 2A.2 of the *Corporations Act 2001*; 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*.

- (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.

Clause 3

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**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 13(3) of the *Legislative Instruments Act 2003*.

**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.
- (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 13(3) of the *Legislative Instruments Act 2003*.

Clause 5

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*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.
- (3) An application under subsection (1) may be expressed to be an application for a restricted datacasting licence.

### 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
  - (aa) a breach of a civil penalty provision occurring; 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; and
  - (f) whether a civil penalty order has been made against:
    - (i) the first-mentioned person; or
    - (ii) a person referred to in paragraph (c) or (d).
- (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 that are not restricted datacasting licences**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
  - (a) particulars of datacasting licences (other than restricted 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.

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

- (1) The ACMA is to maintain a Register in which the ACMA includes particulars of restricted datacasting licences.
- (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 13(3) of the *Legislative Instruments Act 2003*.

**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).
- (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).

**Clause 16**

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- (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 13(3) of the *Legislative Instruments Act 2003*.

**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;
    - (ia) 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
  - (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:

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Clause 18

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- (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.

**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.

Clause 20AA

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- (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 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 13(3) of the *Legislative Instruments Act 2003*.

**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
  - (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) if the licence is not a restricted datacasting licence—the licensee will comply with any standards under section 130A (which deals with technical standards for digital transmission);
  - (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 subsection 130V(1) (which deals with industry standards);
  - (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;
  - (i) if the licence is not a restricted datacasting licence—the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting***

**Clause 24**

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*services bands* in subsection 6(1) to provide a datacasting service under the licence.

- (2) The conditions set out in paragraphs (1)(a), (c), (e) and (f) do not apply in relation 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) 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.

#### **24A Special conditions for restricted datacasting licences**

Each restricted datacasting licence is subject to the following conditions:

- (a) the datacasting content provided under the licence will be transmitted using a digital modulation technique;
- (b) if a form of datacasting content is specified in a legislative instrument made by the Minister—the licensee will not provide datacasting content in that form;
- (c) the licensee will comply with any standards under section 130AA (which deals with technical standards for digital transmission).

#### **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

Clause 26

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- (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).

**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 13(3) of the *Legislative Instruments Act 2003*.

- (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

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- (iv) uses or involves the process known as subliminal perception or any other technique that attempts to 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.

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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*.

### **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.

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**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.

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.

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- (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.
- (3) Subclauses (1) and (2) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

## 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
  - (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

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- (e) for the purposes of this Act (other than Schedule 1) 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.
- (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.
- (3) A person must not provide a datacasting service if the person does not have a datacasting licence to provide that service.
- (4) Subclause (3) is a civil penalty provision.
- (5) A person who contravenes subclause (3) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent 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 Remedial directions—unlicensed datacasting services**

- (1) If the ACMA is satisfied that a person has breached, or is breaching, subclause 49(3), the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that subclause, or is unlikely to breach that subclause, in the future.

Note 1: For exemptions for broadcasters, see clause 51.



Note 2: For exemptions for designated teletext services, see clause 51A.

*Offence*

- (2) A person commits an offence if:
- (a) the person has been given a notice under subclause (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (3) A person who contravenes subclause (2) commits a separate offence in respect of each day (including a day of a conviction for the offence or any subsequent day) during which the contravention continues.

*Civil penalty*

- (4) A person must comply with a notice under subclause (1).
- (5) Subclause (4) is a civil penalty provision.
- (6) A person who contravenes subclause (4) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Definition*

- (7) In this clause:
- engage in conduct*** means:
- (a) do an act; or
  - (b) omit to perform an act.

**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.

**Schedule 6** Datacasting services

**Part 8** Remedies for breaches of licensing provisions

**Division 1** Providing a datacasting service without a licence

**Clause 51A**

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- (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, 21 or 24.

Penalty: 2,000 penalty units.

- (1A) A person commits an offence if:
  - (a) the person is a restricted datacasting licensee; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct breaches a condition of the licence set out in clause 24A.

Penalty: 2,000 penalty units.

- (2) A person who contravenes subclause (1) or (1A) 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.

### **52A Civil penalty provision relating to breach of conditions of datacasting licences**

- (1) A datacasting licensee must not breach a condition of the licence set out in clause 14, 16, 21 or 24.
- (1A) A restricted datacasting licensee must not breach a condition of the licence set out in clause 24A.
- (2) Subclauses (1) and (1A) are civil penalty provisions.
- (3) A person who contravenes subclause (1) or (1A) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

Clause 53

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**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.
- (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.
- (6) A person must comply with a notice under subclause (1).
- (7) Subclause (6) is a civil penalty provision.
- (8) A person who contravenes subclause (6) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent 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 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.
  
  - (2A) If a restricted datacasting licence is suspended because of a breach of a condition set out in clause 24A, the ACMA may take such action, by way of suspending one or more restricted 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, restricted datacasting service is not provided 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 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
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licensee or the related body corporate, as the case may be, at a time after the cancellation.

- (3A) If a restricted datacasting licence is cancelled because of a breach of a condition set out in clause 24A, the ACMA may take such action, by way of cancelling one or more restricted 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, restricted datacasting service is not provided 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), (2A), (3) or (3A), 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.

*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

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- (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.



- (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

**Schedule 6** Datacasting services

**Part 8** Remedies for breaches of licensing provisions

**Division 2** Breaches of licence conditions

**Clause 57**

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- (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.

## 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.

<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

Clause 59

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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

**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.

## Schedule 7—Content services

Note: See section 216D.

### Part 1—Introduction

#### 1 Simplified outline

The following is a simplified outline of this Schedule:

- A person may make a complaint to the ACMA about prohibited content, or potential prohibited content, in relation to certain services.
- The ACMA may take the following action to deal with prohibited content or potential prohibited content:
  - (a) in the case of a hosting service—issue a take-down notice;
  - (b) in the case of a live content service—issue a service-cessation notice;
  - (c) in the case of a links service—issue a link-deletion notice.
- Content (other than an eligible electronic publication) 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; or

Clause 1

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- (c) the content has been classified MA 15+ by the Classification Board, access to the content is not subject to a restricted access system, the content does not consist of text and/or one or more still visual images, and the content is provided by a commercial service (other than a news service or a current affairs service); or
  - (d) the content has been classified MA 15+ by the Classification Board, access to the content is not subject to a restricted access system, and the content is provided by a mobile premium service.
- Content that consists of an eligible electronic publication is **prohibited content** if the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board.
  - Generally, 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.
  - Bodies and associations that represent sections of the content 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 determinations regulating certain content service providers and hosting service providers.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

## 2 Definitions

In this Schedule:

**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 content, means a system under which:

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

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

**adult chat service** means a chat service where, having regard to any or all of the following:

- (a) the name of the chat service;
- (b) the way in which the chat service is advertised or promoted;
- (c) the reputation of the chat service;

it would be concluded that the majority of the content accessed by end-users of the chat service is reasonably likely to be prohibited content or potential prohibited content.

**ancillary subscription television content service** has the meaning given by clause 9A.

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

**Australian connection** has the meaning given by clause 3.

**Australian police force** means:

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

Clause 2

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

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

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

**child** means an individual who has not reached 18 years.

**civil proceeding** includes a civil action.

**classification application** means an application under clause 22.

**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.

**commercial content service** means a content service that:

- (a) is operated for profit or as part of a profit-making enterprise; and
- (b) is provided to the public but only on payment of a fee (whether periodical or otherwise).

**commercial content service provider** means a person who provides a commercial content service.

Note: See clause 5.

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

**content** means 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



Clause 2

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- (e) whether in any other form; or
- (f) whether in any combination of forms.

**content service** means:

- (a) a service that delivers content to persons having equipment appropriate for receiving that content, where the delivery of the service is by means of a carriage service; or
- (b) a service that allows end-users to access content using a carriage service;

but does not include:

- (c) a licensed broadcasting service; or
- (d) a national broadcasting service; or
- (e) a re-transmitted broadcasting service; or
- (f) a licensed datacasting service; or
- (g) a re-transmitted datacasting service; or
- (h) an exempt Parliamentary content service; or
- (i) an exempt court/tribunal content service; or
- (j) an exempt official-inquiry content service; or
- (k) an exempt point-to-point content service; or
- (l) an exempt internet directory service; or
- (m) an exempt internet search engine service; or
- (n) a service that enables end-users to communicate, by means of voice calls, with other end-users; or
- (o) a service that enables end-users to communicate, by means of video calls, with other end-users; or
- (p) a service that enables end-users to communicate, by means of email, with other end-users; or
- (q) an instant messaging service that:
  - (i) enables end-users to communicate with other end-users; and
  - (ii) is not an adult chat service; or
- (r) an SMS service that:
  - (i) enables end-users to communicate with other end-users; and
  - (ii) is not an adult chat service; or
- (s) an MMS service that:
  - (i) enables end-users to communicate with other end-users; and

Clause 2

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- (ii) is not an adult chat service; or
- (t) a service that delivers content by fax; or
- (u) an exempt data storage service; or
- (v) an exempt back-up service; or
- (x) a service specified in the regulations.

Note 1: **SMS** is short for short message service.

Note 2: **MMS** is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**content service provider** means a person who provides a content service.

Note: See clause 5.

**corresponding print publication**, in relation to an eligible electronic publication, has the meaning given by clause 11.

**court/tribunal proceedings** means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of a court or a tribunal, and includes:

- (a) evidence given before the court or tribunal; and
- (b) a document presented or submitted to the court or tribunal; and
- (c) a document issued or published by, or with the authority of, the court or tribunal.

**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 content/hosting service** means:

- (a) a hosting service; or
- (b) a live content service; or
- (c) a links service; or
- (d) a commercial content service.

**designated content/hosting service provider** means a person who provides a designated content/hosting service.

***designated content/hosting service provider rule*** means:

- (a) a provision declared by this Schedule to be a designated content/hosting service provider rule; or
- (b) each of the rules (if any) set out in a designated content/hosting service provider determination in force under clause 104.

***eligible electronic publication*** has the meaning given by clause 11.

***engage in conduct*** means:

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

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***exempt back-up service*** means a back-up service, where each end-user's access is restricted to the end-user's backed-up content.

***exempt court/tribunal content service*** means a service to the extent to which it delivers, or provides access to, content that consists of court/tribunal proceedings.

***exempt data storage service*** means a data storage service, where each end-user's access is restricted to the end-user's stored content.

***exempt internet directory service*** means an internet directory service that:

- (a) does not specialise in providing links to, or information about, websites that specialise in prohibited content or potential prohibited content; and
- (b) is not a service specified in the regulations; and
- (c) complies with such other requirements (if any) as are specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

***exempt internet search engine service*** means an internet search engine service that:

- (a) does not specialise in providing links to, or information about, websites that specialise in prohibited content or potential prohibited content; and

Clause 2

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- (b) is not a service specified in the regulations; and
- (c) complies with such other requirements (if any) as are specified in the regulations.

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**exempt official-inquiry content service** means a service to the extent to which it delivers, or provides access to, content that consists of official-inquiry proceedings.

**exempt Parliamentary content service** means a service to the extent to which it delivers, or provides access to, content that consists of Parliamentary proceedings.

**exempt point-to-point content service** means a service that:

- (a) delivers content by:
  - (i) email; or
  - (ii) instant messaging; or
  - (iii) SMS; or
  - (iv) MMS;where the content is produced or packaged by the provider of the service; and
- (b) does not specialise in content that is prohibited content or potential prohibited content; and
- (c) is not an adult chat service; and
- (d) is not provided on payment of a fee (whether periodical or otherwise); and
- (e) is not a service specified in the regulations; and
- (f) complies with such other requirements (if any) as are specified in the regulations.

Note 1: **SMS** is short for short message service.

Note 2: **MMS** is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

**film** has the same meaning as in the *Classification (Publications, Films and Computer Games) Act 1995*, but does not include a form of recording from which an eligible electronic publication can be produced.

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

**final link-deletion notice** means a notice under paragraph 62(1)(d), (e) or (f) or (4)(b), (c) or (d) of this Schedule.

**final service-cessation notice** means a notice under paragraph 56(1)(c) or (d) or (4)(b) or (c) of this Schedule.

**final take-down notice** means a notice under paragraph 47(1)(c), (d) or (e) or (4)(b), (c) or (d) of this Schedule.

**hosting service** has the meaning given by clause 4.

**hosting service provider** means a person who provides a hosting service.

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

**interim link-deletion notice** means a notice under paragraph 62(2)(c) or (3)(d) of this Schedule.

**interim service-cessation notice** means a notice under paragraph 56(2)(d) or (3)(d) of this Schedule.

**interim take-down notice** means a notice under paragraph 47(2)(c) or (3)(d) of this Schedule.

**internet carriage service** has the same meaning as in Schedule 5.

**internet content** has the same meaning as in Schedule 5.

**licensed broadcasting service** means a broadcasting service provided in accordance with:

- (a) a licence allocated by the ACMA under this Act; or
- (b) a class licence determined by the ACMA under this Act.

**licensed datacasting service** means a datacasting service provided by the holder of a datacasting licence that authorises the provision of that service.

**links service** means a content service that:

- (a) provides one or more links to content; and
- (b) is provided to the public (whether on payment of a fee or otherwise)

Clause 2

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**links service provider** means a person who provides a links service.

Note: See clause 5.

**live content** does not include stored content.

**live content service** means a content service that:

- (a) provides live content; and
- (b) is provided to the public (whether on payment of a fee or otherwise)

**live content service provider** means a person who provides a live content service.

Note: See clause 5.

**MA 15+ content** has the meaning given by clause 15.

**mobile carriage service provider** means:

- (a) a carriage service provider who supplies a public mobile telecommunications service; or
- (b) a carriage service intermediary who arranges for the supply by a carriage service provider of a public mobile telecommunications service.

**mobile premium service** means a commercial content service where:

- (a) a charge for the supply of the commercial content service is expected to be included in a bill sent by or on behalf of a mobile carriage service provider to the relevant customer; or
- (b) a charge for the supply of the commercial content service is payable:
  - (i) in advance; or
  - (ii) in any other manner;by the relevant customer to a mobile carriage service provider or a person acting on behalf of a mobile carriage service provider.

**official-inquiry proceedings** means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of:

- (a) a Royal Commission; or
- (b) an official inquiry;

Clause 2

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and includes:

- (c) evidence given before the Royal Commission or official inquiry; and
- (d) a document presented or submitted to the Royal Commission or official inquiry; and
- (e) a document issued or published by, or with the authority of, the Royal Commission or official inquiry.

***Parliamentary proceedings*** means words spoken and acts done in the course of, or for purposes of or incidental to, the transacting of the business of:

- (a) a Parliament; or
- (b) a legislature; or
- (c) a committee of a Parliament or legislature;

and includes:

- (d) evidence given before the Parliament, legislature or committee; and
- (e) a document presented or submitted to the Parliament, legislature or committee; and
- (f) a document issued or published by, or with the authority of, the Parliament, legislature or committee.

***potential prohibited content*** has the meaning given by clause 21.

***prohibited content*** has the meaning given by clause 20.

***provided by a content service*** has the meaning given by clause 6.

***provided to the public***, in relation to a content service, has the meaning given by clause 7.

***public mobile telecommunications service*** has the same meaning as in the *Telecommunications Act 1997*.

***R 18+ content*** has the meaning given by clause 15.

***restricted access system*** has the meaning given by clause 14.

***re-transmitted broadcasting service*** has the meaning given by clause 12.

***re-transmitted datacasting service*** has the meaning given by clause 13.

### Clause 3

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*service* includes a website or a distinct part of a website.

*special link-deletion notice* means a notice under clause 67.

*special service-cessation notice* means a notice under clause 59A.

*special take-down notice* means a notice under clause 52.

*stored content* means content kept on a data storage device. For this purpose, disregard any storage of content on a highly transitory basis as an integral function of the technology used in its transmission.

Note: Momentary buffering (including momentary storage in a router in order to resolve a path for further transmission) is an example of storage on a highly transitory basis.

*trained content assessor* has the meaning given by clause 18.

*voice call* includes:

- (a) if a voice call is not practical for a particular end-user with a disability—a call that is equivalent to a voice call; and
- (b) a call that involves a recorded or synthetic voice.

### 3 Australian connection

#### *Content service*

- (1) For the purposes of this Schedule, a content service has an ***Australian connection*** if, and only if:
  - (a) any of the content provided by the content service is hosted in Australia; or
  - (b) in the case of a live content service—the live content service is provided from Australia.

Note: A link is an example of content. If a link provided by a content service is hosted in Australia, the content service will have an Australian connection (see paragraph (a)).

#### *Hosting service*

- (2) For the purposes of this Schedule, a hosting service has an ***Australian connection*** if, and only if, any of the content hosted by the hosting service is hosted in Australia.



#### **4 Hosting service**

For the purposes of this Schedule, if:

- (a) a person (the *first person*) hosts stored content; and
- (b) the hosted content does not consist of:
  - (i) voicemail messages; or
  - (ii) video mail messages; or
  - (iii) email messages; or
  - (iv) SMS messages; or
  - (v) MMS messages; or
  - (vi) messages specified in the regulations; and
- (c) the first person or another person provides a content service that:
  - (i) provides the hosted content; and
  - (ii) is provided to the public (whether on payment of a fee or otherwise);

the hosting of the stored content by the first person is taken to be the provision by the first person of a *hosting service* to the public.

Note 1: *SMS* is short for short message service.

Note 2: *MMS* is short for multimedia message service.

Note 3: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

#### **5 Content service provider**

- (1) For the purposes of this Schedule, a person does not provide a content service merely because the person supplies a carriage service that enables content to be delivered or accessed.
- (2) For the purposes of this Schedule, a person does not provide a content service merely because the person provides a billing service, or a fee collection service, in relation to a content service.

#### **6 When content is provided by a content service**

For the purposes of this Schedule, content is *provided* by a content service if the content is delivered by, or accessible to end-users using, the content service.

Clause 7

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**7 When content service is provided to the public etc.**

- (1) For the purposes of this Schedule, a content service is *provided to the public* if, and only if, the service is provided to at least one person outside the immediate circle of the person who provides the service.
- (2) For the purposes of this Schedule, a content service that is provided to the public is taken to be different from a content service that is not provided to the public, even if the content provided by the services is identical.

**8 Links to content**

For the purposes of this Schedule, if:

- (a) a content service (the *first content service*) provides a link to another content service; and
- (b) the other content service specialises in prohibited content or potential prohibited content; and
- (c) the other content service provides particular content;

then:

- (d) end-users of the first content service are taken to be able to access the content mentioned in paragraph (c) using that link; and
- (e) that link is taken to be a link to the content mentioned in paragraph (c).

**9 Services supplied by way of a voice call or video call**

If a service is supplied by way of:

- (a) a voice call made using a carriage service; or
- (b) a video call made using a carriage service;

the service is taken, for the purposes of this Schedule, to be a content service that allows end-users to access the relevant content using the carriage service.

**9A Ancillary subscription television content service**

- (1) For the purposes of this Schedule, an *ancillary subscription television content service* is a service that:

- (a) delivers content by way of television programs to persons having equipment appropriate for receiving that content, where:
    - (i) those television programs are stored on the equipment (whether temporarily or otherwise); and
    - (ii) the equipment is also capable of receiving one or more subscription television broadcasting services provided in accordance with a licence allocated by the ACMA under this Act; and
    - (iii) those television programs are delivered to a subscriber to such a subscription television broadcasting service under a contract with the relevant subscription television broadcasting licensee; and
  - (b) complies with such other requirements (if any) as are specified in the regulations.
- (2) For the purposes of subsection (1), it is immaterial whether the equipment is capable of receiving:
- (a) content by way of television programs; or
  - (b) subscription television broadcasting services;
- when used:
- (c) in isolation; or
  - (d) in conjunction with any other equipment.

## **10 Classification of live content etc.**

### *Recordings of live content*

- (1) If there is a recording of live content, the recording is taken, for the purposes of classifying the live content under this Schedule, to be the content.

### *Short duration segments*

- (2) If, on a particular day, live content has a duration of more than:
- (a) 60 minutes; or
  - (b) if another number of minutes is specified in the regulations—that other number of minutes;
- each short duration segment of the content provided on that day is taken, for the purposes of:
- (c) classifying the content under this Schedule; and

Clause 11

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- (d) Part 3 of this Schedule; and
  - (e) paragraph 81(1)(e) of this Schedule;
- to be different live content from each other short duration segment provided on that day.
- (3) For the purposes of this clause, a **short duration segment** of live content is a segment that has a duration of:
    - (a) 60 minutes; or
    - (b) if another number of minutes is specified in the regulations—that other number of minutes.
  - (4) For the purposes of this clause, it is immaterial when a short duration segment begins.
  - (5) For the purposes of this clause, it is immaterial whether short duration segments overlap.
  - (6) Regulations made for the purposes of paragraph (2)(b) or (3)(b) may make different provision with respect to different kinds of live content.
  - (7) Subclause (6) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

**11 Eligible electronic publication**

For the purposes of this Schedule, if:

- (a) content consists of:
  - (i) an electronic edition of a book, magazine or newspaper; or
  - (ii) an audio recording of the text, or abridged text, of a book, magazine or newspaper; and
- (b) a print edition of the book, magazine or newspaper is or was available to the public (whether by way of purchase or otherwise) in Australia;

then:

- (c) the content is an **eligible electronic publication**; and
- (d) the print edition of the book, magazine or newspaper is the **corresponding print publication** in relation to the eligible electronic publication.

## 12 Re-transmitted broadcasting services

- (1) For the purposes of this Schedule, a service is a *re-transmitted broadcasting service* if the service does no more than:
  - (a) re-transmit programs that have been previously transmitted by a licensed broadcasting service; or
  - (b) re-transmit programs that have been previously transmitted by a national broadcasting service.
- (2) In determining whether a service is a re-transmitted broadcasting service:
  - (a) ignore any changes to the format in which the programs are transmitted; and
  - (b) ignore any advertising or sponsorship matter; and
  - (c) ignore such other matters (if any) as are specified in the regulations.

## 13 Re-transmitted datacasting services

- (1) For the purposes of this Schedule, a service is a *re-transmitted datacasting service* if the service does no more than re-transmit datacasting content that has been previously transmitted by a licensed datacasting service.
- (2) In determining whether a service is a re-transmitted datacasting service:
  - (a) ignore any changes to the format in which the datacasting content is transmitted; and
  - (b) ignore any advertising or sponsorship matter; and
  - (c) ignore such other matters (if any) as are specified in the regulations.

## 14 Restricted access system

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

Note: For specification by class, see subsection 13(3) of the *Legislative Instruments Act 2003*.

Clause 15

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- (2) An instrument under subclause (1) may make different provision with respect to:
  - (a) R 18+ content; and
  - (b) MA 15+ content.
- (3) Subclause (2) does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) In making an instrument under subclause (1), the ACMA must have regard to:
  - (a) the objective of protecting children from exposure to content that is unsuitable for children; and
  - (b) the objective of protecting children who have not reached 15 years from exposure to content that is unsuitable for children who have not reached 15 years; and
  - (c) such other matters (if any) as the ACMA considers relevant.
- (5) The ACMA must ensure that an instrument under subclause (1) is in force at all times after the commencement of this Schedule.

**15 R 18+ content and MA 15+ content**

*R 18+ content*

- (1) For the purposes of this Schedule, **R 18+ content** is:
  - (a) content (other than content that consists of an eligible electronic publication) that has been classified R 18+ by the Classification Board; or
  - (b) content (other than content that consists of an eligible electronic publication) where the following conditions are satisfied:
    - (i) the content has not been classified R 18+ by the Classification Board;
    - (ii) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ by the Classification Board.

*MA 15+ content*

- (2) For the purposes of this Schedule, **MA 15+ content** is:
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- (a) content (other than content that consists of an eligible electronic publication) that has been classified MA 15+ by the Classification Board; or
- (b) content (other than content that consists of an eligible electronic publication) where the following conditions are satisfied:
  - (i) the content has not been classified MA 15+ by the Classification Board;
  - (ii) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified MA 15+ by the Classification Board.

*Classification Board authorised to classify content*

- (3) For the purposes of this clause, it is to be assumed that this Schedule authorised the Classification Board to classify the content.

## **16 Content that consists of a film**

For the purposes of this Schedule, in determining whether 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 delivered by means of, or accessed using, the carriage service concerned.

## **17 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.

## **18 Trained content assessor**

- (1) For the purposes of this Schedule, an individual is a *trained content assessor* if:

Clause 19

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- (a) the individual has, at any time during the preceding 12 months, completed training in:
    - (i) the making of assessments of the kinds referred to in paragraphs 81(1)(d) and (f) of this Schedule; and
    - (ii) giving advice of the kind referred to in subparagraph 81(1)(e)(ii) of this Schedule; and
  - (b) the training was approved by the Director of the Classification Board under subclause (2) of this clause.
- (2) For the purposes of paragraph (1)(b), the Director of the Classification Board may, by writing, approve specified training.
  - (3) An approval under subclause (2) is not a legislative instrument.

**19 Extra-territorial application**

- (1) Unless the contrary intention appears, this Schedule extends to acts, omissions, matters and things outside Australia.

Note: Clause 3 is an example of a contrary intention.

- (2) Section 14.1 of the *Criminal Code* does not apply to an offence against this Schedule.



## **Part 2—Classification of content**

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

#### **20 Prohibited content**

*Content other than eligible electronic publications*

- (1) For the purposes of this Schedule, content (other than content that consists of an eligible electronic publication) is ***prohibited content*** if:
- (a) the content has been classified RC or X 18+ by the Classification Board; or
  - (b) both:
    - (i) the content has been classified R 18+ by the Classification Board; and
    - (ii) access to the content is not subject to a restricted access system; or
  - (c) all of the following conditions are satisfied:
    - (i) the content has been classified MA 15+ by the Classification Board;
    - (ii) access to the content is not subject to a restricted access system;
    - (iii) the content does not consist of text and/or one or more still visual images;
    - (iv) access to the content is provided by means of a content service (other than a news service or a current affairs service) that is operated for profit or as part of a profit-making enterprise;
    - (v) the content service is provided on payment of a fee (whether periodical or otherwise);
    - (vi) the content service is not an ancillary subscription television content service; or
  - (d) all of the following conditions are satisfied:
    - (i) the content has been classified MA 15+ by the Classification Board;

Clause 21

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- (ii) access to the content is not subject to a restricted access system;
- (iii) access to the content is provided by means of a mobile premium service.

*Eligible electronic publications*

- (2) For the purposes of this Schedule, content that consists of an eligible electronic publication is ***prohibited content*** if the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

**21 Potential prohibited content**

- (1) For the purposes of this Schedule, content is ***potential prohibited content*** if:
- (a) the content has not been classified by the Classification Board; and
  - (b) if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be prohibited content.
- (2) However, content is not ***potential prohibited content*** if:
- (a) the content consists of an eligible electronic publication; and
  - (b) the content has not been classified by the Classification Board; and
  - (c) if the content were to be classified by the Classification Board, there is no substantial likelihood that the content would be classified RC or category 2 restricted.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

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

## **Division 2—Classification of content**

### **22 Applications for classification of content**

- (1) Any of the following persons may apply to the Classification Board for classification of content under this Schedule:
  - (a) in the case of content that has been, or is being, hosted by a hosting service—the hosting service provider concerned; or
  - (b) in the case of content that a hosting service provider is considering whether to host—the hosting service provider; or
  - (c) in the case of content that has been, or is being, delivered to, or accessed by, an end-user of a content service—the content service provider concerned; or
  - (d) in the case of content that a content service provider is considering whether to deliver to, or make available for access by, an end-user of the content service concerned—the content service provider; or
  - (e) in the case of content that has been, or can be, accessed using a link provided by a links service—the links service provider concerned; or
  - (f) in the case of content where a links service provider is considering delivering, or making available for access, a link that will enable end-users to access the content—the links service provider; or
  - (g) in any case—the ACMA.
- (2) An application must be:
  - (a) in writing; and
  - (b) made in a form approved in writing by the Director of the Classification Board; and
  - (c) signed by or on behalf of the applicant; and
  - (d) accompanied by:
    - (i) the fee ascertained under clause 27; and
    - (ii) a copy of the content.

Note: For special rules about classification of live content, see clause 10.

Clause 23

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**23 Classification of content**

If an application for classification of content is made under clause 22, the Classification Board must:

- (a) classify the content in accordance with whichever of clauses 24 and 25 is applicable; and
- (b) notify the applicant in writing of the classification of the content.

**24 Classification of content that consists of a film, a computer game or an eligible electronic publication**

*Deemed classification*

(1) If:

- (a) 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 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.

(2) If:

- (a) content consists of an eligible electronic publication; and
- (b) the corresponding print publication has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

the content is taken to have been classified by the Classification Board under this Schedule in the same way as the corresponding print publication was classified under that Act.

*Actual classification*

(3) If:

- (a) 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 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*.

- (4) If:

- (a) content consists of an eligible electronic publication; and  
(b) the corresponding print publication has not been classified under the *Classification (Publications, Films and Computer Games) Act 1995*;

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

## **25 Classification of content that does not consist of a film, a computer game or an eligible electronic publication**

If content does not consist of:

- (a) the entire unmodified contents of a film; or  
(b) a computer game; or  
(c) an eligible electronic publication;

the Classification Board is to classify the 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*.

## **26 Deemed classification of content classified under Schedule 5**

If content has been classified by the Classification Board under Schedule 5 (otherwise than because of repealed subclause 12(1) of that Schedule), the content is taken, for the purposes of this Schedule, to have been classified by the Classification Board under this Schedule in the same way as the content was classified under Schedule 5.

Clause 27

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**27 Fees**

- (1) A person who makes an application under clause 22 is liable to pay a fee.
- (2) The amount of a fee payable under subclause (1) is ascertained under whichever of subclauses (3), (4), (5) and (6) is applicable.

*Films*

- (3) If 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 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.

*Eligible electronic publications*

- (5) If content consists of an eligible electronic publication, regulations prescribing fees for the purposes of paragraph 13(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 corresponding print publication.

*Content other than films, computer games or eligible electronic publications*

- (6) If content does not consist of:
- (a) the entire unmodified contents of a film; or
  - (b) a computer game; or
  - (c) an eligible electronic publication;
- 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 a film.

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

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

## Division 3—Reclassification

### 28 Reclassification of content

- (1) If content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)):
  - (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:
    - (i) the Minister; or
    - (ii) the ACMA; or
    - (iii) if another person applied, under clause 22, for classification of the content—the other person; or
  - (b) on the Classification Board's own initiative.
- (3) If the Classification Board is required to act under paragraph (1)(b), the Classification Board must do so.
- (4) If content is reclassified by the Classification Board, the Classification Board must give written notification to the following persons accordingly:
  - (a) the Minister;
  - (b) the ACMA;
  - (c) if another person applied, under clause 22, for classification of the content—the other person.

### 29 Notice of intention to reclassify content

- (1) If:
    - (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); 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:
    - (i) the Minister; and
    - (ii) the ACMA; and
    - (iii) if another person applied, under clause 22, for classification of the content—the other person; at least 30 days 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 content include issues raised in submissions made to the Classification Board about the matter.

## **Division 4—Review of classification decisions**

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

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

- (1) If content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)), 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) if a person other than the ACMA applied, under clause 22, for classification of the content—the other person;
  - (d) a person aggrieved by the classification.
- (2) Without limiting paragraph (1)(d), 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 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 content concerned; or
  - (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 content that does not consist of a computer game or an eligible electronic publication—the classification MA 15+, R 18+, X 18+ or RC; or
- (b) for content that consists of a computer game—the classification MA 15+, R 18+ or RC; or
- (c) for content that consists of an eligible electronic publication—the classification category 1 restricted, category 2 restricted or Rc.

### **31 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 is notified of the classification; or
  - (b) within such longer period as the Classification Review Board allows.
- (4) If:
  - (a) the applicant for a review of the classification of content is not covered by paragraph 30(1)(c); and
  - (b) a person other than the ACMA applied, under clause 22, for classification of the content;the Convenor of the Classification Review Board must notify the person mentioned in paragraph (b), in writing, of:
  - (c) the application for review; and
  - (d) the day on which it will be considered.

Clause 32

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- (5) 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.
- (6) A fee under subclause (1) must not be such as to amount to taxation.

**32 Classification Review Board may refuse to deal with review applications that are frivolous etc.**

If the applicant for a review of the classification of content is covered by paragraph 30(1)(d), the Classification Review Board may refuse to deal with the application, or to deal further with the application, if the Classification Review Board is satisfied that the application is:

- (a) frivolous; or
- (b) vexatious; or
- (c) not made in good faith.

**33 Review**

- (1) For the purposes of reviewing a classification of 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 classifying the content.
- (2) If the Classification Review Board classifies the content, this Schedule (other than this Subdivision) and Schedule 5 have effect as if the content had been reclassified by the Classification Board.

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

**34 Review of classification of content that consists of a film or a computer game**

If:

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- (a) 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
  - (d) as a result of the review, the Classification Review Board classifies the film or computer game under that Act;
- this Schedule and Schedule 5 have effect as if the film or computer game had been reclassified 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.

### **Subdivision C—Review of content that consists of an eligible electronic publication**

#### **35 Review of classification of content that consists of an eligible electronic publication**

If:

- (a) content consists of an eligible electronic publication; and
  - (b) the corresponding print publication has been classified under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) the decision to classify the corresponding print publication is reviewed by the Classification Review Board under that Act; and
  - (d) as a result of the review, the Classification Review Board classifies the corresponding print publication under that Act;
- this Schedule and Schedule 5 have effect as if the corresponding print publication had been reclassified by the Classification Board under this Schedule in the same way as the corresponding print publication was classified under that Act by the Classification Review Board.

## Division 5—Miscellaneous

### 36 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 3—Complaints to, and investigations by, the ACMA**

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

#### **37 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 provided by a content service, the person may make a complaint to the ACMA about the matter.

*Complaints about hosting services*

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

*Complaints about links services*

- (3) If a person has reason to believe that end-users in Australia can access prohibited content or potential prohibited content using a link provided by a links service, the person may make a complaint to the ACMA about the matter.

*Content of complaint*

- (4) A complaint under subclause (1), (2) or (3) about particular content must:
  - (a) identify the content; and
  - (b) if the content is stored content—set out how to access the content (for example: set out a URL, a password, or the name of a newsgroup); and
  - (c) if:
    - (i) the content is stored content; and

**Schedule 7** Content services

**Part 3** Complaints to, and investigations by, the ACMA

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

**Clause 37**

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- (ii) the complainant knows the country or countries in which the content is hosted;  
set out the name of that country or those countries; and
  - (d) if the content is live content—set out details of how the content was accessed (for example: set out a URL or a password); and
  - (e) if:
    - (i) the content is live content; and
    - (ii) the complainant believes that a particular incident depicted by the live content is sufficient to characterise the content as prohibited content or potential prohibited content;  
set out the date and approximate time when that incident occurred; and
  - (f) set out the complainant’s reasons for believing that the content is prohibited content or potential prohibited content; and
  - (g) set out such other information (if any) as the ACMA requires.
- (5) The rule in paragraph (4)(b) does not apply to a complaint to the extent (if any) to which finding out how to access the content would cause the complainant to contravene a law of the Commonwealth, a State or a Territory.
- (6) The rule in paragraph (4)(d) does not apply to a complaint to the extent (if any) to which finding out how the content was accessed would cause the complainant to contravene a law of the Commonwealth, a State or a Territory.

*Timing of complaint about live content*

- (7) If:
  - (a) a person makes a complaint under subclause (1) about live content; and
  - (b) the person believes that a particular incident depicted in the live content is sufficient to characterise the content as prohibited content or potential prohibited content;the complaint must be made within 60 days after the occurrence of the incident.



*Transitional*

- (8) A person is not entitled to make a complaint under subclause (1), (2) or (3) about something that occurred before the commencement of this clause.

**38 Complaints relating to breach of a designated content/hosting service provider rule etc.**

- (1) If a person (the *first person*) has reason to believe that another person has:
- (a) breached a designated content/hosting service provider rule that applies to the other person; or
  - (b) committed an offence against this Schedule; or
  - (c) breached a civil penalty provision of this Schedule;
- the first person may make a complaint to the ACMA about the matter.
- (2) If a person has reason to believe that a participant in the content industry (within the meaning of Part 4 of this Schedule) has breached a code registered under that Part that is applicable to the participant, the person may make a complaint to the ACMA about the matter.

**39 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.

**40 Recordings of live content**

- (1) If:
- (a) a complaint under subclause 37(1) about live content is accompanied by a recording of:
    - (i) the live content; or
    - (ii) a segment of the live content; and
  - (b) the complainant made the recording;
- neither making the recording, nor giving the recording to the ACMA, is taken to have infringed copyright.

Clause 41

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- (2) Subclause (1) does not apply 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; or
  - (c) the making of the recording would cause the complainant to contravene:
    - (i) a law of the Commonwealth (other than the *Copyright Act 1968*); or
    - (ii) a law of a State; or
    - (iii) a law of a Territory.

**41 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.

**42 Escalation of complaints made under industry codes etc.**

- (1) This clause applies if:
- (a) a person has made a complaint under:
    - (i) an industry code registered under Part 4; or
    - (ii) an industry standard determined under Part 4; or
    - (iii) a designated content/hosting service provider determination; and
  - (b) the complaint is about a particular matter; and
  - (c) the person could have made a complaint about the matter under subclause 37(1), (2) or (3) or 38(1) or (2); and
  - (d) the complaint is referred to the ACMA under the code, standard or determination.

- (2) This Part has effect as if the complaint mentioned in paragraph (1)(a) had been made under subclause 37(1), (2) or (3) or 38(1) or (2), as the case requires.

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

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

- (1) The ACMA must investigate a complaint under Division 1.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (6).
- (3) The ACMA need not investigate a 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.
- (4) The ACMA need not investigate, or continue to investigate, a complaint about a matter if:
  - (a) a complaint about the matter has been, or could have been, made under:
    - (i) an industry code registered under Part 4; or
    - (ii) an industry standard determined under Part 4; or
    - (iii) a designated content/hosting service provider determination; and
  - (b) clause 42 does not apply to the first-mentioned complaint.
- (5) The ACMA must notify the complainant of the results of an investigation under this clause.
- (6) The ACMA may terminate an investigation under this clause if it is of the opinion that it does not have sufficient information to conclude the investigation.

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

The ACMA may investigate any of the following matters if the ACMA thinks that it is desirable to do so:

- (a) whether end-users in Australia can access prohibited content or potential prohibited content provided by a content service;

- (b) whether a hosting service is hosting prohibited content or potential prohibited content;
- (c) whether end-users in Australia can access prohibited content or potential prohibited content using a link provided by a links service;
- (d) whether a person has breached a designated content/hosting service provider rule that applies to the person;
- (e) whether a person has committed an offence against this Schedule;
- (f) whether a person has breached a civil penalty provision of this Schedule;
- (g) whether a participant in the content industry (within the meaning of Part 4 of this Schedule) has breached a code registered under that Part that is applicable to the participant.

#### **45 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).

#### **46 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 hosting services

### 47 Action to be taken in relation to hosting services

#### *Prohibited content*

(1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:

(a) content hosted by a hosting service provider is prohibited content; and

(b) the relevant hosting service has an Australian connection; the ACMA must:

(c) if:

(i) the content does not consist of an eligible electronic publication; and

(ii) the content has been classified RC or X 18+ by the Classification Board;

give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; or

(d) if:

(i) the content does not consist of an eligible electronic publication; and

(ii) the content has been classified R 18+ or MA 15+ by the Classification Board;

give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; or

(e) if:

(i) the content consists of an eligible electronic publication; and

(ii) the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;

give the hosting service provider a written notice (a ***final take-down notice***) directing the hosting service provider to

take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

*Potential prohibited content*

- (2) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) content hosted by a hosting service provider is potential prohibited content; and
    - (ii) the relevant hosting service has an Australian connection; and
  - (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that:
    - (i) if the content does not consist of an eligible electronic publication—the content would be classified RC or X 18+; or
    - (ii) if the content consists of an eligible electronic publication—the content would be classified RC or category 2 restricted;

the ACMA must:

- (c) give the hosting service provider a written notice (an *interim take-down notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content until the ACMA notifies the hosting service provider under subclause (4) of the Classification Board's classification of the content; and
- (d) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type A remedial situation*, see subclause (6).

- (3) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) content hosted by a hosting service provider is potential prohibited content; and

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- (ii) the relevant hosting service has an Australian connection; and
- (b) the content does not consist of an eligible electronic publication; and
- (c) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+;

the ACMA must:

- (d) give the hosting service provider a written notice (an *interim take-down notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content until the ACMA notifies the hosting service provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

- (4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:

- (a) give the relevant hosting service provider a written notice setting out the classification; and

- (b) in a case where:

- (i) the content does not consist of an eligible electronic publication; and
- (ii) the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board;

give the hosting service provider a written notice (a *final take-down notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; and

- (c) in a case where:

- (i) the content does not consist of an eligible electronic publication; and
- (ii) the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board;



give the hosting service provider a written notice (a ***final take-down notice***) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; and

- (d) in a case where:
- (i) the content consists of an eligible electronic publication; and
  - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;

give the hosting service provider a written notice (a ***final take-down notice***) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

- (5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board for classification of content, the ACMA must give the relevant hosting service provider a written notice setting out the decision.

*Type A remedial situation*

- (6) For the purposes of the application of this clause to a hosting service provider, a ***type A remedial situation*** exists in relation to content at a particular time if:
- (a) the provider does not host the content; or
  - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

*Type B remedial situation*

- (7) For the purposes of the application of this clause to a hosting service provider, a ***type B remedial situation*** exists in relation to content at a particular time if:
- (a) the provider does not host the content; or
  - (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
  - (c) access to the content is subject to a restricted access system.

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

(1) If:

- (a) an interim take-down notice relating to particular content is applicable to a particular hosting service provider; and
- (b) before the Classification Board classifies the content, the provider:
  - (i) ceases to host the content; and
  - (ii) gives the ACMA a written undertaking not to host the 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 clause 23 in relation to the classification of the content.
- (2) If an interim take-down notice is revoked under this clause, the ACMA must give the hosting service provider concerned a written notice stating that the interim take-down notice has been revoked.

**49 Revocation of final take-down notices—reclassification of content**

(1) If:

- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
- (b) a final take-down notice relating to the content is applicable to a particular hosting service provider; and
- (c) the Classification Board reclassifies the 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 hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

**50 Revocation of final take-down notices—reclassification of content that consists of a film or a computer game**

- (1) If:
- (a) 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 content is applicable to a particular hosting service provider; 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 hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

**51 Revocation of final take-down notices—reclassification of a corresponding print publication**

- (1) If:
- (a) content consists of an eligible electronic publication; and
  - (b) the Classification Board reclassifies the corresponding print publication under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) a final take-down notice relating to the content is applicable to a particular hosting service provider; 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 hosting service provider concerned a written notice stating that the final take-down notice has been revoked.

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**52 Anti-avoidance—special take-down notices**

(1) If:

- (a) an interim take-down notice or a final take-down notice relating to particular content is applicable to a particular hosting service provider; and
- (b) the ACMA is satisfied that the hosting service provider is hosting, or is proposing to host, content (the **similar content**) that is the same as, or substantially similar to, the content 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 content is prohibited content or potential prohibited content;

the ACMA may:

- (d) if the interim take-down notice or final take-down notice, as the case may be, was given under paragraph 47(1)(c), (1)(e), (2)(c), (4)(b) or (4)(d) of this Schedule—give the hosting service provider a written notice (a **special take-down notice**) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the similar content at any time when the interim take-down notice or final take-down notice, as the case may be, is in force; or
- (e) in any other case—give the hosting service provider a written notice (a **special take-down notice**) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the similar content at any time when the interim take-down notice or final take-down notice, as the case may be, is in force.

Note 1: For **type A remedial situation**, see subclause (2).

Note 2: For **type B remedial situation**, see subclause (3).

*Type A remedial situation*

- (2) For the purposes of the application of this clause to a hosting service provider, a **type A remedial situation** exists in relation to the similar content at a particular time if:
  - (a) the provider does not host the similar content; or
  - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

*Type B remedial situation*

- (3) For the purposes of the application of this clause to a hosting service provider, a **type B remedial situation** exists in relation to content at a particular time if:
- (a) the provider does not host the similar content; or
  - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
  - (c) access to the similar content is subject to a restricted access system.

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

*Interim take-down notice*

- (1) A hosting service provider must comply with an interim take-down 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.

*Final take-down notice*

- (2) A hosting service provider must comply with a final take-down 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 take-down notice*

- (3) A hosting service provider must comply with a special take-down 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.
- (4) In proceedings relating to a contravention of subclause (3), it is a defence if the hosting service provider proves:
- (a) that the provider did not know; and
  - (b) that the provider could not, with reasonable diligence, have ascertained;
- that the relevant content was prohibited content or potential prohibited content.

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Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subclause (4)—see section 13.4 of the *Criminal Code*.

*Undertaking*

- (5) A hosting service provider must comply with an undertaking given by the provider and accepted under clause 48.

*Designated content/hosting service provider rule*

- (6) Subclauses (1), (2), (3) and (5) are designated content/hosting service provider rules.

**54 Identification of content**

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.

**55 Application of notices under this Division**

If a notice under this Division relates to particular internet content, the notice applies to the content only to the extent to which the content is accessed, or available for access, from a website, or a distinct part of a website, specified in the notice.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

## **Division 4—Action to be taken in relation to live content services**

### **56 Action to be taken in relation to live content services**

#### *Prohibited content*

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
- (a) live content provided by a live content service is prohibited content; and
  - (b) the live content service has an Australian connection;
- the ACMA must:
- (c) if the content has been classified RC or X 18+ by the Classification Board—give the live content service provider a written notice (a ***final service-cessation notice***) directing the live content service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service; or
  - (d) if the content has been classified R 18+ or MA 15+ by the Classification Board—give the live content service provider a written notice (a ***final service-cessation notice***) directing the live content service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

#### *Potential prohibited content*

- (2) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) live content provided by a live content service is potential prohibited content; and
    - (ii) the live content service has an Australian connection; and

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- (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified RC or X 18+; and
- (c) the ACMA has:
  - (i) a recording of the content; or
  - (ii) a copy of such a recording;

the ACMA must:

- (d) give the live content service provider a written notice (an *interim service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service until the ACMA notifies the live content provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type A remedial situation*, see subclause (6).

(3) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
  - (i) live content provided by a live content service is potential prohibited content; and
  - (ii) the live content service has an Australian connection; and
- (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+; and
- (c) the ACMA has:
  - (i) a recording of the content; or
  - (ii) a copy of such a recording;

the ACMA must:

- (d) give the live content service provider a written notice (an *interim service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service until the ACMA notifies the live content provider under



subclause (4) of the Classification Board's classification of the content; and

- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

- (4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:
- (a) give the relevant live content service provider a written notice setting out the classification; and
  - (b) in a case where the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the live content service; and
  - (c) in a case where the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board—give the live content service provider a written notice (a *final service-cessation notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the live content service.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

- (5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board under clause 22 for classification of content, the ACMA must give the relevant live content service provider a written notice setting out the decision.

*Type A remedial situation*

- (6) For the purposes of the application of this clause to a live content service provider, a *type A remedial situation* exists in relation to a live content service if the provider does not provide the live content service.

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*Type B remedial situation*

- (7) For the purposes of the application of this clause to a live content service provider, a **type B remedial situation** exists in relation to a live content service if:
- (a) the provider does not provide the live content service; or
  - (b) access to any R 18+ or MA 15+ content provided by the live content service is subject to a restricted access system.

**57 Undertaking—alternative to service-cessation notice**

- (1) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) live content provided by a live content service is prohibited content or potential prohibited content; and
    - (ii) the live content service has an Australian connection; and
  - (b) apart from this subclause, the ACMA would be required to take action under subclause 56(1), (2) or (3) in relation to the content; and
  - (c) the live content service provider concerned gives the ACMA a written undertaking relating to the live content service;
- then:
- (d) the ACMA may accept the undertaking; and
  - (e) if the ACMA accepts the undertaking—the ACMA is not required to take action under subclause 56(1), (2) or (3) in relation to the content.
- (2) Subclause (1) has effect despite anything in clause 56.

**58 Revocation of service-cessation notices—undertaking**

- (1) If:
- (a) a final service-cessation notice or interim service-cessation notice is applicable to a particular live content service provider; and
  - (b) the provider gives the ACMA a written undertaking relating to the live content service concerned;

the ACMA may:

- (c) accept the undertaking; and
  - (d) revoke the final service-cessation notice or interim service-cessation notice; and
  - (e) in the case of an interim service-cessation notice—by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content concerned.
- (2) If a final service-cessation notice or interim service-cessation notice is revoked under this clause, the ACMA must give the live content service provider concerned a written notice stating that the notice has been revoked.

### **59 Revocation of final service-cessation notices—reclassification of content**

- (1) If:
- (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
  - (b) a final service-cessation notice is applicable to a particular live content service provider; and
  - (c) the final service-cessation notice was given because the content was prohibited content; and
  - (d) the Classification Board reclassifies the content; and
  - (e) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final service-cessation notice.
- (2) If a final service-cessation notice is revoked under this clause, the ACMA must give the live content service provider concerned a written notice stating that the final service-cessation notice has been revoked.

### **59A Anti-avoidance—special service-cessation notices**

- (1) If:
- (a) an interim service-cessation notice or a final service-cessation notice relating to a particular live content service is applicable to a particular live content service provider; and

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- (b) the ACMA is satisfied that the live content service provider:
    - (i) is providing; or
    - (ii) is proposing to provide;another live content service that is substantially similar to the first-mentioned live content service; and
  - (c) the ACMA is satisfied that the other live content service:
    - (i) has provided; or
    - (ii) is providing; or
    - (iii) is likely to provide;prohibited content or potential prohibited content;
- the ACMA may:
- (d) if the interim service-cessation notice or final service-cessation notice, as the case may be, was given under paragraph 56(1)(c), (2)(d) or (4)(b) of this Schedule—give the live content service provider a written notice (a ***special service-cessation notice***) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the other live content service at any time when the interim service-cessation notice or final service-cessation notice, as the case may be, is in force; or
  - (e) in any other case—give the live content service provider a written notice (a ***special service-cessation notice***) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the other live content service at any time when the interim service-cessation notice or final service-cessation notice, as the case may be, is in force.

Note 1: For ***type A remedial situation***, see subclause (2).

Note 2: For ***type B remedial situation***, see subclause (3).

*Type A remedial situation*

- (2) For the purposes of the application of this clause to a live content service provider, a ***type A remedial situation*** exists in relation to a live content service if the provider does not provide the live content service.

*Type B remedial situation*

- (3) For the purposes of the application of this clause to a live content service provider, a **type B remedial situation** exists in relation to a live content service if:
- (a) the provider does not provide the live content service; or
  - (b) access to any R 18+ or MA 15+ content provided by the live content service is subject to a restricted access system.

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

*Interim service-cessation notice*

- (1) A live content service provider must comply with an interim service-cessation 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.

*Final service-cessation notice*

- (2) A live content service provider must comply with a final service-cessation 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 service-cessation notice*

- (2A) A live content service provider must comply with a special service-cessation 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.

*Undertaking*

- (3) A live content service provider must comply with an undertaking given by the provider and accepted under clause 57 or 58.

*Designated content/hosting service provider rule*

- (4) Subclauses (1), (2), (2A) and (3) are designated content/hosting service provider rules.

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## **61 Identification of content**

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.

## **Division 5—Action to be taken in relation to links services**

### **62 Action to be taken in relation to links services**

#### *Prohibited content*

(1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:

- (a) end-users in Australia can access content using a link provided by a links service; and
- (b) the content is prohibited content; and
- (c) the links service has an Australian connection;

the ACMA must:

- (d) if:
  - (i) the content does not consist of an eligible electronic publication; and
  - (ii) the content has been classified RC or X 18+ by the Classification Board;

give the links service provider a written notice (a ***final link-deletion notice***) directing the links service provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; or

- (e) if:
  - (i) the content does not consist of an eligible electronic publication; and
  - (ii) the content has been classified R 18+ or MA 15+ by the Classification Board;

give the links service provider a written notice (a ***final link-deletion notice***) directing the links service provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; or

- (f) if:
  - (i) the content consists of an eligible electronic publication; and
  - (ii) the content has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;

give the links service provider a written notice (a ***final link-deletion notice***) directing the links service provider to

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take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For *type A remedial situation*, see subclause (6).

Note 2: For *type B remedial situation*, see subclause (7).

*Potential prohibited content*

(2) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
  - (i) end-users in Australia can access content using a link provided by a links service; and
  - (ii) the content is potential prohibited content; and
  - (iii) the links service has an Australian connection; and
- (b) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that:
  - (i) if the content does not consist of an eligible electronic publication—the content would be classified RC or X 18+; or
  - (ii) if the content consists of an eligible electronic publication—the content would be classified RC or category 2 restricted;

the ACMA must:

- (c) give the links service provider a written notice (an *interim link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content until the ACMA notifies the links service provider under subclause (4) of the Classification Board's classification of the content; and
- (d) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type A remedial situation*, see subclause (6).

(3) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
  - (i) end-users in Australia can access content using a link provided by a links service; and
  - (ii) the content is potential prohibited content; and



- (iii) the links service has an Australian connection; and
- (b) the content does not consist of an eligible electronic publication; and
- (c) the ACMA is satisfied that, if the content were to be classified by the Classification Board, there is a substantial likelihood that the content would be classified R 18+ or MA 15+;

the ACMA must:

- (d) give the links service provider a written notice (an *interim link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content until the ACMA notifies the links service provider under subclause (4) of the Classification Board's classification of the content; and
- (e) apply to the Classification Board under clause 22 for classification of the content.

Note: For *type B remedial situation*, see subclause (7).

- (4) If, in response to an application made as required by subclause (2) or (3), the ACMA is informed under paragraph 23(b) of the classification of particular content, the ACMA must:

- (a) give the relevant links service provider a written notice setting out the classification; and
- (b) in a case where:
  - (i) the content does not consist of an eligible electronic publication; and
  - (ii) the effect of the classification is that the content is prohibited content because it has been classified RC or X 18+ by the Classification Board;

give the links service provider a written notice (a *final link-deletion notice*) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content; and

- (c) in a case where:
  - (i) the content does not consist of an eligible electronic publication; and
  - (ii) the effect of the classification is that the content is prohibited content because it has been classified R 18+ or MA 15+ by the Classification Board;

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give the links service provider a written notice (a ***final link-deletion notice***) directing the provider to take such steps as are necessary to ensure that a type B remedial situation exists in relation to the content; and

(d) in a case where:

(i) the content consists of an eligible electronic publication; and

(ii) the effect of the classification is that the content is prohibited content because it has been classified RC, category 2 restricted or category 1 restricted by the Classification Board;

give the links service provider a written notice (a ***final link-deletion notice***) directing the provider to take such steps as are necessary to ensure that a type A remedial situation exists in relation to the content.

Note 1: For ***type A remedial situation***, see subclause (6).

Note 2: For ***type B remedial situation***, see subclause (7).

(5) If the ACMA makes a decision under subclause (2) or (3) to apply to the Classification Board under clause 22 for classification of content, the ACMA must give the relevant links service provider a written notice setting out the decision.

*Type A remedial situation*

(6) For the purposes of the application of this clause to a links service provider, a ***type A remedial situation*** exists in relation to particular content if:

(a) the provider ceases to provide a link to the content using the links service concerned; or

(b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

*Type B remedial situation*

(7) For the purposes of the application of this clause to a links service provider, a ***type B remedial situation*** exists in relation to particular content if:

(a) the provider ceases to provide a link to the content using the links service concerned; or

- (b) the content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
- (c) access to the content is subject to a restricted access system.

### **63 Revocation of interim link-deletion notices—voluntary deletion of link**

- (1) If:
  - (a) an interim link-deletion notice relating to a link to particular content is applicable to a particular links service provider; and
  - (b) before the Classification Board classifies the content, the provider:
    - (i) ceases to provide a link to the content; and
    - (ii) gives the ACMA a written undertaking not to provide a link to the content;the ACMA may:
  - (c) accept the undertaking; and
  - (d) revoke the interim link-deletion notice; and
  - (e) by written notice given to the Classification Board, determine that the Classification Board is not required to comply with clause 23 in relation to the classification of the content.
- (2) If an interim link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the interim link-deletion notice has been revoked.

### **64 Revocation of final link-deletion notices—reclassification of content**

- (1) If:
  - (a) content has been classified by the Classification Board (otherwise than because of subclause 24(1) or (2)); and
  - (b) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
  - (c) the Classification Board reclassifies the content; and
  - (d) as a result of the reclassification, the content ceases to be prohibited content;the ACMA must revoke the final link-deletion notice.

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- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

**65 Revocation of final link-deletion notices—reclassification of content that consists of a film or a computer game**

- (1) If:
- (a) 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 link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
  - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final link-deletion notice.
- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.

**66 Revocation of final link-deletion notices—reclassification of a corresponding print publication**

- (1) If:
- (a) content consists of an eligible electronic publication; and
  - (b) the Classification Board reclassifies the corresponding print publication under the *Classification (Publications, Films and Computer Games) Act 1995*; and
  - (c) a final link-deletion notice relating to a link to the content is applicable to a particular links service provider; and
  - (d) as a result of the reclassification, the content ceases to be prohibited content;
- the ACMA must revoke the final link-deletion notice.
- (2) If a final link-deletion notice is revoked under this clause, the ACMA must give the links service provider concerned a written notice stating that the final link-deletion notice has been revoked.
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**67 Anti-avoidance—special link-deletion notices**

- (1) If:
- (a) an interim link-deletion notice or a final link-deletion notice relating to particular content is applicable to a particular links service provider; and
  - (b) the ACMA is satisfied that the links service provider is providing, or is proposing to provide, a link to content (the **similar content**) that is the same as, or substantially similar to, the content identified in the interim link-deletion notice or the final link-deletion notice, as the case may be; and
  - (c) the ACMA is satisfied that the similar content is prohibited content or potential prohibited content;

the ACMA may:

- (d) if the interim link-deletion notice or the final link-deletion notice, as the case may be, was given under paragraph 62(1)(d), (1)(f), (2)(c), (4)(b) or (4)(d)—give the links service provider a written notice (a **special link-deletion notice**) directing the provider to take all reasonable steps to ensure that a type A remedial situation exists in relation to the similar content at any time when the interim link-deletion notice or the final link-deletion notice, as the case may be, is in force; or
- (e) in any other case—give the links service provider a written notice (a **special link-deletion notice**) directing the provider to take all reasonable steps to ensure that a type B remedial situation exists in relation to the similar content at any time when the interim link-deletion notice or the final link-deletion notice, as the case may be, is in force.

Note 1: For **type A remedial situation**, see subclause (2).

Note 2: For **type B remedial situation**, see subclause (3).

*Type A remedial situation*

- (2) For the purposes of the application of this clause to a links service provider, a **type A remedial situation** exists in relation to the similar content if:
- (a) the provider ceases to provide a link to the similar content using the links service concerned; or

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- (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise).

*Type B remedial situation*

- (3) For the purposes of the application of this clause to a links service provider, a ***type B remedial situation*** exists in relation to the similar content if:
  - (a) the provider ceases to provide a link to the similar content using the links service concerned; or
  - (b) the similar content is not provided by a content service provided to the public (whether on payment of a fee or otherwise); or
  - (c) access to the similar content is subject to a restricted access system.

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

*Interim link-deletion notice*

- (1) A links service provider must comply with an interim link-deletion 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.

*Final link-deletion notice*

- (2) A links service provider must comply with a final link-deletion 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 link-deletion notice*

- (3) A links service provider must comply with a special link-deletion 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.
- (4) In proceedings relating to a contravention of subclause (3), it is a defence if the links service provider proves:
  - (a) that the provider did not know; and

(b) that the provider could not, with reasonable diligence, have ascertained;  
that the relevant content was prohibited content or potential prohibited content.

Note: In criminal proceedings, a defendant bears a legal burden in relation to the matters in subclause (4)—see section 13.4 of the *Criminal Code*.

*Undertaking*

- (5) A links service provider must comply with an undertaking given by the provider and accepted under clause 63.

*Designated content/hosting service provider rule*

- (6) Subclauses (1), (2), (3) and (5) are designated content/hosting service provider rules.

## Division 6—Law enforcement agencies

### 69 Referral of matters to law enforcement agencies

- (1) If, in the course of an investigation under Division 2, the ACMA is satisfied that:
- (a) content is prohibited content or potential prohibited content; and
  - (b) the content is of a sufficiently serious nature to warrant referral to a law enforcement agency;
- the ACMA must notify the content to:
- (c) a member of an Australian police force; or
  - (d) 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—that other person or body.

#### *Referral to law enforcement agency*

- (2) The manner in which content may be notified under paragraph (1)(c) 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.
- (3) If a member of an Australian police force is notified of particular content under this clause, the member may notify the content to a member of another law enforcement agency.
- (4) This clause does not limit the ACMA's powers to refer other matters to a member of an Australian police force.

#### *Previous referral to law enforcement agency under Schedule 5*

- (5) The ACMA is not required to notify particular content under subclause (1) if the ACMA has already notified the content under paragraph 40(1)(a) of Schedule 5.



**70 Deferral of action in order to avoid prejudicing a criminal investigation—hosting services**

- (1) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) content hosted by a hosting service provider is prohibited content or potential prohibited content; and
    - (ii) the relevant hosting service has an Australian connection; and
  - (b) apart from this subclause, the ACMA would be required to take action under subclause 47(1), (2) or (3) 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 47.

**71 Deferral of action in order to avoid prejudicing a criminal investigation—live content services**

- (1) If:
- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
    - (i) live content provided by a live content service is potential prohibited content; and
    - (ii) the live content service has an Australian connection; and
  - (b) apart from this subclause, the ACMA would be required to take action under subclause 56(1), (2) or (3) 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;

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the ACMA may defer taking that action until the end of that period.

(2) Subclause (1) has effect despite anything in clause 56.

**72 Deferral of action in order to avoid prejudicing a criminal investigation—links services**

(1) If:

- (a) in the course of an investigation under Division 2, the ACMA is satisfied that:
  - (i) end-users in Australia can access content using a link provided by a links service; and
  - (ii) the content is potential prohibited content; and
  - (iii) the links service has an Australian connection; and
- (b) apart from this subclause, the ACMA would be required to take action under subclause 62(1), (2) or (3) in relation to the link; 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 62.

## **Part 4—Industry codes and industry standards**

### **Division 1—Simplified outline**

#### **73 Simplified outline**

The following is a simplified outline of this Part:

- Bodies and associations that represent sections of the content 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 content 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

### 74 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).

### 75 Industry standards

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

### 76 Content activity

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

- (a) providing a hosting service that has an Australian connection;  
or
- (b) providing a live content service that has an Australian connection; or
- (c) providing a links service that has an Australian connection;  
or
- (d) providing a commercial content service that has an Australian connection.

### 77 Sections of the content industry

- (1) For the purposes of this Part, *sections of the content 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 content industry*:
  - (a) hosting service providers, where the relevant hosting services have an Australian connection;
  - (b) live content service providers, where the relevant live content services have an Australian connection;
  - (c) links service providers, where the relevant links services have an Australian connection;

- (d) commercial content service providers, where the relevant commercial content services have an Australian connection.

### **78 Participants in a section of the content industry**

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

### **79 Designated body**

The Minister may, by legislative instrument, declare that a specified body or association is the *designated body* for the purposes of this Part. The declaration has effect accordingly.

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

### **80 Statement of regulatory policy**

- (1) The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the content industry should develop codes (*industry codes*) that are to apply to participants in the respective sections of the industry in relation to their content activities.
- (2) The Parliament intends that the ACMA should make reasonable efforts to ensure that, for each section of the content industry, either:
  - (a) an industry code is registered under this Part within 6 months after the commencement of this Schedule; or
  - (b) an industry standard is registered under this Part within 9 months after the commencement of this Schedule.

### **81 Matters that must be dealt with by industry codes and industry standards—commercial content providers**

- (1) The Parliament intends that, for the commercial content service provider section of the content 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 engagement of trained content assessors by commercial content service providers;
  - (d) ensuring that content (other than live content or content that consists of an eligible electronic publication) that:
    - (i) has not been classified by the Classification Board; and
    - (ii) would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board;is not provided by commercial content services (other than news services or current affairs services) unless a trained

content assessor has assessed the content for the purposes of categorising the content as:

- (iii) content that would, if it were classified by the Classification Board, be substantially likely to be classified RC by the Classification Board; or
  - (iv) content that would, if it were classified by the Classification Board, be substantially likely to be classified X 18+ by the Classification Board; or
  - (v) content that would, if it were classified by the Classification Board, be substantially likely to be classified R 18+ by the Classification Board; or
  - (vi) content that would, if it were classified by the Classification Board, be substantially likely to be classified MA 15+ by the Classification Board;
- (e) ensuring that live content is not provided by commercial content services (other than news services or current affairs services) unless:
- (i) there is no reasonable likelihood that the live content will be of a kind that would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board; or
  - (ii) a trained content assessor has given advice to the relevant commercial content service provider about whether the live content is likely to be of a kind that would, if it were classified by the Classification Board, be substantially likely to be classified RC, X 18+, R 18+ or MA 15+ by the Classification Board;
- (f) ensuring that content that consists of an eligible electronic publication that:
- (i) has not been classified by the Classification Board; and
  - (ii) would, if it were classified by the Classification Board, be substantially likely to be classified RC or category 2 restricted by the Classification Board;

is not provided by commercial content services (other than news services or current affairs services) unless a trained content assessor has assessed the content for the purposes of categorising the content as:

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- (iii) content that would, if it were classified by the Classification Board, be substantially likely to be classified RC by the Classification Board; or
- (iv) content that would, if it were classified by the Classification Board, be substantially likely to be classified category 2 restricted by the Classification Board.

Note: The classification of an eligible electronic publication is the same as the classification of the corresponding print publication—see clause 24.

- (2) For the purposes of paragraphs (1)(d), (e) and (f), it is to be assumed that this Schedule authorised the Classification Board to classify the content concerned.

*Codes and standards not limited*

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

**82 Examples of matters that may be dealt with by industry codes and industry standards**

- (1) This clause sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the content industry is involved.
- (3) The examples are as follows:
  - (a) procedures to be followed in order to deal with complaints about matters, where the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2);
  - (b) telling persons about their rights to make complaints;
  - (c) procedures to be followed in order to assist persons to make complaints;
  - (d) the referral to the ACMA of complaints about matters, where:
    - (i) the complainant could have made a complaint about the same matter under subclause 37(1), (2) or (3) or 38(1) or (2); and



- (ii) the complainant is dissatisfied with the way in which the complaint was dealt with under the code or standard;
  - (e) advice about the reasons for content having a particular classification;
  - (f) procedures directed towards the achievement of the objective of ensuring that, in the event that a commercial content service provider becomes aware that:
    - (i) prohibited content; or
    - (ii) potential prohibited content;is or was delivered to, or made available for access by, an end-user of a commercial content service provided by another commercial content service provider, the other commercial content service provider is told about the prohibited content or the potential prohibited content, as the case may be;
  - (g) promoting awareness of the safety issues associated with commercial content services or live content services;
  - (h) procedures to be followed in order to deal with safety issues associated with commercial content services that are chat services;
  - (i) procedures to be followed in order to assist parents and responsible adults to deal with safety issues associated with children's use of commercial content services that are chat services;
  - (j) giving parents and responsible adults information about how to supervise and control children's access to content provided by commercial content services or live content services;
  - (k) procedures to be followed in order to assist parents and responsible adults to supervise and control children's access to content provided by commercial content services or live content services;
  - (l) procedures to be followed in order to inform producers of content provided by commercial content services or live content services about the legal responsibilities of commercial content service providers in relation to that content;
  - (m) the making and retention of records of content provided by a commercial content service or a live content service;
  - (n) the making and retention of recordings of live content provided by a live content service;
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- (o) procedures directed towards the achievement of the objective of ensuring that, in the event that new content services or live content services are developed that could put at risk the safety of children who are end-users of the services, the ACMA is informed about those services.

**83 Escalation of complaints**

- (1) This clause applies if an industry code or industry standard deals with the matter referred to in paragraph 82(3)(a).
- (2) The industry code or industry standard, as the case may be, must also deal with the matter referred to in paragraph 82(3)(d).

**84 Collection of personal information**

- (1) This clause applies to a provision of an industry code or industry standard if the provision deals with the making and retention of:
  - (a) records of content provided by a content service; or
  - (b) recordings of live content provided by a live content service.
- (2) The provision must not authorise the collection of personal information (within the meaning of the *Privacy Act 1988*) about an end-user of a content service.

## **Division 4—Industry codes**

### **85 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 content 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 content 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

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- (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.
- Note: *Designated body* is defined by clause 79.
- (2) The ACMA must register the code by including it in the Register of industry codes kept under clause 101.
  - (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.

**86 ACMA may request codes**

- (1) If the ACMA is satisfied that a body or association represents a particular section of the content 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 content 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 content 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 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).

### **87 Publication of notice where no body or association represents a section of the content industry**

- (1) If the ACMA is satisfied that a particular section of the content industry is not represented by a body or association, the ACMA may publish a notice on the ACMA's website:
  - (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 86(1); and
  - (b) setting out the matter or matters relating to the content activities of those providers that would be likely to be specified in the subclause 86(1) notice.
- (2) The period specified in a notice under subclause (1) must run for at least 60 days.

### **88 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 85 has effect, in relation to the registration of the code, as if paragraphs 85(1)(e) and (f) of this Schedule had not been enacted.

Note: Paragraphs 85(1)(e) and (f) deal with submissions about draft codes.

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**89 Compliance with industry codes**

- (1) If:
  - (a) a person is a participant in a particular section of the content 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;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).
- (3) Subclause (2) is a designated content/hosting service provider rule.

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

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

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

## **Division 5—Industry standards**

### **91 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 86(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the content industry; and
    - (ii) deal with one or more matters relating to the content 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 legislative 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.
- (4) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

Clause 92

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**92 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 content industry is not represented by a body or association; and
  - (b) the ACMA has published a notice under subclause 87(1); 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 86(1); and
    - (ii) sets out one or more matters relating to the content activities of 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 legislative 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) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

**93 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 content industry; and
-



- (ii) deals with one or more matters relating to the content 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 (6)); 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 legislative 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) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.
- (6) For the purposes of this clause, an industry code that applies to participants in a particular section of the content industry and deals with one or more matters relating to the content 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.
- (7) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

Clause 94

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**94 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 content industry; and
    - (ii) deals with 2 or more matters relating to the content activities of those participants;has been registered under this Part for at least 180 days; and
  - (b) clause 93 does not apply to the code; and
  - (c) the ACMA is satisfied that the code is deficient (as defined by subclause (6)) 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)(d) must run for at least 30 days.
- (3) The ACMA may, by legislative 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) 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 89 that occurred before that day.
- (6) For the purposes of this clause, an industry code that applies to participants in a particular section of the content industry and deals with 2 or more matters relating to the content 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.
- (7) The Minister may, by legislative instrument, give the ACMA a written direction as to the exercise of its powers under this clause.

## **95 Compliance with industry standards**

- (1) If:
- (a) an industry standard that applies to participants in a particular section of the content industry is registered under this Part; and
  - (b) a person is a participant in that section of the content industry;
- the person must comply with the industry standard.

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

- (2) Subclause (1) is a designated content/hosting service provider rule.

## **96 Formal warnings—breach of industry standards**

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

Clause 97

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**97 Variation of industry standards**

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the content 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 content activities of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the content activities of those participants.

**98 Revocation of industry standards**

- (1) The ACMA may, by legislative 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.

**99 Public consultation on industry standards**

- (1) Before determining or varying an industry standard, the ACMA must:
  - (a) make a copy of the draft available on its website; and
  - (b) publish a notice on its website:
    - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
    - (ii) inviting interested persons to give written comments about the draft to the ACMA within the period specified in the notice.
- (2) The period specified in the notice 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.

- (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.

### **100 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 98(1), the ACMA must consult the designated body.

Note: *Designated body* is defined by clause 79.

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

### **101 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 86; and
  - (d) all notices under clause 87; and
  - (e) all directions under clause 89.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

## **Division 7—Miscellaneous**

### **102 Industry codes may provide for matters by reference to other instruments**

Section 589 of the *Telecommunications Act 1997* applies to an industry code in a corresponding way to the way in which it applies to an instrument under that Act.

### **103 Industry standards may provide for matters by reference to other instruments**

Section 589 of the *Telecommunications Act 1997* applies to an industry standard in a corresponding way to the way in which it applies to an instrument under that Act.

## **Part 5—Designated content/hosting service provider determinations**

### **104 Designated content/hosting service provider determinations**

- (1) The ACMA may, by legislative instrument, determine rules that apply to designated content/hosting service providers in relation to the provision of designated content/hosting services.
- (2) A determination under subclause (1) is called a *designated content/hosting service provider determination*.
- (3) A designated content/hosting service 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.
- (4) The ACMA must not make a designated content/hosting service provider determination unless the determination relates to a matter specified in the regulations.
- (5) A designated content/hosting service provider determination may make provision for or in relation to a particular matter by empowering the ACMA to make decisions of an administrative character.

### **105 Exemptions from designated content/hosting service provider determinations**

- (1) The Minister may, by legislative instrument, determine that a specified designated content/hosting service provider is exempt from designated content/hosting service provider determinations.



Clause 105

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- (2) The Minister may, by legislative instrument, determine that a specified designated content/hosting service provider is exempt from a specified designated content/hosting service 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.

## **Part 6—Enforcement**

### **106 Compliance with designated content/hosting service provider rules—offence**

- (1) A person commits an offence if:
  - (a) the person is a designated content/hosting service provider;  
and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a designated content/hosting service provider rule that applies to the person.

Penalty: 100 penalty units.

- (2) A person who contravenes subclause (1) commits 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.

### **107 Compliance with designated content/hosting service provider rules—civil penalty provision**

- (1) A person must not contravene a designated content/hosting service provider rule if:
  - (a) the person is a designated content/hosting service provider;  
and
  - (b) the rule applies to the person.
- (2) Subclause (1) is a civil penalty provision.
- (3) A person who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

**108 Remedial directions—breach of designated content/hosting service provider rules**

- (1) This clause applies if the ACMA is satisfied that a designated content/hosting service provider has contravened, or is contravening, a designated content/hosting service provider rule that applies to the provider.
- (2) The ACMA may give the designated content/hosting service provider a written direction requiring the provider to take specified action directed towards ensuring that the provider 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 a designated content/hosting service provider under subclause (2):
  - (a) a direction that the provider implement effective administrative systems for monitoring compliance with a designated content/hosting service provider rule;
  - (b) a direction that the provider implement a system designed to give the provider's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a designated content/hosting service provider rule, in so far as those requirements affect the employees, agents or contractors concerned.

*Offence*

- (4) A person commits 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: 100 penalty units.

- (5) A person who contravenes subclause (4) commits 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.

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*Civil penalty*

- (6) A person must comply with a direction under subclause (2).
- (7) Subclause (6) is a civil penalty provision.
- (8) A person who contravenes subclause (6) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

**109 Formal warnings—breach of designated content/hosting service provider rules**

The ACMA may issue a formal warning to a person if the ACMA is satisfied that the person has contravened, or is contravening, a designated content/hosting service provider rule that applies to the person.

**110 Federal Court may order a person to cease providing designated content/hosting services**

- (1) If the ACMA is satisfied that a person is providing a designated content/hosting service otherwise than in accordance with a designated content/hosting service provider rule that applies to the person, the ACMA may apply to the Federal Court for an order that the person cease providing that designated content/hosting service.
- (2) If the Federal Court is satisfied, on such an application, that the person is providing a designated content/hosting service otherwise than in accordance with a designated content/hosting service provider rule that applies to the person, the Federal Court may order the person to cease providing that designated content/hosting service.

## **Part 7—Protection from civil and criminal proceedings**

### **111 Protection from civil proceedings—service providers**

#### *Hosting service provider*

- (1) Civil proceedings do not lie against a hosting service provider in respect of anything done by the provider in compliance with clause 53.

#### *Live content service provider*

- (2) Civil proceedings do not lie against a live content service provider in respect of anything done by the provider in compliance with clause 60.

#### *Links service provider*

- (3) Civil proceedings do not lie against a links service provider in respect of anything done by the provider in compliance with clause 68.

### **112 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;

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- (g) a member of staff assisting the Classification Board or Classification Review Board as mentioned in section 88A of the *Classification (Publications, Films and Computer Games) Act 1995*;
  - (h) a consultant engaged to assist in the performance of the functions of the Classification Board or the functions of the Classification Review Board;
  - (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 content or material; or
  - (b) the possession of content or material; or
  - (c) the distribution of content or material; or
  - (d) the delivery of content or material; or
  - (e) the copying of content or material; or
  - (f) the doing of any other thing in relation to content 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 or Schedule 5 to this Act.

*Definition*

- (3) In this clause:

**possession** includes have in custody or control.

## **Part 8—Review of decisions**

### **113 Review by the Administrative Appeals Tribunal**

#### *Decisions under Division 3 of Part 3*

- (1) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
  - (a) a decision to give a hosting service provider an interim take-down notice;
  - (b) a decision to give a hosting service provider a final take-down notice;
  - (c) a decision to give a hosting service provider a special take-down notice;
  - (d) a decision under subclause 47(2) or (3) to apply to the Classification Board for classification of content hosted by a hosting service provider.
- (2) An application under subclause (1) may only be made by the hosting service provider concerned.

#### *Decisions under Division 4 of Part 3*

- (3) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
  - (a) a decision to give a live content service provider an interim service-cessation notice;
  - (b) a decision to give a live content service provider a final service-cessation notice;
  - (ba) a decision to give a live content service provider a special service-cessation notice;
  - (c) a decision under subclause 56(2) or (3) to apply to the Classification Board for classification of content provided by a live content service.
- (4) An application under subclause (3) may only be made by the live content service provider concerned.

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*Decisions under Division 5 of Part 3*

- (5) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
- (a) a decision to give a links service provider an interim link-deletion notice;
  - (b) a decision to give a links service provider a final link-deletion notice;
  - (c) a decision to give a links service provider a special link-deletion notice;
  - (d) a decision under subclause 62(2) or (3) to apply to the Classification Board for classification of content that can be accessed using a link provided by a links service.
- (6) An application under subclause (5) may only be made by the links service provider concerned.

*Decisions under clause 85*

- (7) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the ACMA under clause 85 to refuse to register a code.
- (8) An application under subclause (7) may only be made by the body or association that developed the code.

*Decisions under clause 89*

- (9) An application may be made to the Administrative Appeals Tribunal for a review of a decision of the ACMA under clause 89 to:
- (a) give a direction to a designated content/hosting service provider; or
  - (b) vary a direction that is applicable to a designated content/hosting service provider; or
  - (c) refuse to revoke a direction that is applicable to a designated content/hosting service provider.
- (10) An application under subclause (9) may only be made by the designated content/hosting service provider concerned.



*Decisions under subclause 104(5) or clause 108*

- (11) An application may be made to the Administrative Appeals Tribunal for a review of any of the following decisions made by the ACMA:
- (a) a decision of a kind referred to in subclause 104(5) (which deals with decisions under designated content/hosting service provider determinations), where the decision relates to a designated content/hosting service provider;
  - (b) a decision under clause 108 to:
    - (i) give a direction to a designated content/hosting service provider; or
    - (ii) vary a direction that is applicable to a designated content/hosting service provider; or
    - (iii) refuse to revoke a direction that is applicable to a designated content/hosting service provider.
- (12) An application under subclause (11) may only be made by the designated content/hosting service provider concerned.

## Part 9—Miscellaneous

### 114 Additional ACMA functions

The ACMA has the following functions:

- (a) to monitor compliance with codes and standards registered under Part 4 of this Schedule;
- (b) to advise and assist parents and responsible adults in relation to the supervision and control of children's access to content services;
- (c) to conduct and/or co-ordinate community education programs about content services, in consultation with relevant industry and consumer groups and government agencies;
- (d) to conduct and/or commission research into issues relating to content services;
- (e) to liaise with regulatory and other relevant bodies overseas about co-operative arrangements for the regulation of the commercial content services industry, including (but not limited to) collaborative arrangements to develop:
  - (i) multilateral codes of practice; and
  - (ii) content labelling technologies;
- (f) to inform itself and advise the Minister on technological developments and service trends in the commercial content services industry.

### 115 Recordings of content etc.

*Recordings of live content*

- (1) The ACMA may:
  - (a) make a recording of live content, or of a segment of live content, for the purposes of:
    - (i) an investigation under Division 2 of Part 3; or
    - (ii) an application to the Classification Board under clause 22; and
  - (b) make one or more copies of such a recording for the purposes of:

- (i) an investigation under Division 2 of Part 3; or
- (ii) an application to the Classification Board under clause 22.

*Copies of stored content*

- (2) The ACMA may make one or more copies of stored content for the purposes of:
  - (a) an investigation under Division 2 of Part 3; or
  - (b) an application to the Classification Board under clause 22.

*Copyright*

- (3) The ACMA does not infringe copyright if it does anything authorised by subclause (1) or (2).

**116 Samples of content to be submitted for classification**

The ACMA must, from time to time:

- (a) select samples of content that have been the subject of complaints under clause 37; and
- (b) apply to the Classification Board under clause 22 for classification of that content.

**117 Service of summons, process or notice on corporations incorporated outside Australia**

- (1) This clause applies to:
  - (a) a summons or process in any proceedings under, or connected with, this Schedule; or
  - (b) a notice under this Schedule;where:
  - (c) the summons, process or notice, as the case may be, is required to be served on, or given to, a body corporate incorporated outside Australia; and
  - (d) the body corporate does not have a registered office or a principal office in Australia; and
  - (e) the body corporate has an agent in Australia.

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- (2) The summons, process or notice, as the case may be, is taken to have been served on, or given to, the body corporate if it is served on, or given to, the agent.
- (3) Subclause (2) has effect in addition to section 28A of the *Acts Interpretation Act 1901*.

Note: Section 28A of the *Acts Interpretation Act 1901* deals with the service of documents.

### **117A Meaning of *broadcasting service***

Disregard the following provisions of this Schedule in determining the meaning of the expression ***broadcasting service***:

- (a) clause 9A;
- (b) subparagraph 20(1)(c)(vi).

### **118 Review**

- (1) Within 3 years after the commencement of this Schedule, the Minister must cause to be conducted a review of the following matters:
  - (a) the operation of this Schedule;
  - (b) whether this Schedule should be amended or repealed.
- (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 tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

### **119 This Schedule does not limit Schedule 5**

This Schedule does not limit the operation of Schedule 5.

### **120 This Schedule does not limit the *Telecommunications Act 1997***

This Schedule does not limit the operation of the *Telecommunications Act 1997*.

### **121 Implied freedom of political communication**

- (1) This Schedule does not apply to the extent (if any) that it would infringe any constitutional doctrine of implied freedom of political communication.
- (2) Subclause (1) does not limit the application of section 15A of the *Acts Interpretation Act 1901* to this Act.

### **122 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.

### **123 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.

## Endnotes

### Endnote 1—Legislation history

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## Endnotes

### Endnote 1—Legislation history

This endnote sets out details of the legislation history of the *Broadcasting Services Act 1992*.

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Services Act 1992	110, 1992	14 July 1992	ss. 4, 5, 7–92 and 117–218: 5 Oct 1992 ( <i>see Gazette</i> 1992, No. GN38) Remainder: Royal Assent	—
Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992	167, 1992	11 Dec 1992	1 July 1993	—
Broadcasting Services (Subscription Television Broadcasting) Amendment Act 1992	171, 1992	11 Dec 1992	11 Dec 1992	—
Transport and Communications Legislation Amendment Act (No. 3) 1992	216, 1992	24 Dec 1992	ss. 10–13, 15–18 and 20: Royal Assent ( <i>a</i> ) ss. 14 and 19: 24 June 1993 ( <i>a</i> )	—
Tobacco Advertising Prohibition Act 1992	218, 1992	24 Dec 1992	ss. 36 and 37: 1 July 1993 ( <i>b</i> )	—
Broadcasting Services Amendment Act 1993	1, 1993	14 May 1993	14 May 1993	—
Broadcasting Services Amendment Act (No. 2) 1993	2, 1993	14 May 1993	14 May 1993	—

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Communications and the Arts Legislation Amendment Act (No. 1) 1995	32, 1995	12 Apr 1995	s. 3 (items 6–51): Royal Assent ( <i>c</i> )	—
Competition Policy Reform Act 1995	88, 1995	20 July 1995	s. 77: 6 Nov 1995 ( <i>see Gazette</i> 1995, No. S423) ( <i>d</i> )	—
Broadcasting Services Amendment Act 1995	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
Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997	59, 1997	3 May 1997	Schedule 1 (items 7–12): 1 July 1997 ( <i>e</i> ) Schedule 1 (items 13, 14): ( <i>e</i> )	—
Broadcasting Services Amendment Act 1997	115, 1997	7 July 1997	7 July 1997	Sch. 1 (item 5)
Communications Legislation Amendment Act (No. 1) 1997	119, 1997	7 July 1997	4 Aug 1997	—
Broadcasting Services Legislation Amendment Act 1997	143, 1997	8 Oct 1997	8 Oct 1997	Sch. 1 (items 8, 9)
Audit (Transitional and Miscellaneous) Amendment Act 1997	152, 1997	24 Oct 1997	Schedule 2 (items 597–604): 1 Jan 1998 ( <i>see Gazette</i> 1997, No. GN49) ( <i>f</i> )	—
Broadcasting Services Amendment Act (No. 2) 1997	180, 1997	27 Nov 1997	25 Dec 1997	—
Financial Sector Reform (Consequential Amendments) Act 1998	48, 1998	29 June 1998	Schedule 1 (item 24): 1 July 1998 ( <i>see Gazette</i> 1998, No. S316) ( <i>g</i> )	—

## Endnotes

### Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Television Broadcasting Services (Digital Conversion) Act 1998	99, 1998	27 July 1998	27 July 1998	Sch. 1 (item 7)
Broadcasting Services Amendment (Online Services) Act 1999	90, 1999	16 July 1999	16 July 1999	—
Broadcasting Services Amendment Act (No. 2) 1999	122, 1999	13 Oct 1999	13 Oct 1999	—
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Schedule 1 (items 282, 283): 5 Dec 1999 ( <i>see Gazette</i> 1999, No. S584) ( <i>h</i> )	—
Corporate Law Economic Reform Program Act 1999	156, 1999	24 Nov 1999	Schedule 10 (item 68): 13 Mar 2000 ( <i>see Gazette</i> 2000, No. S114) ( <i>i</i> )	—
Broadcasting Services Amendment Act (No. 1) 1999	197, 1999	23 Dec 1999	Schedule 2: 20 Jan 2000 Schedule 3 (items 14–19): ( <i>j</i> ) Remainder: Royal Assent	Sch. 3 (items 10, 11, 19)
Broadcasting Services Amendment Act (No. 3) 1999	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): ( <i>k</i> ) Remainder: Royal Assent	Sch. 1 (items 5, 19, 22)



## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Services Amendment (Digital Television and Datacasting) Act 2000	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)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	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)
Broadcasting Services Amendment Act 2000	172, 2000	21 Dec 2000	Schedule 2: (l) Remainder: Royal Assent	Sch. 1 (item 36)
Communications and the Arts Legislation Amendment (Application of Criminal Code) Act 2001	5, 2001	20 Mar 2001	Schedule 1 (items 18–26, 28–38): (m) Schedule 1 (item 27): 1 July 2001 (m)	s. 4
Classification (Publications, Films and Computer Games) Amendment Act (No. 1) 2001	13, 2001	22 Mar 2001	22 Mar 2002	—
Broadcasting Legislation Amendment Act 2001	23, 2001	6 Apr 2001	6 Apr 2001	—
Corporations (Repeals, Consequentials and Transitionals) Act 2001	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

## Endnotes

### Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Legislation Amendment Act (No. 2) 2001	92, 2001	20 July 2001	20 July 2001	ss. 4 and 5
Financial Sector (Collection of Data—Consequential and Transitional Provisions) Act 2001	121, 2001	24 Sept 2001	ss. 1–3: Royal Assent Remainder: 1 July 2002 ( <i>see</i> s. 2(2) and <i>Gazette</i> 2002, No. GN24)	—
Broadcasting Legislation Amendment Act (No. 2) 2002	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)
Broadcasting Legislation Amendment Act (No. 1) 2002	126, 2002	10 Dec 2002	10 Dec 2002	—
Broadcasting Legislation Amendment Act (No. 1) 2003	4, 2003	26 Feb 2003	26 Feb 2003	—
Therapeutic Goods Amendment Act (No. 1) 2003	39, 2003	27 May 2003	Schedule 2: 27 Nov 2003	Sch. 2 (item 3)
Communications Legislation Amendment Act (No. 3) 2003	108, 2003	24 Oct 2003	Schedule 1 (items 1–7): 12 Dec 2003 ( <i>see</i> <i>Gazette</i> 2003, No. GN49) Schedule 1 (items 25–48): 21 Nov 2003 Remainder: Royal Assent	Sch. 1 (item 24)
Classification (Publications, Films and Computer Games) Amendment Act 2004	61, 2004	26 May 2004	Schedules 1 and 2: 26 May 2005 Remainder: Royal Assent	Sch. 2 (items 30–32)

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
US Free Trade Agreement Implementation Act 2004	120, 2004	16 Aug 2004	Schedule 10: Royal Assent	—
Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004	127, 2004	31 Aug 2004	Schedule 1 (item 2): 1 Mar 2005	—
Financial Framework Legislation Amendment Act 2005	8, 2005	22 Feb 2005	s. 4 and Schedule 1 (items 109, 496): Royal Assent	s. 4 and Sch. 1 (item 496)
Broadcasting Services Amendment (Anti-Siphoning) Act 2005	43, 2005	1 Apr 2005	2 Apr 2005	Sch. 1 (item 2)
Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005	45, 2005	1 Apr 2005	Schedule 1 (items 6–58) and Schedule 4: 1 July 2005 ( <i>o</i> ) Schedule 2: ( <i>o</i> )	Sch. 4
Broadcasting Services Amendment (Subscription Television Drama and Community Broadcasting Licences) Act 2006	71, 2006	23 June 2006	Schedule 1: 1 Jan 2006 Remainder: Royal Assent	Sch. 1 (item 62)
Communications Legislation Amendment (Enforcement Powers) Act 2006	120, 2006	4 Nov 2006	Schedule 1: 4 Feb 2007 Remainder: Royal Assent	Sch. 1 (items 53, 54)

## Endnotes

### Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Legislation Amendment Act (No. 1) 2006	127, 2006	4 Nov 2006	5 Nov 2006	—
Broadcasting Legislation Amendment (Digital Television) Act 2006	128, 2006	4 Nov 2006	Schedule 1 (items 1–20, 28, 28A): 5 Nov 2006 Schedule 2 (items 1A, 1–88, 88A, 93, 93A–93E): 1 Jan 2007 Schedule 2A (items 1–27): 4 May 2007 Schedule 3 (items 1–16): 1 Jan 2009	Sch. 1 (items 28, 28A) and Sch. 2 (items 93, 93A–93E)
<b>as amended by</b>				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 2 (item 2): <i>(p)</i>	—
Broadcasting Services Amendment (Media Ownership) Act 2006	129, 2006	4 Nov 2006	Schedule 1: 1 Feb 2007 Schedule 2: 4 Apr 2007 ( <i>see</i> F2007L00837) Schedule 3: 1 Jan 2009 Remainder: Royal Assent	—
Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Act 2006	153, 2006	8 Dec 2006	1 Jan 2007	—
Statute Law Revision Act 2007	8, 2007	15 Mar 2007	Schedule 1 (item 2): Royal Assent	—
Classification (Publications, Films and Computer Games) Amendment Act 2007	27, 2007	15 Mar 2007	Schedule 1 (items 1–3, 16, 17): 1 July 2007 ( <i>see</i> F2007L01781)	Sch. 1 (items 16, 17)

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Legislation Amendment Act 2007	28, 2007	15 Mar 2007	15 Mar 2007	—
Broadcasting Legislation Amendment (Digital Radio) Act 2007	68, 2007	28 May 2007	Schedule 1 (items 1–118, 183–185): 29 May 2007	Sch. 1 (items 183–185)
Communications Legislation Amendment (Content Services) Act 2007	124, 2007	20 July 2007	Schedule 1 (items 8–77, 100–104): 20 Jan 2008 Schedule 1 (items 106, 107): Royal Assent Schedule 2 (item 1): 20 July 2008	Sch. 1 (items 100–104, 106, 107)
Communications Legislation Amendment (Miscellaneous Measures) Act 2008	72, 2008	3 July 2008	Schedule 1: 4 July 2008 Remainder: Royal Assent	Sch. 1 (item 5)
Statute Law Revision Act 2008	73, 2008	3 July 2008	Schedule 1 (items 15, 16): Royal Assent	—
Broadcasting Legislation Amendment (Digital Radio) Act 2008	114, 2008	31 Oct 2008	1 Nov 2008	—
Same-Sex Relationships (Equal Treatment in Commonwealth Laws—General Law Reform) Act 2008	144, 2008	9 Dec 2008	Schedule 3 (items 3–10): 10 Dec 2008	Sch. 3 (item 10)
Broadcasting Legislation Amendment (Digital Television Switch-over) Act 2008	158, 2008	18 Dec 2008	Schedule 1: 19 Dec 2008 Schedule 2: 16 Feb 2009 Remainder: Royal Assent	Sch. 2 (items 21, 22)
Statute Stocktake (Regulatory and Other Laws) Act 2009	111, 2009	16 Nov 2009	Schedule 1 (items 2–6): 17 Nov 2009	—

## Endnotes

### Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Schedule 1 (item 5) (Note) and Schedule 5 (items 15–26): Royal Assent Schedule 5 (items 137, 138): <i>(q)</i>	Sch. 5 (item 138)
Broadcasting Legislation Amendment (Digital Television) Act 2010	94, 2010	29 June 2010	Schedule 1 (items 1–134): 30 June 2010	Sch. 1 (item 134)
<b>as amended by</b> Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 2 (item 1): <i>(r)</i>	—
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Schedule 6 (items 1, 40–48): 1 Jan 2011	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Schedule 1 (item 10): Royal Assent	—
Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011	36, 2011	26 May 2011	Schedule 1 (items 1–28), Schedule 2 (items 2–60) and Schedule 3: 27 May 2011	Sch. 3
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 293–313) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch. 3 (items 10, 11)
Broadcasting Services Amendment (Review of Future Uses of Broadcasting Services Bands Spectrum) Act 2011	177, 2011	5 Dec 2011	6 Dec 2011	—

## Endnote 1—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent date</b>	<b>Commencement date</b>	<b>Application, saving and transitional provisions</b>
Broadcasting Services Amendment (Regional Commercial Radio) Act 2012	34, 2012	15 Apr 2012	Schedule 1: 16 Apr 2012 Schedule 2: 15 Oct 2012 Remainder: Royal Assent	Sch. 1 (item 16) and Sch. 2 (item 13)
Broadcasting Services Amendment (Improved Access to Television Services) Act 2012	83, 2012	28 June 2012	Schedule 1: 29 June 2012 Remainder: Royal Assent	Sch. 1 (items 14–16)
Broadcasting Services Amendment (Digital Television) Act 2012	88, 2012	28 June 2012	29 June 2012	Sch. 1 (items 8, 14)
Classification (Publications, Films and Computer Games) Amendment (R 18+ Computer Games) Act 2012	103, 2012	6 July 2012	Schedule 1 (item 5): 1 Jan 2013	—
Statute Law Revision Act 2012	136, 2012	22 Sept 2012	Schedule 1 (items 21–24): Royal Assent	—
Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012	169, 2012	3 Dec 2012	Schedule 2 (items 153, 154): 3 Dec 2012 ( <i>see</i> s. 2(1)) Schedule 4 (item 12): [ <i>see</i> (s) and Endnote 3]	—
Federal Circuit Court of Australia (Consequential Amendments) Act 2013	13, 2013	14 Mar 2013	Schedule 1 (items 58, 59): 12 Apr 2013 ( <i>see</i> s. 2(1))	—
Broadcasting Legislation Amendment (Convergence Review and Other Measures) Act 2013	29, 2013	30 Mar 2013	Schedule 1 (items 1–14): 31 Mar 2013	Sch. 1 (items 12–14)

## Endnotes

### Endnote 1—Legislation history

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Act	Number and year	Assent date	Commencement date	Application, saving and transitional provisions
Broadcasting Legislation Amendment (Digital Dividend) Act 2013	51, 2013	28 May 2013	Schedule 1 (items 1–10): [see Endnote 3]	—
Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013	98, 2013	28 June 2013	Schedule 1 (items 63A, 63B): [see Endnote 3]	—
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (items 24–28) and Schedule 3 (items 34–66, 343): Royal Assent	Sch. 3 (item 343)

- (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:



## Endnote 1—Legislation history

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- (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.
- (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.
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## Endnotes

### Endnote 1—Legislation history

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- (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);  
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* provides as follows:

## Endnote 1—Legislation history

- (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
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

- (p) Subsection 2(1) (item 45) of the *Statute Law Revision Act 2008* provides 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.

Provision(s)	Commencement	Date/Details
45. Schedule 2, item 2	Immediately after the time specified in the <i>Broadcasting Legislation Amendment (Digital Television) Act 2006</i> for the commencement of item 26 of Schedule 2A to that Act.	4 May 2007

- (q) Subsection 2(1) (items 31 and 38) of the *Statute Law Revision Act 2010* provides 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.

Provision(s)	Commencement	Date/Details
31. Schedule 5, items 1 to 51	The day this Act receives the Royal Assent.	1 March 2010
38. Schedule 5, Parts 2 and 3	Immediately after the provision(s) covered by table item 31.	1 March 2010

## Endnotes

### Endnote 1—Legislation history

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- (r) Subsection 2(1) (item 3) of the *Statute Law Revision Act 2011* provides 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.

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Provision(s)	Commencement	Date/Details
3. Schedule 2, item 1	Immediately after the time specified in the <i>Broadcasting Legislation Amendment (Digital Television) Act 2010</i> for the commencement of item 104A of Schedule 1 to that Act.	30 June 2010

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- (s) Subsection 2(1) (item 14) of the *Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012* provides 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.

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Provision(s)	Commencement	Date/Details
14. Schedule 4, Part 2, Division 2	The later of: (a) immediately after the commencement of the provision(s) covered by table item 3; and (b) immediately after the commencement of Schedule 1 to the <i>Tax Laws Amendment (Special Conditions for Not-for-profit Concessions) Act 2012</i> .  However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.	[see Endnote 3] (paragraph (b) applies)

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## Endnote 2—Amendment history

**Endnote 2—Amendment history**

This endnote sets out the amendment history of the *Broadcasting Services Act 1992*.

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
Title .....	am. No. 115, 1997; No. 90, 1999; No. 108, 2000; No. 124, 2007
<b>Part 1</b>	
s. 3 .....	am. No. 90, 1999; Nos. 108 and 172, 2000; No. 129, 2006; No. 124, 2007; No. 8, 2010
s. 4 .....	am. No. 90, 1999; Nos. 108 and 172, 2000; No. 45, 2005; No. 124, 2007; No. 8, 2010
Heading to s. 5 .....	am. No. 45, 2005
s. 5 .....	am. No. 90, 1999; No. 108, 2000; No. 45, 2005; No. 124, 2007; No. 8, 2010
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; Nos. 120, 128 and 129, 2006; Nos. 68 and 124, 2007; Nos. 144 and 158, 2008; No. 94, 2010; Nos. 36 and 46, 2011; Nos. 34 and 169, 2012; No. 13, 2013
Note to s. 7 .....	ad. No. 108, 2000
s. 8A .....	ad. No. 108, 2000
ss. 8AA, 8AB .....	ad. No. 68, 2007
s. 8AC .....	ad. No. 68, 2007 am. No. 114, 2008; No. 8, 2010
s. 8AD .....	ad. No. 68, 2007
s. 8AE .....	ad. No. 94, 2010
s. 8AF .....	ad. No. 34, 2012
s. 8B .....	ad. No. 120, 2002 am. No. 45, 2005; No. 103, 2013
s. 10A .....	ad. No. 5, 2001
<b>Part 2</b>	
s. 11 .....	am. No. 172, 2000

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 11A .....	ad. No. 172, 2000
s. 12 .....	am. No. 172, 2000
s. 14 .....	am. No. 94, 2010
s. 17 .....	am. No. 216, 1992
s. 18 .....	am. No. 216, 1992; No. 108, 2000; No. 128, 2006; No. 68, 2007
s. 18A .....	ad. No. 172, 2000 am. No. 103, 2013
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; No. 68, 2007
Subhead. to s. 26(2) .....	ad. No. 36, 2011
s. 26 .....	am. No. 45, 2005; No. 128, 2006; No. 68, 2007; No. 36, 2011; No. 29, 2013
s. 26A .....	ad. No. 128, 2006 am. No. 128, 2006; No. 36, 2011
s. 26AA .....	ad. No. 36, 2011
s. 26B .....	ad. No. 128, 2006 am. No. 128, 2006; No. 36, 2011
ss. 26C, 26D .....	ad. No. 68, 2007
Subhead. to s. 27(2) .....	ad. No. 36, 2011
s. 27 .....	am. No. 45, 2005; No. 36, 2011

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 28 .....	rs. No. 99, 1998 am. No. 108, 2000; No. 45, 2005 rep. No. 128, 2006
Heading to s. 28A .....	am. No. 108, 2000 rep. No. 128, 2006
s. 28A .....	ad. No. 99, 1998 am. No. 108, 2000 rep. No. 128, 2006
s. 29 .....	am. No. 119, 1997; No. 45, 2005; No. 94, 2010; No. 36, 2011
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
s. 35A .....	ad. No. 128, 2006 am. No. 158, 2008 rs. No. 177, 2011 rep. No. 29, 2013
<b>Part 4</b>	
<b>Division 1</b>	
Heading to Div. 1 of Part 4 .....	ad. No. 94, 2010
s. 35B .....	ad. No. 128, 2006 rep. No. 29, 2013
s. 35C .....	ad. No. 68, 2007
s. 35D .....	ad. No. 68, 2007 am. No. 8, 2010
Heading to s. 36 .....	am. No. 45, 2005
s. 36 .....	am. No. 45, 2005; No. 128, 2006
s. 36A .....	ad. No. 68, 2007

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 37 .....	am. No. 45, 2005; No. 94, 2010
s. 37A .....	ad. No. 29, 2013
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; No. 128, 2006; No. 94, 2010
s. 38B .....	ad. No. 108, 2000
	am. No. 92, 2001; No. 108, 2003; No. 45, 2005; Nos. 127 and 128, 2006; No. 94, 2010
Subhead. to s. 38C(11) .....	rs. No. 136, 2012
s. 38C .....	ad. No. 94, 2010
	am. No. 88, 2012
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; No. 128, 2006; No. 5, 2011
s. 41 .....	am. No. 108, 2000; No. 45, 2005; No. 120, 2006
<b>Division 2</b>	
Heading to Div. 2 of Part 4 .....	ad. No. 94, 2010
s. 41A .....	ad. No. 128, 2006
Subhead. to s. 41B(1) .....	am. No. 94, 2010
Subhead. to s. 41B(3) .....	am. No. 94, 2010
s. 41B .....	ad. No. 128, 2006
	am. No. 94, 2010; No. 36, 2011
Subhead. to s. 41C(3) .....	am. No. 94, 2010
s. 41C .....	ad. No. 128, 2006
	am. No. 94, 2010
s. 41CA .....	ad. No. 94, 2010
	am. No. 88, 2012

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 41D .....	ad. No. 68, 2007
<b>Division 3</b>	
Heading to Div. 3 of Part 4 .....	ad. No. 94, 2010
s. 42 .....	am. No. 94, 2010
Heading to s. 43 .....	am. No. 45, 2005
s. 43 .....	am. No. 45, 2005
s. 43A .....	ad. No. 129, 2006
s. 43AA .....	ad. No. 94, 2010 am. No. 36, 2011
s. 43AB .....	ad. No. 94, 2010
s. 43AC .....	ad. No. 94, 2010 am. No. 36, 2011
s. 43AD .....	ad. No. 94, 2010
s. 43B .....	ad. No. 129, 2006 am. No. 34, 2012
Note to s. 43B(1) .....	ad. No. 34, 2012 rep. No. 34, 2012
s. 43C .....	ad. No. 129, 2006 am. No. 34, 2012
s. 43D .....	ad. No. 68, 2007
s. 44 .....	am. No. 45, 2005
<b>Division 4</b>	
Heading to Div. 4 of Part 4 .....	ad. No. 94, 2010
s. 45 .....	am. No. 94, 2010
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

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 59 .....	am. No. 143, 1997; No. 45, 2005; No. 129, 2006; No. 8, 2010
ss. 60, 61 .....	rep. No. 129, 2006
<b>Division 5A</b>	
Div. 5A of Part 5 .....	ad. No. 129, 2006
<b>Subdivision A</b>	
s. 61AA .....	ad. No. 129, 2006 am. No. 129, 2006; No. 94, 2010
s. 61AB.....	ad. No. 129, 2006
s. 61AC.....	ad. No. 129, 2006 am. No. 129, 2006
ss. 61AD, 61AE.....	ad. No. 129, 2006
s. 61AEA .....	ad. No. 129, 2006
s. 61AF .....	ad. No. 129, 2006
<b>Subdivision B</b>	
ss. 61AG, 61AH .....	ad. No. 129, 2006
ss. 61AJ–61AM.....	ad. No. 129, 2006
<b>Subdivision BA</b>	
ss. 61AMA–61AMF .....	ad. No. 129, 2006
<b>Subdivision C</b>	
s. 61AN .....	ad. No. 129, 2006
s. 61ANA.....	ad. No. 129, 2006
ss. 61AP–61AR .....	ad. No. 129, 2006
<b>Subdivision D</b>	
s. 61AS.....	ad. No. 129, 2006 am. No. 8, 2010
s. 61AT.....	ad. No. 129, 2006
<b>Subdivision E</b>	
s. 61AU .....	ad. No. 129, 2006 am. No. 8, 2010
ss. 61AV–61AZ.....	ad. No. 129, 2006

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
ss. 61AZA–61AZC.....	ad. No. 129, 2006
s. 61AZCA .....	ad. No. 129, 2006
ss. 61AZD–61AZH.....	ad. No. 129, 2006
<b>Division 5B</b>	
Div. 5B of Part 5.....	ad. No. 129, 2006
ss. 61BA, 61BB.....	ad. No. 129, 2006
Subhead. to s. 61BC(6) .....	am. No. 8, 2010
s. 61BC.....	ad. No. 129, 2006 am. No. 8, 2010
ss. 61BD–61BH.....	ad. No. 129, 2006
<b>Division 5C</b>	
Div. 5C of Part 5.....	ad. No. 129, 2006
<b>Subdivision A</b>	
s. 61CA.....	ad. No. 129, 2006
s. 61CAA.....	ad. No. 34, 2012
s. 61CB.....	ad. No. 129, 2006 am. No. 34, 2012
s. 61CC.....	ad. No. 129, 2006
<b>Subdivision B</b>	
s. 61CD.....	ad. No. 129, 2006 am. No. 34, 2012
s. 61CE.....	ad. No. 129, 2006
<b>Subdivision C</b>	
ss. 61CF–61CH.....	ad. No. 129, 2006
s. 61CJ.....	ad. No. 129, 2006 am. No. 8, 2010
ss. 61CK–61CN.....	ad. No. 129, 2006
s. 61CP .....	ad. No. 129, 2006
s. 61CPA .....	ad. No. 129, 2006
s. 61CQ.....	ad. No. 129, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Subdivision D</b>	
ss. 61CR–61CT .....	ad. No. 129, 2006
<b>Division 6</b>	
Heading to s. 62.....	am. No. 129, 2006
Subhead. to s. 62(1) .....	ad. No. 129, 2006
	am. No. 68, 2007
s. 62.....	am. No. 32, 1995; No. 108, 2000; No. 45, 2005; No. 129, 2006; No. 68, 2007
Subhead. to s. 63(1) .....	ad. No. 129, 2006
	am. No. 68, 2007
s. 63.....	am. No. 32, 1995; No. 108, 2000; No. 45, 2005; No. 129, 2006; No. 68, 2007
Heading to s. 64.....	am. No. 108, 2000; No. 45, 2005; No. 129, 2006
Subhead. to s. 64(1) .....	ad. No. 129, 2006
	am. No. 68, 2007
s. 64.....	am. No. 32, 1995; No. 108, 2000; No. 45, 2005; No. 129, 2006; No. 68, 2007
Heading to s. 65.....	am. No. 45, 2005
	rs. No. 129, 2006
s. 65.....	am. No. 32, 1995; No. 45, 2005
	rs. No. 129, 2006
ss. 65A, 65B .....	ad. No. 120, 2006
<b>Division 7</b>	
s. 66.....	am. No. 32, 1995; No. 108, 2000; No. 5, 2001; No. 45, 2005; No. 129, 2006
s. 67.....	am. No. 45, 2005; No. 129, 2006
s. 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

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 70 .....	am. No. 45, 2005; No. 129, 2006
s. 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
Heading to s. 77 .....	am. No. 103, 2010
s. 77 .....	am. No. 103, 2010
<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
s. 82 .....	am. No. 45, 2005; No. 68, 2007
s. 83 .....	am. No. 108, 2000; No. 120, 2002; No. 45, 2005; No. 120, 2006
s. 84 .....	am. No. 45, 2005
s. 84A .....	ad. No. 68, 2007
Heading to s. 85 .....	am. No. 45, 2005
s. 85 .....	am. No. 45, 2005
s. 85A .....	ad. No. 68, 2007
s. 86 .....	am. No. 120, 2002
Heading to s. 87 .....	am. No. 45, 2005

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 87 .....	am. No. 120, 2002; No. 45, 2005
s. 87A .....	ad. No. 120, 2002 am. No. 45, 2005
s. 87B .....	ad. No. 68, 2007
s. 88 .....	am. No. 45, 2005
s. 89 .....	am. No. 72, 2008
Subhead. to s. 90(2) .....	ad. No. 72, 2008
s. 90 .....	am. No. 120, 2002; No. 45, 2005; No. 72, 2008
Heading to s. 91 .....	rs. No. 120, 2002 am. No. 45, 2005
s. 91 .....	am. No. 120, 2002; No. 45, 2005; No. 72, 2008
s. 91A .....	ad. No. 71, 2006
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; No. 120, 2006
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

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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 rep. No. 111, 2009
s. 95.....	ad. No. 171, 1992 am. No. 45, 2005; No. 94, 2010
s. 96.....	ad. No. 171, 1992 am. No. 1, 1993; No. 88, 1995; No. 45, 2005; No. 103, 2010
s. 96A.....	ad. No. 1, 1993 am. No. 88, 1995; No. 45, 2005 rep. No. 129, 2006
Heading to s. 97.....	am. No. 8, 2010
s. 97.....	ad. No. 171, 1992 am. No. 88, 1995; No. 45, 2005; No. 103, 2010
s. 98.....	ad. No. 171, 1992 am. No. 108, 2000; No. 45, 2005; No. 120, 2006
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 am. No. 94, 2010

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<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; No. 27, 2007
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 am. No. 71, 2006
s. 103B .....	ad. No. 198, 1999 am. No. 198, 1999; No. 55, 2001; No. 71, 2006
ss. 103C–103G .....	ad. No. 198, 1999
Heading to s. 103H .....	am. No. 71, 2006
s. 103H .....	ad. No. 198, 1999 am. No. 71, 2006
s. 103J .....	ad. No. 198, 1999 am. No. 71, 2006
s. 103JA .....	ad. No. 71, 2006
s. 103K .....	ad. No. 198, 1999
Heading to s. 103L .....	am. No. 45, 2005
s. 103L .....	ad. No. 198, 1999 am. No. 45, 2005; No. 71, 2006

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 103M.....	ad. No. 198, 1999 am. No. 71, 2006

#### **Subdivision B**

s. 103N .....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103N(3) .....	am. No. 71, 2006
s. 103NA .....	ad. No. 71, 2006
ss. 103P, 103Q.....	ad. No. 198, 1999 am. No. 71, 2006

#### **Subdivision C**

s. 103R .....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103R(4) .....	am. No. 71, 2006
s. 103RA.....	ad. No. 71, 2006
s. 103S.....	ad. No. 198, 1999 am. No. 71, 2006

#### **Subdivision D**

s. 103T.....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103T.....	rep. No. 198, 1999
s. 103TA.....	ad. No. 71, 2006

#### **Subdivision E**

s. 103U .....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103U(3) .....	am. No. 71, 2006
s. 103UA .....	ad. No. 71, 2006
ss. 103V, 103W .....	ad. No. 198, 1999 am. No. 71, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
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**Subdivision F**

s. 103X .....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103X(4) .....	am. No. 71, 2006
s. 103XA .....	ad. No. 71, 2006
s. 103Y .....	ad. No. 198, 1999 am. No. 71, 2006

**Subdivision G**

s. 103Z.....	ad. No. 198, 1999 am. No. 71, 2006
Note to s. 103Z.....	rep. No. 198, 1999
s. 103ZAA .....	ad. No. 71, 2006

**Subdivision H**

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

**Subdivision I**

Heading to s. 103ZE .....	am. No. 45, 2005
s. 103ZE .....	ad. No. 198, 1999 am. No. 45, 2005; No. 71, 2006
s. 103ZF.....	ad. No. 198, 1999 am. No. 45, 2005

**Subdivision J**

s. 103ZG.....	ad. No. 198, 1999 am. No. 45, 2005
ss. 103ZH, 103ZJ.....	ad. No. 198, 1999

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## Endnotes

### Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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
Div. 3 of Part 7 .....	rep. No. 129, 2006
s. 104 .....	ad. No. 171, 1992 rep. No. 129, 2006
s. 105 .....	ad. No. 171, 1992 am. No. 45, 2005 rep. No. 129, 2006
ss. 106–110.....	ad. No. 171, 1992 rep. No. 129, 2006
Div. 4 of Part 7 .....	rep. No. 129, 2006
s. 111 .....	ad. No. 171, 1992 am. No. 32, 1995 rep. No. 129, 2006
Div. 5 of Part 7 .....	rep. No. 129, 2006
s. 112 .....	ad. No. 171, 1992 am. No. 32, 1995; No. 45, 2005 rep. No. 129, 2006
<b>Division 6</b>	
s. 113 .....	ad. No. 171, 1992 am. No. 111, 2009
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
s. 115A .....	ad. No. 128, 2006

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## Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 116 .....	ad. No. 171, 1992 am. No. 139, 1995; No. 111, 2009
s. 116A .....	ad. No. 171, 1992
Heading to s. 116B .....	am. No. 103, 2010
s. 116B .....	ad. No. 171, 1992 am. No. 103, 2010
s. 116C .....	ad. No. 171, 1992 rep. No. 111, 2009
<b>Part 8</b>	
ss. 117, 118.....	am. No. 45, 2005
s. 119 .....	am. No. 45, 2005; No. 27, 2007
s. 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

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## Endnotes

### Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
s. 121FA .....	ad. No. 172, 2000 am. No. 45, 2005
s. 121FB .....	ad. No. 172, 2000 am. No. 45, 2005; No. 94, 2010
s. 121FC .....	ad. No. 172, 2000 am. No. 45, 2005; No. 120, 2006
ss. 121FD, 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 am. No. 120, 2006
s. 121FH .....	ad. No. 172, 2000 am. No. 5, 2001; No. 45, 2005 rs. No. 120, 2006
ss. 121FHA, 121FHB .....	ad. No. 120, 2006
s. 121FJ .....	ad. No. 172, 2000 am. No. 5, 2001
ss. 121FJA–121FJD .....	ad. No. 120, 2006
ss. 121FK, 121FL .....	ad. No. 172, 2000 am. No. 45, 2005
<b>Division 4A</b>	
s. 121FLA .....	ad. No. 172, 2000
s. 121FLB .....	ad. No. 172, 2000 am. No. 45, 2005
s. 121FLC .....	ad. No. 172, 2000 am. No. 45, 2005; No. 94, 2010

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
ss. 121FLD, 121FLE .....	ad. No. 172, 2000 am. No. 45, 2005
s. 121FLF .....	ad. No. 172, 2000 am. No. 5, 2001
ss. 121FLG, 121FLH .....	ad. No. 172, 2000 am. No. 45, 2005; No. 94, 2010
s. 121FLJ .....	ad. No. 172, 2000 am. No. 45, 2005; No. 8, 2010
<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 am. No. 13, 2013
<b>Part 9</b>	
Heading to Part 9 .....	rs. No. 29, 2013
s. 121G .....	ad. No. 29, 2013
s. 122 .....	am. No. 120, 2002; No. 120, 2004; No. 45, 2005; No. 128, 2006; No. 94, 2010; No. 29, 2013
Note to s. 122(1) .....	ad. No. 29, 2013
s. 123 .....	am. No. 216, 1992; No. 180, 1997; No. 120, 2002; No. 61, 2004; No. 45, 2005; No. 128, 2006; Nos. 27 and 68, 2007; No. 83, 2012
Heading to s. 123A .....	am. No. 45, 2005
s. 123A .....	ad. No. 216, 1992 am. No. 180, 1997; No. 45, 2005
s. 123B .....	ad. No. 94, 2010
Heading to s. 124 .....	am. No. 45, 2005
s. 124 .....	am. No. 45, 2005

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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
Heading to s. 130.....	am. No. 103, 2010
s. 130.....	am. No. 103, 2010

#### **Part 9A**

Part 9A.....	ad. No. 128, 2006
Heading to s. 130A.....	am. No. 68, 2007
s. 130A.....	ad. No. 128, 2006 am. No. 68, 2007
ss. 130AA, 130AB.....	ad. No. 68, 2007
s. 130AC.....	ad. No. 94, 2010
Heading to s. 130B.....	am. No. 68, 2007
s. 130B.....	ad. No. 128, 2006 am. No. 103, 2010
s. 130BA.....	ad. No. 68, 2007 am. No. 103, 2010
s. 130BB.....	ad. No. 94, 2010 am. No. 103, 2010

#### **Part 9B**

Part 9B.....	ad. No. 128, 2006
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#### **Division 1**

s. 130C.....	ad. No. 128, 2006
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#### **Division 2**

ss. 130D, 130E.....	ad. No. 128, 2006
s. 130F.....	ad. No. 128, 2006 am. No. 68, 2007; No. 103, 2010
ss. 130G, 130H.....	ad. No. 128, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Division 3</b>	
ss. 130J, 130K .....	ad. No. 128, 2006
s. 130L.....	ad. No. 128, 2006
	am. Nos. 68 and 124, 2007
<b>Division 4</b>	
ss. 130M, 130N .....	ad. No. 128, 2006
ss. 130P, 130Q.....	ad. No. 128, 2006
<b>Division 5</b>	
ss. 130R–130Z.....	ad. No. 128, 2006
<b>Division 6</b>	
s. 130ZA .....	ad. No. 128, 2006
	am. No. 8, 2010
<b>Part 9C</b>	
Part 9C.....	ad. No. 94, 2010
s. 130ZBA .....	ad. No. 94, 2010
Heading to s. 130ZB.....	am. No. 36, 2011
s. 130ZB .....	ad. No. 94, 2010
	am. No. 36, 2011; No. 88, 2012
s. 130ZBB .....	ad. No. 36, 2011
	am. No. 88, 2012
s. 130ZBC .....	ad. No. 88, 2012
s. 130ZC .....	ad. No. 94, 2010
	am. No. 36, 2011
Note to s. 130ZC(1) .....	rep. No. 36, 2011
ss. 130ZCAA, 130ZCAB.....	ad. No. 94, 2010
	am. No. 36, 2011
s. 130ZCA .....	ad. No. 94, 2010
	am. No. 36, 2011
ss. 130ZD, 130ZE.....	ad. No. 94, 2010
s. 130ZEA .....	ad. No. 36, 2011

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 130ZF.....	ad. No. 94, 2010 am. No. 36, 2011
s. 130ZFA.....	ad. No. 94, 2010
s. 130ZG.....	ad. No. 94, 2010 am. No. 88, 2012
s. 130ZH.....	ad. No. 36, 2011
<b>Part 9D</b>	
Part 9D.....	ad. No. 83, 2012
<b>Division 1</b>	
s. 130ZJ.....	ad. No. 83, 2012
s. 130ZK.....	ad. No. 83, 2012
s. 130ZL.....	ad. No. 83, 2012
s. 130ZM.....	ad. No. 83, 2012
s. 130ZN.....	ad. No. 83, 2012
s. 130ZO.....	ad. No. 83, 2012
s. 130ZP.....	ad. No. 83, 2012
s. 130ZQ.....	ad. No. 83, 2012
<b>Division 2</b>	
s. 130ZR.....	ad. No. 83, 2012
s. 130ZS.....	ad. No. 83, 2012
s. 130ZT.....	ad. No. 83, 2012
s. 130ZU.....	ad. No. 83, 2012
s. 130ZUA.....	ad. No. 83, 2012
s. 130ZUAA.....	ad. No. 83, 2012
s. 130ZUB.....	ad. No. 83, 2012
<b>Division 3</b>	
s. 130ZV.....	ad. No. 83, 2012
s. 130ZVA.....	ad. No. 83, 2012 am. No. 103, 2013

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 130ZW .....	ad. No. 83, 2012 am. No. 103, 2013
s. 130ZX .....	ad. No. 83, 2012
s. 130ZY .....	ad. No. 83, 2012
s. 130ZYA .....	ad. No. 83, 2012
s. 130ZZ .....	ad. No. 83, 2012
s. 130ZZAA .....	ad. No. 83, 2012
s. 130ZZAB .....	ad. No. 83, 2012
<b>Division 4</b>	
s. 130ZZA .....	ad. No. 83, 2012
<b>Division 5</b>	
s. 130ZZB .....	ad. No. 83, 2012
<b>Division 6</b>	
s. 130ZZC .....	ad. No. 83, 2012
s. 130ZZD .....	ad. No. 83, 2012
<b>Division 7</b>	
s. 130ZZE .....	ad. No. 83, 2012
<b>Part 10</b>	
<b>Division 1</b>	
s. 131 .....	am. No. 32, 1995
s. 132 .....	am. No. 32, 1995; No. 120, 2006
ss. 133–135 .....	am. No. 32, 1995
<b>Division 1A</b>	
Div. 1A of Part 10 .....	ad. No. 120, 2006
ss. 136A–136F .....	ad. No. 120, 2006
<b>Division 2</b>	
Heading to Div. 2 of Part 10 .....	am. No. 45, 2005
s. 137 .....	am. No. 45, 2005 rs. No. 120, 2006

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 138 .....	am. No. 32, 1995 rs. No. 120, 2006
s. 138A .....	ad. No. 120, 2006
<b>Division 3</b>	
s. 139 .....	am. No. 32, 1995; No. 119, 1997; No. 198, 1999 rs. No. 5, 2001 am. No. 5, 2001; No. 120, 2006
s. 140A .....	ad. No. 120, 2006
s. 141 .....	am. No. 45, 2005 rs. No. 120, 2006
s. 142 .....	am. No. 32, 1995 rs. No. 120, 2006
s. 142A .....	ad. No. 120, 2006
s. 143 .....	am. No. 198, 1999; No. 55, 2001; No. 45, 2005
<b>Division 4</b>	
s. 144 .....	am. No. 45, 2005
Div. 5 of Part 10 .....	rep. No. 120, 2006
s. 145 .....	rep. No. 120, 2006
s. 146 .....	am. No. 45, 2005 rep. No. 120, 2006
<b>Part 10A</b>	
Part 10A .....	ad. No. 197, 1999
<b>Division 1</b>	
s. 146A .....	ad. No. 197, 1999
s. 146B .....	ad. No. 197, 1999 am. No. 55, 2001; No. 128, 2006
s. 146C .....	ad. No. 197, 1999
Notes to s. 146C(1), (2) .....	am. No. 46, 2011
s. 146CA.....	ad. No. 197, 1999
Notes to s. 146CA(1), (2) .....	am. No. 46, 2011

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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.....	ad. No. 197, 1999
ss. 146J, 146K .....	ad. No. 197, 1999
s. 146KA .....	ad. No. 197, 1999
<b>Division 3</b>	
ss. 146L–146N.....	ad. No. 197, 1999
ss. 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>	
s. 147 .....	am. No. 45, 2005; No. 120, 2006
s. 148 .....	am. No. 45, 2005
Heading to s. 149.....	am. No. 45, 2005
s. 149 .....	am. No. 45, 2005; No. 120, 2006
<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; No. 83, 2012
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

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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
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

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
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; No. 120, 2006
Note to s. 202(2A) .....	am. No. 120, 2006
s. 203 .....	am. No. 45, 2005
<b>Part 14</b>	
Subhead. to s. 204(1) .....	ad. No. 94, 2010
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; Nos. 71, 128 and 129, 2006; No. 68, 2007; No. 94, 2010; No. 83, 2012
s. 205 .....	am. No. 45, 2005
<b>Part 14A</b>	
Part 14A .....	ad. No. 143, 1997

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 205A .....	ad. No. 143, 1997 am. No. 153, 2006
Heading to s. 205B .....	am. No. 153, 2006
s. 205B .....	ad. No. 143, 1997 am. No. 45, 2005; No. 128, 2006
Note to s. 205B.....	ad. No. 120, 2006
s. 205BA.....	ad. No. 153, 2006
s. 205C .....	ad. No. 143, 1997 am. No. 45, 2005; No. 153, 2006
s. 205D .....	ad. No. 143, 1997 am. No. 45, 2005; Nos. 120 and 153, 2006
<b>Part 14B</b>	
Part 14B.....	ad. No. 120, 2006
<b>Division 1</b>	
s. 205E.....	ad. No. 120, 2006
<b>Division 2</b>	
s. 205EA.....	ad. No. 120, 2006
ss. 205F–205H.....	ad. No. 120, 2006
ss. 205J–205N .....	ad. No. 120, 2006
s. 205P.....	ad. No. 120, 2006
s. 205PAA .....	ad. No. 120, 2006
<b>Part 14C</b>	
Part 14C.....	ad. No. 120, 2006
s. 205PA .....	ad. No. 120, 2006 am. No. 129, 2006; No. 36, 2011
s. 205Q .....	ad. No. 120, 2006 am. No. 129, 2006; No. 36, 2011
ss. 205R–205U .....	ad. No. 120, 2006
<b>Part 14D</b>	
Part 14D .....	ad. No. 120, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
s. 205V .....	ad. No. 120, 2006
s. 205W .....	ad. No. 120, 2006 am. No. 8, 2010
s. 205X .....	ad. No. 120, 2006
<b>Part 14E</b>	
Part 14E.....	ad. No. 120, 2006
s. 205XAA.....	ad. No. 120, 2006
s. 205XA .....	ad. No. 120, 2006
ss. 205Y, 205Z.....	ad. No. 120, 2006
s. 205ZA.....	ad. No. 120, 2006
s. 205ZB.....	ad. No. 120, 2006
s. 205ZC.....	ad. No. 120, 2006
s. 205ZD.....	ad. No. 120, 2006 am. No. 136, 2012
s. 205ZE.....	ad. No. 120, 2006
s. 205ZF.....	ad. No. 120, 2006
<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. 211AA .....	ad. No. 94, 2010 am. No. 88, 2012
s. 211A .....	ad. No. 94, 2010
s. 212.....	am. No. 197, 1999; No. 45, 2005; No. 128, 2006; Nos. 28 and 68, 2007
s. 212A .....	ad. No. 197, 1999 am. No. 55, 2001; No. 169, 2012

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
s. 212B .....	ad. No. 197, 1999
Note to s. 212B(6) .....	am. No. 46, 2011
s. 214 .....	am. Nos. 108 and 172, 2000; No. 120, 2006
s. 215 .....	rs. No. 1, 1993
	am. No. 139, 1995
	rep. No. 99, 1998
	ad. No. 120, 2006
ss. 215A, 215B .....	ad. No. 68, 2007
s. 216A .....	ad. No. 99, 1998
s. 216B .....	ad. No. 90, 1999
s. 216C .....	ad. No. 108, 2000
s. 216D .....	ad. No. 108, 2000
	rep. No. 45, 2005
	ad. No. 124, 2007
s. 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; No. 68, 2007
<b>Part 2</b>	
c. 2 .....	am. No. 108, 2000; No. 129, 2006; No. 68, 2007
c. 4 .....	am. No. 48, 1998; Nos. 108 and 172, 2000; No. 121, 2001; No. 45, 2005; No. 68, 2007
<b>Part 3</b>	
cc. 6, 7 .....	am. No. 139, 1995
<b>Part 4</b>	
c. 8 .....	am. No. 139, 1995; No. 45, 2005

## Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Schedule 2</b>	
<b>Part 1</b>	
c. 1 .....	am. No. 167, 1992; No. 13, 2001; No. 39, 2003; No. 45, 2005; No. 136, 2012
c. 2 .....	am. No. 218, 1992; No. 120, 2002; No. 68, 2007
<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>	
<b>Division 1</b>	
Heading to Div. 1 of Part 3 .....	ad. No. 94, 2010
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; Nos. 128 and 129, 2006; No. 68, 2007; Nos. 73 and 158, 2008; No. 94, 2010; No. 36, 2011; No. 83, 2012; No. 29, 2013
<b>Division 2</b>	
Div. 2 of Part 3 .....	ad. No. 94, 2010
cc. 7A–7C .....	ad. No. 94, 2010
c. 7D .....	ad. No. 94, 2010 am. No. 36, 2011
cc. 7E–7H .....	ad. No. 94, 2010
cc. 7J–7L .....	ad. No. 94, 2010
<b>Part 4</b>	
c. 8 .....	am. Nos. 167, 216 and 218, 1992; No. 143, 1997; No. 197, 1999; No. 45, 2005; No. 129, 2006; No. 68, 2007; No. 73, 2008
<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; Nos. 71 and 128, 2006; No. 68, 2007; No. 36, 2011

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
<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; Nos. 128 and 129, 2006; No. 68, 2007; No. 94, 2010; No. 83, 2012
<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; No. 128, 2006; No. 68, 2007; No. 83, 2012
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; No. 83, 2012
c. 2.....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005; Nos. 127 and 128, 2006; No. 158, 2008; No. 94, 2010
cc. 3, 4 .....	ad. No. 99, 1998

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
cc. 4A, 4B.....	ad. No. 108, 2000
c. 4C.....	ad. No. 128, 2006 am. No. 94, 2010
c. 4D.....	ad. No. 128, 2006
c. 5.....	ad. No. 99, 1998 am. No. 45, 2005; No. 94, 2010
c. 5A.....	ad. No. 108, 2000 am. No. 23, 2001 rep. No. 128, 2006 ad. No. 128, 2006 am. No. 94, 2010
cc. 5B–5D.....	ad. No. 128, 2006 am. No. 94, 2010
c. 5E.....	ad. No. 128, 2006
c. 5F.....	ad. No. 158, 2008 am. No. 88, 2012
c. 5H.....	ad. No. 158, 2008
c. 5J.....	ad. No. 94, 2010
<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; Nos. 127 and 128, 2006; No. 158, 2008; No. 94, 2010; No. 36, 2011
Note to c. 6(7A).....	ad. No. 158, 2008
Notes to c. 6(9), (10).....	am. No. 46, 2011
Note to c. 6(21).....	am. No. 46, 2011
c. 6A.....	ad. No. 158, 2008 am. No. 88, 2012
c. 6B.....	ad. No. 158, 2008
c. 6C.....	ad. No. 94, 2010 rep. No. 36, 2011

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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; No. 94, 2010
c. 7AA.....	ad. No. 36, 2011
c. 7B.....	ad. No. 128, 2006
Subhead. to c. 8(7) .....	am. No. 108, 2000; No. 128, 2006
c. 8.....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005; No. 128, 2006; No. 36, 2011
Heading to c. 9.....	am. No. 45, 2005
c. 9.....	ad. No. 99, 1998 am. No. 45, 2005; No. 128, 2006; No. 94, 2010
c. 9A.....	ad. No. 36, 2011
cc. 10–12.....	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>	
Subhead. to c. 19(7B) .....	am. No. 128, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 19.....	ad. No. 99, 1998 am. No. 108, 2000; No. 23, 2001; No. 45, 2005; No. 128, 2006; No. 158, 2008; No. 94, 2010; No. 36, 2011
Notes to c. 19(9), (10) .....	am. No. 46, 2011
Note to c. 19(21) .....	am. No. 46, 2011
c. 20.....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 45, 2005; No. 128, 2006; No. 36, 2011
c. 21.....	ad. No. 99, 1998
c. 21A.....	ad. No. 36, 2011
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
c. 22AA .....	ad. No. 36, 2011
Subhead. to c. 23(7) .....	am. No. 108, 2000; No. 128, 2006
c. 23.....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005; No. 128, 2006; No. 36, 2011
cc. 24–26 .....	ad. No. 99, 1998 am. No. 45, 2005
Heading to c. 27.....	am. No. 45, 2005
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

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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 am. No. 128, 2006; No. 158, 2008
c. 35A.....	ad. No. 94, 2010 am. No. 36, 2011
c. 35AA.....	ad. No. 128, 2006
c. 35A.....	ad. No. 108, 2000 rep. No. 128, 2006
c. 36.....	ad. No. 99, 1998 am. No. 108, 2000; No. 128, 2006
c. 36A.....	ad. No. 99, 1998 rep. No. 108, 2000
Part 3A.....	ad. No. 108, 2000 rep. No. 128, 2006
cc. 36B, 36C.....	ad. No. 108, 2000 rep. No. 128, 2006
<b>Part 4</b>	
Heading to Part 4.....	rs. No. 128, 2006
Heading to Div. 1 of Part 4.....	ad. No. 108, 2000 rep. No. 128, 2006
Div. 1 of Part 4.....	rep. No. 128, 2006
c. 37.....	ad. No. 99, 1998 rs. No. 108, 2000 rep. No. 128, 2006
cc. 37A–37D.....	ad. No. 108, 2000 rep. No. 128, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Division 2</b>	
Heading to Div. 2 of Part 4.....	rs. No. 128, 2006
Div. 2 of Part 4.....	ad. No. 108, 2000
c. 37DAA.....	ad. No. 94, 2010
c. 37DA.....	ad. No. 128, 2006
c. 37E.....	ad. No. 108, 2000
	am. No. 23, 2001; No. 126, 2002; Nos. 4 and 108, 2003; No. 128, 2006
Subhead. to c. 37EA(2).....	am. No. 45, 2005
	rep. No. 128, 2006
c. 37EA.....	ad. No. 92, 2001
	am. No. 126, 2002; No. 4, 2003; No. 45, 2005
	rep. No. 128, 2006
c. 37F.....	ad. No. 108, 2000
	am. No. 23, 2001; No. 126, 2002; No. 4, 2003; No. 128, 2006
Subhead. to c. 37FA(2).....	am. No. 45, 2005
	rep. No. 128, 2006
c. 37FA.....	ad. No. 92, 2001
	am. No. 126, 2002; No. 4, 2003; No. 45, 2005
	rep. No. 128, 2006
c. 37G.....	ad. No. 108, 2000
	am. No. 92, 2001; No. 45, 2005; Nos. 127 and 128, 2006
c. 37H.....	ad. No. 108, 2000
	am. No. 92, 2001; No. 45, 2005; No. 128, 2006
c. 37J.....	ad. No. 108, 2000
	rep. No. 128, 2006
c. 37K.....	ad. No. 108, 2000
c. 37L.....	ad. No. 108, 2000
	rs. No. 4, 2003
c. 37M.....	ad. No. 108, 2000

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
Heading to Div. 3 of Part 4.....	ad. No. 108, 2000 rs. No. 128, 2006 rep. No. 83, 2012
Div. 3 of Part 4 .....	rs. No. 128, 2006 rep. No. 83, 2012
c. 38.....	ad. No. 99, 1998 am. No. 108, 2000 rs. No. 128, 2006 am. No. 128, 2006; No. 94, 2010; No. 36, 2011 rep. No. 83, 2012
Heading to Div. 4 of Part 4.....	ad. No. 108, 2000 rep. No. 128, 2006
Div. 4 of Part 4 .....	rep. No. 128, 2006
c. 39.....	ad. No. 99, 1998 am. No. 108, 2000; No. 45, 2005 rep. No. 128, 2006
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
<b>Part 4A</b>	
Part 4A .....	ad. No. 128, 2006
<b>Division 1</b>	
Div. 1 of Part 4A .....	ad. No. 128, 2006
c. 41A.....	ad. No. 99, 1998 rep. No. 108, 2000 ad. No. 128, 2006 am. No. 94, 2010

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
cc. 41B–41F .....	ad. No. 128, 2006 am. No. 94, 2010
cc. 41FA, 41FB .....	ad. No. 94, 2010
c. 41G .....	ad. No. 128, 2006 am. No. 94, 2010; No. 36, 2011; No. 136, 2012
<b>Division 2</b>	
Heading to Div. 2 of .....	ad. No. 128, 2006
Part 4A	
c. 41H .....	ad. No. 128, 2006 am. No. 94, 2010
cc. 41J–41L .....	ad. No. 128, 2006 am. No. 94, 2010
cc. 41LA, 41LB .....	ad. No. 94, 2010
c. 41M .....	ad. No. 128, 2006
c. 41N .....	ad. No. 94, 2010
<b>Part 5</b>	
c. 42 .....	ad. No. 99, 1998 am. No. 108, 2000
c. 43 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 129, 2006; No. 94, 2010
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; No. 128, 2006
c. 45A .....	ad. No. 108, 2000 am. No. 45, 2005; No. 128, 2006
c. 46 .....	ad. No. 99, 1998 am. No. 45, 2005; No. 128, 2006

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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
<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 rep. No. 128, 2006
c. 60 .....	ad. No. 99, 1998 am. No. 108, 2000; No. 108, 2003; No. 45, 2005 rep. No. 128, 2006
Heading to c. 60A .....	am. No. 4, 2003 rep. No. 128, 2006
c. 60A .....	ad. No. 108, 2000 am. No. 4, 2003 rep. No. 128, 2006

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 60B .....	ad. No. 108, 2000 rep. No. 83, 2012
c. 60C .....	ad. No. 108, 2000 rep. No. 45, 2005 ad. No. 128, 2006 am. No. 158, 2008 rep. No. 83, 2012
c. 60D.....	ad. No. 94, 2010 am. No. 83, 2012 rep. No. 29, 2013
Heading to Part 9 .....	am. No. 45, 2005 rep. No. 8, 2007
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 rep. No. 124, 2007
c. 1.....	ad. No. 90, 1999 am. No. 127, 2004 rep. No. 124, 2007

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 2.....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005; No. 124, 2007; No. 8, 2010
c. 3.....	ad. No. 90, 1999 am. No. 45, 2005; No. 129, 2006; No. 124, 2007; No. 8, 2010
c. 4.....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
c. 5.....	ad. No. 90, 1999 am. No. 8, 2010
Heading to c. 6.....	am. No. 61, 2004 rep. No. 124, 2007
c. 6.....	ad. No. 90, 1999 am. No. 61, 2004 rep. No. 124, 2007
c. 7.....	ad. No. 90, 1999
<b>Part 2</b>	
Subhead. to c. 8(2) .....	am. No. 8, 2010
c. 8.....	ad. No. 90, 1999 am. No. 8, 2010; No. 103, 2013
Note to c. 8(2) .....	am. No. 46, 2011
c. 9.....	ad. No. 90, 1999 am. No. 8, 2010; No. 103, 2013
Note to c. 9(2) .....	am. No. 8, 2010
Part 3 .....	rep. No. 124, 2007
c. 10.....	ad. No. 90, 1999 am. No. 61, 2004 rep. No. 124, 2007
cc. 11–13 .....	ad. No. 90, 1999 rep. No. 124, 2007

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
cc. 14, 15 .....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
c. 16.....	ad. No. 90, 1999 am. No. 13, 2001; No. 61, 2004; No. 45, 2005 rep. No. 124, 2007
c. 17.....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
cc. 18, 19 .....	ad. No. 90, 1999 rep. No. 124, 2007
c. 20.....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
c. 21.....	ad. No. 90, 1999 am. No. 13, 2001 rep. No. 124, 2007
<b>Part 4</b>	
Heading to Part 4.....	am. No. 45, 2005
<b>Division 1</b>	
Heading to Div. 1 of Part 4.....	am. No. 45, 2005
c. 22.....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
c. 23.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
c. 24.....	ad. No. 90, 1999 am. No. 45, 2005
c. 25.....	ad. No. 90, 1999

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
<b>Division 2</b>	
Heading to Div. 2 of Part 4.....	am. No. 45, 2005
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 rs. No. 124, 2007
c. 27.....	ad. No. 90, 1999 am. No. 45, 2005 rs. No. 124, 2007 am. No. 8, 2010
cc. 28, 29 .....	ad. No. 90, 1999 am. No. 45, 2005
Div. 3 of Part 4 .....	rep. No. 124, 2007
c. 30.....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005 rep. No. 124, 2007
c. 31.....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
Heading to c. 32.....	am. No. 61, 2004 rep. No. 124, 2007
c. 32.....	ad. No. 90, 1999 am. No. 61, 2004; No. 45, 2005 rep. No. 124, 2007
cc. 33–36 .....	ad. No. 90, 1999 am. No. 45, 2005 rep. No. 124, 2007
cc. 37–39 .....	ad. No. 90, 1999 rep. No. 124, 2007

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
<b>Division 4</b>	
c. 40.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010; No. 103, 2013
Note to c. 40(1) .....	am. No. 45, 2005
Note to c. 40(5) .....	am. No. 46, 2011
c. 41.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
Heading to c. 42.....	am. No. 8, 2010
c. 42.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
Heading to c. 43.....	am. No. 8, 2010
c. 43.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010
Heading to c. 44.....	am. No. 8, 2010
c. 44.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
Note to c. 44(2) .....	am. No. 45, 2005
Heading to c. 45.....	am. No. 8, 2010
c. 45.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010
Note to c. 45(2) .....	am. No. 45, 2005
Heading to c. 46.....	am. No. 8, 2010
cc. 46, 47 .....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010
Note to c. 47(1) .....	am. No. 45, 2005
c. 48.....	ad. No. 90, 1999 am. No. 8, 2010
Heading to c. 49.....	am. No. 8, 2010
c. 49.....	ad. No. 90, 1999

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 50.....	ad. No. 90, 1999 am. No. 8, 2010
Note to c. 50.....	am. No. 46, 2011
Heading to c. 51.....	am. No. 45, 2005
c. 51.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010; No. 103, 2013
Note to c. 51(2).....	am. No. 45, 2005; No. 8, 2010
<b>Part 5</b>	
<b>Division 1</b>	
c. 52.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
<b>Division 2</b>	
cc. 53, 54.....	ad. No. 90, 1999
c. 55.....	ad. No. 90, 1999 am. No. 124, 2007; No. 8, 2010
Heading to c. 56.....	am. No. 8, 2010
c. 56.....	ad. No. 90, 1999 rs. No. 124, 2007 am. No. 8, 2010
Heading to c. 57.....	am. No. 8, 2010
c. 57.....	ad. No. 90, 1999 am. No. 8, 2010
c. 58.....	ad. No. 90, 1999 am. No. 103, 2013
<b>Division 3</b>	
c. 59.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
Subheads. to c. 60(1), (2).....	rs. No. 124, 2007
c. 60.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
Notes to c. 60(4), (5) .....	am. No. 46, 2011
c. 61 .....	ad. No. 90, 1999
<b>Division 4</b>	
c. 62 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 124, 2007; No. 8, 2010
Heading to c. 63 .....	am. No. 45, 2005
c. 63 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010
Heading to c. 64 .....	am. No. 8, 2010
c. 64 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010
c. 65 .....	ad. No. 90, 1999
cc. 66, 67 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010
<b>Division 5</b>	
Heading to c. 68 .....	am. No. 45, 2005
c. 68 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010; No. 103, 2013
Heading to c. 69 .....	am. No. 45, 2005
c. 69 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010; No. 103, 2013
Heading to c. 70 .....	am. No. 45, 2005
c. 70 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010; No. 103, 2013
Heading to c. 71 .....	am. No. 45, 2005
c. 71 .....	ad. No. 90, 1999
	am. No. 45, 2005; No. 8, 2010; No. 103, 2013
c. 72 .....	ad. No. 90, 1999
	am. No. 8, 2010

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 73.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010
c. 74.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010; No. 103, 2013
c. 75.....	ad. No. 90, 1999 am. No. 45, 2005; No. 103, 2013
c. 76.....	ad. No. 90, 1999 am. No. 45, 2005
c. 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; No. 8, 2010
<b>Part 6</b>	
c. 79.....	ad. No. 90, 1999 am. No. 124, 2007
c. 80.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010; No. 103, 2013
c. 81.....	ad. No. 90, 1999 am. No. 124, 2007; No. 8, 2010; No. 103, 2013
c. 82.....	ad. No. 90, 1999 am. No. 5, 2001
c. 83.....	ad. No. 90, 1999 am. No. 5, 2001; No. 45, 2005; No. 124, 2007; No. 8, 2010
c. 84.....	ad. No. 90, 1999 am. No. 45, 2005
Heading to c. 85.....	am. No. 8, 2010

## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
c. 85.....	ad. No. 90, 1999 am. No. 45, 2005 rs. No. 124, 2007 am. No. 8, 2010
<b>Part 7</b>	
c. 86.....	ad. No. 90, 1999
c. 87.....	ad. No. 90, 1999 am. No. 5, 2001
<b>Part 8</b>	
Heading to c. 88.....	am. No. 124, 2007; No. 8, 2010
Subhead. to c. 88(1) .....	rep. No. 124, 2007
c. 88.....	ad. No. 90, 1999 am. No. 124, 2007; No. 8, 2010
Heading to c. 89.....	am. No. 45, 2005 rep. No. 124, 2007
c. 89.....	ad. No. 90, 1999 am. No. 45, 2005; No. 27, 2007 rep. No. 124, 2007
<b>Part 9</b>	
c. 90.....	ad. No. 90, 1999
Heading to c. 91.....	am. No. 8, 2010
c. 91.....	ad. No. 90, 1999 am. No. 8, 2010; No. 103, 2013
Note to c. 91(2) .....	am. No. 46, 2011
Notes to c. 91(4), (5) .....	am. No. 46, 2011
<b>Part 10</b>	
c. 92.....	ad. No. 90, 1999 am. No. 45, 2005; No. 124, 2007; No. 8, 2010
c. 93.....	ad. No. 90, 1999 am. No. 45, 2005

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## Endnotes

### Endnote 2—Amendment history

---

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
<b>Part 11</b>	
Heading to c. 94.....	am. No. 45, 2005
c. 94.....	ad. No. 90, 1999 am. No. 45, 2005; No. 8, 2010
c. 95.....	ad. No. 90, 1999 am. No. 8, 2010
c. 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; No. 68, 2007; No. 8, 2010
c. 2.....	ad. No. 108, 2000 am. Nos. 55 and 92, 2001; Nos. 8 and 94, 2010
Subhead. to c. 3(3) .....	am. No. 45, 2005
c. 3.....	ad. No. 108, 2000 am. No. 45, 2005
Note to c. 3(7) .....	am. No. 46, 2011
Subhead. to c. 4(3) .....	am. No. 45, 2005
c. 4.....	ad. No. 108, 2000 am. No. 45, 2005
Note to c. 4(7) .....	am. No. 46, 2011
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>	
c. 7.....	ad. No. 108, 2000 am. No. 45, 2005; No. 68, 2007

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
c. 8.....	ad. No. 108, 2000 am. No. 45, 2005
c. 9.....	ad. No. 108, 2000 am. No. 45, 2005; No. 120, 2006
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; No. 68, 2007
c. 12.....	ad. No. 108, 2000 am. No. 45, 2005; No. 68, 2007; No. 8, 2010
c. 12A.....	ad. No. 68, 2007 am. No. 8, 2010
<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
Note to c. 13(8) .....	am. No. 46, 2011
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
Note to c. 15(8) .....	am. No. 46, 2011
c. 16.....	ad. No. 108, 2000 am. No. 92, 2001
cc. 17, 18.....	ad. No. 108, 2000
c. 18A.....	ad. No. 108, 2000
c. 19.....	ad. No. 108, 2000
Heading to c. 20.....	am. No. 8, 2010

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 20.....	ad. No. 108, 2000 am. No. 8, 2010
Heading to c. 20AA.....	am. No. 8, 2010
c. 20AA.....	ad. No. 108, 2000 am. No. 8, 2010
Div. 1A of Part 3.....	rep. No. 128, 2006
cc. 20A, 20B.....	ad. No. 108, 2000 rep. No. 128, 2006
<b>Division 2</b>	
Subhead. to c. 21(4).....	am. No. 45, 2005
Subheads. to c. 21(9), (10).....	am. No. 8, 2010
c. 21.....	ad. No. 108, 2000 am. No. 92, 2001; No. 45, 2005; No. 8, 2010
Note to c. 21(8).....	am. No. 46, 2011
cc. 22, 23.....	ad. No. 108, 2000
c. 23A.....	ad. No. 108, 2000
<b>Division 2A</b>	
Heading to c. 23B.....	am. No. 8, 2010
c. 23B.....	ad. No. 108, 2000 am. No. 45, 2005; No. 8, 2010
<b>Division 3</b>	
c. 24.....	ad. No. 108, 2000 am. No. 61, 2004; No. 45, 2005; No. 128, 2006; No. 68, 2007; No. 8, 2010
c. 24A.....	ad. No. 68, 2007
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
c. 26.....	ad. No. 108, 2000 am. No. 45, 2005; No. 8, 2010

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## Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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Provision affected	How affected
c. 27.....	ad. No. 108, 2000 am. No. 45, 2005
Note to c. 27(1) .....	am. No. 46, 2011
<b>Division 4</b>	
Heading to Div. 4 of Part 3.....	am. No. 8, 2010
Heading to c. 27A.....	am. No. 8, 2010
c. 27A.....	ad. No. 108, 2000 am. No. 23, 2001; No. 45, 2005; No. 8, 2010
<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; No. 8, 2010
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
Heading to c. 35.....	am. No. 8, 2010
c. 35.....	ad. No. 108, 2000 am. No. 8, 2010
c. 35A.....	ad. No. 23, 2001
<b>Part 5</b>	
Heading to Part 5.....	am. No. 45, 2005

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## Endnotes

### Endnote 2—Amendment history

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted  
exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
c. 36.....	ad. No. 108, 2000 am. No. 45, 2005
c. 37.....	ad. No. 108, 2000 am. No. 23, 2001; No. 45, 2005; No. 8, 2010
Heading to c. 38.....	am. No. 45, 2005
c. 38.....	ad. No. 108, 2000 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 am. No. 128, 2006
<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 am. No. 128, 2006
c. 47.....	ad. No. 108, 2000 am. No. 45, 2005
c. 48.....	ad. No. 108, 2000 am. No. 45, 2005; No. 8, 2010
<b>Part 8</b>	
<b>Division 1</b>	
c. 49.....	ad. No. 108, 2000 am. No. 120, 2006
Note to c. 49	
Renumbered Note 1.....	No. 172, 2000
Note 2 to c. 49 .....	ad. No. 172, 2000

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## Endnote 2—Amendment history

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Provision affected	How affected
c. 50.....	ad. No. 108, 2000 am. No. 45, 2005 rs. No. 120, 2006
Note to c. 50	
Renumbered Note 1.....	No. 172, 2000
Note 1 to c. 50.....	rep. No. 120, 2006
Note 2 to c. 50.....	ad. No. 172, 2000 rep. No. 120, 2006
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 am. No. 128, 2006; No. 68, 2007
c. 52A.....	ad. No. 120, 2006 am. No. 68, 2007
c. 53.....	ad. No. 108, 2000 am. No. 45, 2005; No. 120, 2006
c. 54.....	ad. No. 108, 2000 am. No. 45, 2005; No. 128, 2006 (as am. by 73, 2008); No. 68, 2007
c. 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 am. No. 8, 2010
c. 59.....	ad. No. 108, 2000 am. No. 45, 2005
Part 10.....	rep. No. 128, 2006
c. 60.....	ad. No. 108, 2000 rep. No. 128, 2006

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## Endnotes

### Endnote 2—Amendment history

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<b>Provision affected</b>	<b>How affected</b>
c. 61.....	ad. No. 108, 2000 rep. No. 45, 2005
<b>Schedule 7</b>	
Schedule 7.....	ad. No. 124, 2007
<b>Part 1</b>	
c. 1.....	ad. No. 124, 2007
c. 2.....	ad. No. 124, 2007 am. No. 124, 2007; No. 8, 2010
cc. 3–9.....	ad. No. 124, 2007
c. 9A.....	ad. No. 124, 2007
cc. 10–19.....	ad. No. 124, 2007
<b>Part 2</b>	
<b>Division 1</b>	
cc. 20, 21.....	ad. No. 124, 2007
<b>Division 2</b>	
cc. 22–26.....	ad. No. 124, 2007
c. 27.....	ad. No. 124, 2007 am. No. 46, 2011
<b>Division 3</b>	
cc. 28, 29.....	ad. No. 124, 2007
<b>Division 4</b>	
<b>Subdivision A</b>	
c. 30.....	ad. No. 124, 2007 am. No. 103, 2012
c. 31.....	ad. No. 124, 2007 am. No. 46, 2011
cc. 32, 33.....	ad. No. 124, 2007
<b>Subdivision B</b>	
c. 34.....	ad. No. 124, 2007

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## Endnote 2—Amendment history

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Provision affected	How affected
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**Subdivision C**

c. 35.....	ad. No. 124, 2007
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**Division 5**

c. 36.....	ad. No. 124, 2007
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**Part 3****Division 1**

cc. 37–42.....	ad. No. 124, 2007
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**Division 2**

cc. 43–46.....	ad. No. 124, 2007
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**Division 3**

cc. 47–54.....	ad. No. 124, 2007
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c. 55.....	ad. No. 124, 2007
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	am. No. 8, 2010
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Note to c. 55.....	am. No. 46, 2011
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**Division 4**

cc. 56–59.....	ad. No. 124, 2007
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c. 59A.....	ad. No. 124, 2007
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cc. 60, 61.....	ad. No. 124, 2007
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**Division 5**

cc. 62–68.....	ad. No. 124, 2007
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**Division 6**

cc. 69–72.....	ad. No. 124, 2007
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**Part 4****Division 1**

c. 73.....	ad. No. 124, 2007
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**Division 2**

cc. 74–79.....	ad. No. 124, 2007
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**Division 3**

cc. 80–84.....	ad. No. 124, 2007
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## Endnotes

### Endnote 2—Amendment history

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exp. = expired or ceased to have effect

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<b>Provision affected</b>	<b>How affected</b>
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**Division 4**

cc. 85, 86 .....	ad. No. 124, 2007
c. 87 .....	ad. No. 124, 2007
	am. No. 8, 2010
cc. 88–90 .....	ad. No. 124, 2007

**Division 5**

cc. 91–98 .....	ad. No. 124, 2007
c. 99 .....	ad. No. 124, 2007
	am. No. 8, 2010
c. 100 .....	ad. No. 124, 2007

**Division 6**

c. 101 .....	ad. No. 124, 2007
	am. No. 8, 2010

**Division 7**

cc. 102, 103 .....	ad. No. 124, 2007
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**Part 5**

cc. 104, 105 .....	ad. No. 124, 2007
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**Part 6**

cc. 106–110 .....	ad. No. 124, 2007
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**Part 7**

cc. 111, 112 .....	ad. No. 124, 2007
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**Part 8**

c. 113 .....	ad. No. 124, 2007
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**Part 9**

cc. 114–117 .....	ad. No. 124, 2007
c. 117A .....	ad. No. 124, 2007
cc. 118–123 .....	ad. No. 124, 2007

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**Endnote 3—Uncommenced amendments**

This endnote sets out amendments of the *Broadcasting Services Act 1992* that have not yet commenced.

**Australian Charities and Not-for-profits Commission (Consequential and Transitional) Act 2012 (No. 169, 2012)****Schedule 4****12 Subparagraph 212A(1)(a)(ii)**

After “not-for-profit entity”, insert “(within the meaning of the *Income Tax Assessment Act 1997*)”.

**Broadcasting Legislation Amendment (Digital Dividend) Act 2013 (No. 51, 2013)****Schedule 1****1 Subsections 34(5) and (6)**

Repeal the subsections.

**2 Section 215A**

Repeal the section.

**3 Clause 1 of Schedule 6**

Omit:

- Datacasting service providers must hold datacasting licences.

substitute:

- A person who provides a designated datacasting service must hold a datacasting licence.

**4 Subclause 2(1) of Schedule 6**

Insert:

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## Endnotes

### Endnote 3—Uncommenced amendments

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*designated datacasting service* has the meaning given by clause 2A.

## 5 After clause 2 of Schedule 6

Insert:

### 2A Designated datacasting service

- (1) For the purposes of this Schedule, a *designated datacasting service* is a datacasting service that:
  - (a) is provided by a person who is:
    - (i) a commercial television broadcasting licensee; or
    - (ii) a commercial radio broadcasting licensee; or
    - (iii) a national broadcaster; or
  - (b) is of a kind specified in an instrument under subclause (2).
- (2) The Minister may, by legislative instrument, specify kinds of datacasting services for the purposes of paragraph (1)(b).

## 6 Subclause 36(2) of Schedule 6

Before “datacasting service”, insert “designated”.

## 7 Division 1 of Part 8 of Schedule 6 (heading)

Before “datacasting”, insert “designated”.

## 8 Clause 49 of Schedule 6 (heading)

Before “datacasting”, insert “designated”.

## 9 Paragraph 49(1)(a) of Schedule 6

Before “datacasting”, insert “designated”.

## 10 Subclause 49(3) of Schedule 6

Before “datacasting”, insert “designated”.



**Sex Discrimination Amendment (Sexual Orientation, Gender Identity and Intersex Status) Act 2013 (No, 98, 2013)**

**Schedule 1**

**63A Paragraph 123(3)(e)**

Omit “sexual preference”, substitute “sexual orientation”.

**63B Paragraph 28(3)(e) of Schedule 6**

Omit “sexual preference”, substitute “sexual orientation”.

## Endnotes

Endnote 4—Misdescribed amendments [none]

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### **Endnote 4—Misdescribed amendments [none]**

There are no misdescribed amendments.