



# Broadcasting Services Act 1992

No. 110 of 1992

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## An Act relating to broadcasting services

[Assented to 14 July 1992]

The Parliament of Australia enacts:

### PART 1—PRELIMINARY

#### Short title

1. This Act may be cited as the *Broadcasting Services Act 1992*.

#### 5 Commencement

2.(1) Section 1, this section, sections 3 and 6 commence on the day on which this Act receives the Royal Assent.

(2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.

10 (3) If those provisions do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

**Objects of this Act**

3. The objects of this Act are:

- (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and 5
- (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
- (c) to encourage diversity in control of the more influential broadcasting services; and 10
- (d) to ensure that Australians have effective control of the more influential broadcasting services; and
- (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and 15
- (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and 20
- (h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and
- (i) to encourage the provision of means for addressing complaints about broadcasting services; and 25
- (j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them.

**Regulatory policy**

4.(1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services according to the degree of influence that different types of broadcasting services are able to exert in shaping community views in Australia. 30

(2) The Parliament also intends that broadcasting services in Australia be regulated in a manner that, in the opinion of the ABA: 35

- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services; and
- (b) will readily accommodate technological change; and
- (c) encourages: 40
  - (i) the development of broadcasting technologies and their application; and

- (ii) the provision of services made practicable by those technologies to the Australian community.

#### **Role of the ABA**

5 **5.(1)** In order to achieve the objects of this Act in a way that is consistent with the regulatory policy referred to in section 4, the Parliament:

- (a) charges the ABA with responsibility for monitoring the broadcasting industry; and
- 10 (b) confers on the ABA a range of functions and powers that are to be used in a manner that, in the opinion of the ABA, will:
  - (i) produce regulatory arrangements that are stable and predictable; and
  - (ii) deal effectively with breaches of the rules established by this Act.

15 **(2)** Where it is necessary for the ABA to use any of the powers conferred on it by this Act to deal with a breach of this Act or the regulations, the Parliament intends that the ABA use its powers, or a combination of its powers, in a manner that, in the opinion of the ABA, is commensurate with the seriousness of the breach concerned.

#### **20 Interpretation**

**6.(1)** In this Act, unless the contrary intention appears:

**“ABA”** means the Australian Broadcasting Authority;

**“amount paid on shares”**, in relation to a company, includes an amount treated by the company as having been so paid;

25 **“associate”**, in relation to a person in relation to control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper, means:

- (a) the person’s spouse (including a *de facto* spouse) or a parent, child, brother or sister of the person; or
- 30 (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
- 35 (d) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;

40 in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or

- (e) if the person is a company—another company if:
  - (i) the other company is a related body corporate of the person for the purposes of the *Corporations Act 1990*; or
  - (ii) the person, or the person and another person who is an associate of the person under another paragraph, are in a position to exercise control of the other company; 5

but:

- (f) persons are not associates if the ABA is satisfied that they do not, in any relevant dealings relating to that company, licence or newspaper, act together, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper; and 10
- (g) persons are not associates only because of an association between them in relation to their participation in a venture that operates the initial satellite licence; 15

**“associate member”** means an associate member of the ABA;

**“Australian drama program”**, in relation to a satellite subscription television broadcasting licence, means a drama program:

- (a) that has been made wholly or substantially in Australia or in an external Territory and has a significant Australian content; or 20
- or
- (b) that has been made in pursuance of an agreement or arrangement entered into between the Government of Australia or an authority of the Government of Australia and the Government of another country or an authority of the Government of another country; or 25
- (c) that is to be treated as an Australian program under an agreement between Australia and another country; or
- (d) in relation to which a certificate under Division 10BA of Part III of the *Income Tax Assessment Act 1936* has been issued; or 30
- (e) that would, if it were not a program of the kind referred to in paragraph (d) or (e) of the definition of “drama program”, be entitled to such a certificate; or
- (f) would be an Australian drama program for the purposes of a standard relating to Australian content that is in force under paragraph 122(2)(b); 35

but does not include a program in relation to which a declaration under subsection (3) is in force;

**“broadcasting service”** means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include: 40

- (a) a service (including a teletext service) that provides no more

than data, or no more than text (with or without associated still images); or

(b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or

5 (c) a service, or a class of services, that the Minister determines, by notice in the *Gazette*, not to fall within this definition;

**“broadcasting services bands”** means that part of the radiofrequency spectrum that:

10 (a) is designated under the *Radiocommunications Act 1983* as being primarily for broadcasting purposes; and

(b) is assigned by the Minister under that Act to the ABA for planning;

15 **“broadcasting services bands licence”** means a commercial television broadcasting licence, a commercial radio broadcasting licence or a community broadcasting licence that uses the broadcasting services bands as a means of delivering broadcasting services;

**“census count”** means a census count of the Australian population published by the Australian Statistician;

**“Chairperson”** means the Chairperson of the ABA;

20 **“class licence”** means a class licence determined by the ABA under section 117;

**“commercial broadcasting service”** has the meaning given by section 14;

**“commercial radio broadcasting licence”** means a licence to provide a commercial broadcasting service that provides radio programs;

25 **“commercial television broadcasting licence”** means a licence to provide a commercial broadcasting service that provides television programs;

**“community broadcasting licence”** means a licence to provide a community broadcasting service that provides radio programs or television programs;

30 **“community broadcasting service”** has the meaning given by section 15;

**“company interests”**, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage;

35 **“control”** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights;

40 **“Deputy Chairperson”** means the Deputy Chairperson of the ABA;

**“drama program”**, in relation to a satellite subscription television broadcasting licence, includes:

(a) a feature film of the kind that is commonly screened as a main attraction in commercial cinemas; and

- (b) a film that is similar in nature to a feature film but was produced for broadcasting on television; and
  - (c) a mini series produced for broadcasting on television comprising an extended but self-contained drama and that is designed to be broadcast in 2 or more sequential parts; and 5
  - (d) a drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes each of which:
    - (i) has a self-contained plot; and
    - (ii) can be broadcast in any order; and 10
  - (e) a continuing drama series produced for broadcasting on television that comprises a potentially unlimited number of episodes that are arranged into a consecutive series for broadcasting;
- “Federal Court”** means the Federal Court of Australia; 15
- “foreign person”** means:
- (a) a natural person who is not an Australian citizen; or
  - (b) a company, wherever incorporated, where natural persons who are not Australian citizens hold company interests in the company exceeding 50%; or 20
  - (c) a company, wherever incorporated, where:
    - (i) a company referred to in paragraph (b); or
    - (ii) natural persons who are not Australian citizens and a company or companies referred to in paragraph (b);hold company interests in the company exceeding 50%; 25
- “initial satellite licence”** means the satellite subscription television broadcasting licence referred to in paragraph 93(1)(a);
- “legislature of a Territory”** means:
- (a) the Legislative Assembly for the Australian Capital Territory; or 30
  - or
  - (b) the Legislative Assembly of the Northern Territory; or
  - (c) such other Territory legislative bodies as are prescribed;
- “licence”** means a licence allocated by the ABA under this Act, but does not include a class licence;
- “licence area”** means an area designated by the ABA under section 29 or 40; 35
- “licence area population”**, in relation to a licence area, means the population of the licence area determined under section 30;
- “member”** means a member of the ABA, and includes the Chairperson and the Deputy Chairperson; 40
- “national broadcaster”** means the provider of a national broadcasting service referred to in paragraph 13(1)(a) or (b);
- “national broadcasting service”** has the meaning given by section 13;

- “newspaper”** means a newspaper that is in the English language and is published on at least 4 days in each week, but does not include a publication if less than 50% of its circulation is by way of sale;
- 5 **“open narrowcasting radio service”** means an open narrowcasting service that provides radio programs;
- “open narrowcasting service”** has the meaning given by section 18;
- “open narrowcasting television service”** means an open narrowcasting service that provides television programs;
- 10 **“overlap area”**, in relation to a licence area part of which is within another licence area, means the area of overlap between the 2 licence areas;
- “Parliament”** means:
- (a) the Parliament of the Commonwealth; or
  - (b) a State Parliament; or
  - 15 (c) the legislature of a Territory;
- “political party”** means an organisation whose objects or activities include the promotion of the election of candidates endorsed by it to a Parliament;
- 20 **“population of Australia”** means the Australian population determined by the ABA under section 30;
- “program”**, in relation to a broadcasting service, means:
- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
  - 25 (b) advertising or sponsorship matter, whether or not of a commercial kind;
- “program standards”** means standards determined by the ABA relating to the content or delivery of programs;
- 30 **“satellite subscription television broadcasting licence”** means a licence under Part 7 to provide a subscription television broadcasting service with the use of a subscription television satellite;
- “shares”**, in relation to a company, means shares in, or stock forming part of, the capital of the company;
- “subscription broadcasting service”** has the meaning given by section 16;
- 35 **“subscription fee”** includes any form of consideration;
- “subscription narrowcasting service”** has the meaning given by section 17;
- “subscription radio broadcasting service”** means a subscription broadcasting service that provides radio programs;
- 40 **“subscription radio narrowcasting service”** means a subscription narrowcasting service that provides radio programs;
- “subscription television broadcasting service”** means a subscription broadcasting service that provides television programs;
- “subscription television narrowcasting service”** means a subscription narrowcasting service that provides television programs;

- “subscription television satellite”** means a satellite operated under the general telecommunications licence that was granted to AUSSAT Pty Ltd and notified on 26 November 1991 in *Gazette* No. S 323;
- “telecommunications carrier”** means the holder of a general telecommunications licence or a public mobile licence under Part 5 of the *Telecommunications Act 1991*; 5
- “transaction”** includes:
- (a) arrangements under which a person becomes a director of a company; and
  - (b) the acquisition of things by gift or inheritance. 10
- (2) A determination under paragraph (c) of the definition of “broadcasting service” in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) The ABA may, if it is satisfied that a drama program of the kind referred to in paragraph (a) of the definition of “drama program” in subsection (1) has non-Australian content of such significance that it should not be treated as an Australian drama program, declare that it is not an Australian drama program. 15
- Interpretation—meaning of control**
7. Schedule 1 sets out mechanisms that are to be used in: 20
- (a) deciding whether a person is in a position to exercise control of a licence, a company or a newspaper for the purposes of this Act; and
  - (b) tracing company interests of persons.
- Interpretation—shareholding interests, voting interests, dividend interests and winding-up interests** 25
- 8.(1) For the purposes of this Act:
- (a) a person has a shareholding interest in a company if the person is beneficially entitled to, or to an interest in, shares in the company, whether or not any part of the legal ownership of the shares is vested in the person; and 30
  - (b) the percentage of the interest is the value of the shares, or of the interest in the shares, as the case may be, on the basis that the value of the shares is equal to the amount paid on the shares, expressed as a percentage of the total of all amounts paid on shares in the company. 35
- (2) For the purposes of this Act:
- (a) a person has a voting interest in a company if the person is in a position to exercise control of votes cast on a poll at a meeting of the company; and 40
  - (b) the percentage of the interest is the greatest percentage of the number of votes, expressed as a percentage of the total number



of votes that could be cast on any issue at a meeting of the company, the casting of which the person is in a position to control.

**(3) For the purposes of this Act:**

- 5 (a) a person has a dividend interest in a company if:
- (i) the person is, or would become if a dividend were declared, beneficially entitled to be paid or credited a dividend by the company; or
  - 10 (ii) under the memorandum and articles of association of the company, a share of any profits of the company is to be, or may be, paid or credited to the person otherwise than as dividends on shares; and
- (b) the percentage of the interest is:
- 15 (i) if subparagraph (a)(i) applies—the amount of the dividend to which the person is beneficially entitled or will become beneficially entitled expressed as a percentage of the total of all dividends to which members of the company become entitled at that time; or
  - 20 (ii) if subparagraph (a)(ii) applies—the amount of the maximum share of any profits of the company that could be paid or credited to the person at a particular time expressed as a percentage of the total of all shares of profits that could be paid or credited to all members of the company at that time.

25 **(4) For the purposes of this Act:**

- (a) a person has a winding-up interest in a company if the person would be entitled to a share of the property of the company that could be distributed among members of the company if property of the company were distributed among members, 30 whether as a result of a winding-up or otherwise; and
- (b) the percentage of the interest is the percentage that the value of that part of the property of the company to which the person would be so entitled bears to the total value of the property of the company.

35 **(5) A person may have a voting interest, a dividend interest or a winding-up interest in a company even if the person does not have a beneficial entitlement to, or to an interest in, shares in the company.**

**Act to bind the Crown**

40 **9. This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory, but nothing in this Act renders the Crown liable to be prosecuted for an offence.**

**Extension of Act to the external Territories**

10. This Act extends to all the external Territories.

**PART 2—CATEGORIES OF BROADCASTING SERVICES**

**Categories of broadcasting services**

11. The following categories of broadcasting services are broadcasting services to which this Act relates: 5

- (a) national broadcasting services;
- (b) commercial broadcasting services;
- (c) community broadcasting services;
- (d) subscription broadcasting services; 10
- (e) subscription narrowcasting services;
- (f) open narrowcasting services.

**Method of regulating particular services**

12.(1) Commercial broadcasting services, community broadcasting services and subscription television broadcasting services require individual licences. 15

(2) Other broadcasting services (other than national broadcasting services) are to be provided under the relevant class licence.

**National broadcasting services**

13.(1) National broadcasting services are: 20

- (a) broadcasting services provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
- (b) broadcasting services provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or 25
- (c) broadcasting services provided under the *Parliamentary Proceedings Broadcasting Act 1946*.

(2) National broadcasting services do not include subscription broadcasting services or subscription or open narrowcasting services provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation. 30

(3) Subsection (2) does not apply to services specified by the Minister by notice in the *Gazette*.

(4) A specification under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. 35

(5) Except as expressly provided by this Act, the regulatory regime established by this Act does not apply to national broadcasting services.

**Commercial broadcasting services**

14. Commercial broadcasting services are broadcasting services:

- 5 (a) that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) that provide programs that:
  - (i) are able to be received by commonly available equipment; and
  - 10 (ii) are made available free to the general public; and
- 10 (c) that are usually funded by advertising revenue; and
- (d) that are operated for profit or as part of a profit-making enterprise; and
- (e) that comply with any determinations or clarifications under section 19 in relation to commercial broadcasting services.

15 **Community broadcasting services**

15. Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- 20 (c) that provide programs that:
  - (i) are able to be received by commonly available equipment; and
  - (ii) are made available free to the general public; and
- 25 (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

**Subscription broadcasting services**

16. Subscription broadcasting services are broadcasting services that:

- 30 (a) provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and
- (c) comply with any determinations or clarifications under section 19 in relation to subscription broadcasting services.

35 **Subscription narrowcasting services**

17. Subscription narrowcasting services are broadcasting services:

- (a) whose reception is limited:
  - (i) by being targeted to special interest groups; or
  - 40 (ii) by being intended only for limited locations, for example, arenas or business premises; or

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- (iii) by being provided during a limited period to cover a special event; or
  - (iv) because they provide programs of limited appeal; or
  - (v) for some other reason; and
  - (b) that are made available only on payment of subscription fees (whether periodical or otherwise); and 5
  - (c) that comply with any determinations or clarifications under section 19 in relation to subscription narrowcasting services.
- Open narrowcasting services**
- 18. Open narrowcasting services are broadcasting services: 10
    - (a) whose reception is limited:
      - (i) by being targeted to special interest groups; or
      - (ii) by being intended only for limited locations, for example, arenas or business premises; or
      - (iii) by being provided during a limited period to cover a special event; or 15
      - (iv) because they provide programs of limited appeal; or
      - (v) for some other reason; and
    - (b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services. 20
- ABA may determine additional criteria or clarify existing criteria**
- 19.(1) The ABA may, by notice in the *Gazette*:
    - (a) determine additional criteria to those specified in sections 14 to 18; or
    - (b) clarify the criteria specified in sections 14 to 18; 25
- for the purpose of distinguishing between categories of broadcasting services.
- (2) Different criteria or clarifications may be determined or made for radio services and television services.
  - (3) The Minister may give specific directions to the ABA as to the making of determinations and clarifications, and the ABA must observe those directions. 30
- Determinations and clarifications to be disallowable by the Parliament**
- 20. Determinations and clarifications under section 19 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*. 35

**Requests to ABA to decide which category a broadcasting service falls into**

5       **21.(1)** A person who is providing, or who proposes to provide, a broadcasting service may apply to the ABA for an opinion as to which category of broadcasting services the service falls into.

**(2)** An application must be in accordance with a form approved in writing by the ABA, and must state the applicant's opinion as to which category of broadcasting services the service falls into.

10       **(3)** If the ABA considers that additional information is required before an opinion can be given, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

**(4)** The ABA must, as soon as practicable after:

**(a)** receiving the application; or

15       **(b)** if the ABA has requested further information—receiving that further information;

      give the applicant, in writing, its opinion as to which category of broadcasting services the service falls into.

20       **(5)** If the ABA has given an opinion under this section to the provider of a broadcasting service, neither the ABA nor any other Government agency may, while the circumstances relating to the broadcasting service remain substantially the same as those advised to the ABA in relation to the application for the opinion:

25       **(a)** take any action against the provider of the service during the period of 5 years commencing on the day on which the opinion is given on the basis that the service falls into a different category of broadcasting services than that advised in the opinion; or

30       **(b)** unless the ABA has made a determination or clarification under section 19 after that opinion was given that places the broadcasting service in a different category—take any action against the provider of the service after the end of that period on the basis that the service falls into a different category of broadcasting services.

35       **(6)** If the ABA does not, within 45 days after:

**(a)** receiving the application; or

**(b)** if the ABA has requested further information—receiving that further information;

40       give the applicant, in writing, its opinion as to which category of broadcasting services the service falls into, the ABA is taken to have given an opinion at the end of that period that accords with the applicant's opinion.

(7) The ABA may charge a fee for providing an opinion under this section.

**Matters to be considered by ABA**

22. In making determinations or clarifications under section 19 in relation to broadcasting services, and in giving opinions under section 21 in relation to broadcasting services, the ABA is to have regard to: 5

- (a) the geographic coverage of those services; and
- (b) the number of persons who receive or are able to receive those services; and 10
- (c) the accessibility of those services, including:
  - (i) whether those services are encrypted; and
  - (ii) whether their availability is otherwise restricted, whether because of the high cost of the equipment required to receive those services, the controlled supply of that equipment or otherwise; and 15
  - (iii) whether their comprehensibility is otherwise restricted; and
- (d) the duration and frequency of the provision of those services, including whether those services are provided for a set period only; and 20
- (e) the nature of the audience to which those services are targeted; and
- (f) the nature of the programs being provided by those services, including: 25
  - (i) the level of interest in the subject matter of those programs; and
  - (ii) whether those programs are directed at a specialised audience; and
  - (iii) the social and cultural impact of those programs; and 30
- (g) such other matters as the ABA thinks fit.

**PART 3—PLANNING OF THE BROADCASTING SERVICES BANDS**

**Planning criteria**

23. In performing functions under this Part, the ABA is to promote the objects of this Act including the economic and efficient use of the radiofrequency spectrum, and is to have regard to: 35

- (a) demographics; and
- (b) social and economic characteristics within the licence area, within neighbouring licence areas and within Australia generally; and 40
- and

- (c) the number of existing broadcasting services and the demand for new broadcasting services within the licence area, within neighbouring licence areas and within Australia generally; and
- (d) developments in technology; and
- 5 (e) technical restraints relating to the delivery or reception of broadcasting services; and
- (f) the demand for radiofrequency spectrum for services other than broadcasting services; and
- (g) such other matters as the ABA considers relevant.

10 **ABA to determine priorities**

24.(1) Before preparing frequency allotment plans or licence area plans, the ABA must, by notice in writing, determine priorities, as between particular areas of Australia and as between different parts of the broadcasting services bands, for the preparation of those plans.

- 15 (2) The ABA may, by notice in writing, vary priorities.

**Preparation of frequency allotment plans**

25.(1) Where the Minister has, under the *Radiocommunications Act 1983*, assigned a part of the radiofrequency spectrum to the ABA for planning, the ABA must prepare in writing a frequency allotment plan that determines the number of channels that are to be available in particular areas of Australia to provide broadcasting services using that part of the radiofrequency spectrum.

(2) The ABA may, by notice in writing, vary a frequency allotment plan.

- 25 (3) In preparing or varying a frequency allotment plan, the ABA must comply with any directions, whether of a general or specific nature, given to the ABA in writing by the Minister.

**Preparation of licence area plans**

30 26.(1) The ABA is to prepare in writing licence area plans that determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of the broadcasting services bands, and those plans must be consistent with the relevant frequency allotment plan.

- 35 (2) The ABA may, by notice in writing, vary a licence area plan.

**Processes to be public**

27.(1) In performing its functions under sections 24, 25 and 26, the ABA must make provision for wide public consultation.

- 40 (2) The ABA is to keep a record of, and make available for public inspection, all advice received by the ABA, and all assumptions made by the ABA, in performing its functions under sections 24, 25 and 26.

**Limitation on allocation of commercial television broadcasting licences**

28. The ABA must not allocate more than 3 commercial television broadcasting licences in any licence area before a date specified by Proclamation, being a date not earlier than the completion of the review referred to in section 215. 5

**Designation of licence areas**

29.(1) Before allocating a new commercial television broadcasting licence, commercial radio broadcasting licence or community broadcasting licence that is a broadcasting services bands licence, the ABA is to designate one of the areas referred to in section 26 as the licence area of the licence. 10

(2) If the ABA varies a licence area plan, the ABA may vary the designation of the relevant licence areas.

**ABA may determine population figures**

30.(1) The ABA may, by notice in writing, determine the licence area population of a licence area. 15

(2) The ABA may, by notice in writing, determine a number that is to be the population of Australia for the purposes of this Act.

(3) In making a determination, the ABA is to have regard to the most recently published census count prepared by the Australian Statistician. 20

(4) The ABA is to make a new determination of the licence area population of a licence area if the licence area is changed.

(5) The ABA is to specify, in a determination of the licence area population of a licence area: 25

- (a) the percentage of the population of Australia constituted by that licence area population; and
- (b) the percentage of that licence area population that is attributable to an overlap area.

**Minister may reserve capacity for national broadcasters or community broadcasters** 30

31.(1) The Minister may notify the ABA in writing that capacity in the broadcasting services bands is to be reserved for a specified number of:

- (a) national broadcasting services; or 35
- (b) community broadcasting services;

but such a notice must not affect the provision of services in accordance with a licence already allocated by the ABA under this Act or in accordance with a class licence.

(2) The ABA must not, except in accordance with section 34, allocate a licence or determine a class licence that would allow the 40



provision of broadcasting services (other than services provided by national broadcasters or community broadcasting licensees) which would make use of reserved capacity in the broadcasting services bands.

**Reservations to be disallowable by the Parliament**

- 5     **32.** A notice under section 31 is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Development of technical planning guidelines**

- 10     **33.** The ABA is to develop in writing guidelines for the technical planning of individual services that use the broadcasting services bands as a means of delivery.

**Alternative uses of broadcasting services bands**

**34.(1) If:**

- 15     (a) the ABA has advertised under section 38 for applications for the allocation of one or more commercial television broadcasting licences or commercial radio broadcasting licences that are broadcasting services bands licences and that licence is not allocated or not all of those licences are allocated; or
- 20     (b) broadcasting services bands spectrum is available in a licence area but has not been made available for commercial television broadcasting licences or commercial radio broadcasting licences; or
- 25     (c) broadcasting services bands spectrum has been reserved under section 31 but has not been made available for the purpose for which it was reserved; or
- (d) broadcasting services bands spectrum is available but the ABA has not commenced or completed planning and allocation processes in relation to that spectrum;

30     the ABA may decide that the part or parts of the radiofrequency spectrum concerned is or are available for allocation, for a period specified by the ABA:

- (e) for the temporary transmission or the re-transmission of programs; or
- (f) to providers of subscription broadcasting services, subscription narrowcasting services or open narrowcasting services; or
- 35     (g) for other purposes.
- (2)** In making the decision, the ABA is to have regard to:
- (a) the possible future demand for the use of that part of the radiofrequency spectrum; and
- (b) such other matters as the ABA considers relevant.

**Notification of decisions under this Part**

35. If the ABA makes an instrument under this Part, the ABA must publish in the *Gazette* a notice stating:

- (a) that the instrument has been made; and
- (b) the places where copies of the instrument can be purchased. 5

**PART 4—COMMERCIAL TELEVISION BROADCASTING LICENCES AND COMMERCIAL RADIO BROADCASTING LICENCES**

**ABA to determine system for allocating licences**

36.(1) The ABA is to determine in writing a price-based system for allocating: 10

- (a) commercial television broadcasting licences and commercial radio broadcasting licences that are broadcasting services bands licences; and
- (b) other commercial television broadcasting licences before the date referred to in section 28. 15

(2) The Minister may give specific directions to the ABA for the purpose of a determination.

(3) Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas. 20

(4) If a commercial television broadcasting licence or a commercial radio broadcasting licence referred to in subsection (1) is allocated, the ABA must, unless the allocation system adopted was public, publish in the *Gazette* the name of the successful applicant and the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence. 25

**When licences must not be allocated**

37.(1) A licence is not to be allocated to an applicant if:

- (a) the applicant is not a company that is formed in Australia or in an external Territory and has a share capital; or 30
- (b) the ABA decides that subsection 41(2) applies to the applicant.

(2) Paragraph (1)(b) does not require the ABA to consider the application of section 41 in relation to an applicant before allocating a licence to the applicant. 35

**ABA to advertise for applications for certain licences**

38.(1) Where the ABA is going to allocate one or more commercial television broadcasting licences or commercial radio broadcasting licences referred to in subsection 36(1), the ABA is to advertise, in a

manner determined by the ABA, for applications for licences of that kind, and is to include in the advertisements:

- (a) the date before which applications must be received by the ABA; and
- 5 (b) a statement specifying how details of:
  - (i) the system determined under section 36; and
  - (ii) the conditions that are to apply to the licence; and
  - 10 (iii) the licence area of the licence, the licence area population of the licence and any areas of overlap with other licence areas;  
can be obtained.
- (2) Applications must:
  - (a) be in accordance with a form approved in writing by the ABA; and
  - 15 (b) be accompanied by the application fee determined in writing by the ABA.

**Additional commercial radio licences in single markets**

**39.(1) If:**

- 20 (a) there is only one commercial radio broadcasting licensee providing services in a licence area; and
- (b) at least 2 other commercial radio broadcasting licences that are broadcasting services bands licences are available for allocation in the licence area; and
- 25 (c) the licensee requests the ABA, in writing, to allocate another commercial radio broadcasting licence that is a broadcasting services bands licence to the licensee;

the ABA must, subject to section 37, allocate an additional licence to the applicant.

- 30 (2) The applicant must pay to the ABA, on the allocation of such a licence, a fee determined by the ABA (which must not exceed the amount that, in the opinion of the ABA represents the costs, including the planning costs, incurred by the ABA in allocating the additional licence).

- 35 (3) It is a condition of a licence allocated under this section that the licensee will continue to provide services under that licence and the licence to which it relates for the period of 2 years after the allocation of the licence.

- 40 (4) If more than 30% of the licence area population of a licence area is attributable to an overlap area, this section applies to the 2 licence areas as if they were one.

**Allocation of other licences**

**40.(1)** Subject to section 28, the ABA may allocate to a person, on application in writing by the person, a commercial television broadcasting licence or a commercial radio broadcasting licence that is not a licence referred to in subsection 36(1). 5

**(2)** Before allocating a licence referred to in subsection (1) or paragraph 36(1)(b), the ABA is to designate a particular area in Australia as the licence area of the licence.

**(3)** Applications must:

- (a)** be in accordance with a form approved in writing by the ABA; and 10
- (b)** be accompanied by the application fee determined in writing by the ABA.

**(4)** If the ABA makes a decision under subsection (1) or (2), the ABA must publish in the *Gazette* details of the allocation or the designation of a licence area. 15

**When persons are regarded as suitable**

**41.(1)** For the purposes of this Part, a company is a suitable licensee or a suitable applicant for a licence if the ABA has not decided that subsection (2) applies to the company. 20

**(2)** The ABA may, if it is satisfied that allowing a particular company to provide or continue to provide commercial broadcasting services under a licence would lead to a significant risk of:

- (a)** an offence against this Act or the regulations being committed; or 25
- (b)** a breach of the conditions of the licence occurring;

decide that this subsection applies to the company.

**(3)** In deciding whether such a risk exists, the ABA is to take into account:

- (a)** the business record of the company; and 30
- (b)** the company's record in situations requiring trust and candour; and
- (c)** the business record of each person who is, or would be, if a licence were allocated to the applicant, in a position to control the licence; and 35
- (d)** the record in situations requiring trust and candour of each such person; and
- (e)** whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations. 40

**Conditions of commercial broadcasting licences**

- 42.(1) Each commercial television broadcasting licence is subject to:
- (a) the conditions set out in Part 3 of Schedule 2; and
  - (b) such other conditions as are imposed under section 43.
- 5 (2) Each commercial radio broadcasting licence is subject to:
- (a) the conditions set out in Part 4 of Schedule 2; and
  - (b) such other conditions as are imposed under section 43.

**ABA may impose additional conditions**

10 43.(1) The ABA may, by notice in writing given to a commercial television broadcasting licensee or a commercial radio broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

(2) If the ABA proposes to vary or revoke a condition or to impose a new condition, the ABA must:

- 15 (a) give to the licensee written notice of its intention; and
- (b) give to the licensee a reasonable opportunity to make representations to the ABA in relation to the proposed action; and
- (c) publish the proposed changes in the *Gazette*.

20 (3) This section does not allow the ABA to vary or revoke a condition set out in Part 3 or 4 of Schedule 2.

(4) If the ABA varies or revokes a condition or imposes a new condition, the ABA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

- 25 (5) Action taken under subsection (1) must not be inconsistent with:
- (a) determinations and clarifications under section 19; or
  - (b) conditions set out in Part 3 or 4 of Schedule 2.

**Matters to which conditions may relate**

30 44.(1) Conditions of commercial television broadcasting licences and commercial radio broadcasting licences must be relevant to the broadcasting services to which those licences relate.

(2) Without limiting the range of conditions that may be imposed, the ABA may impose a condition on a commercial television broadcasting licensee or a commercial radio broadcasting licensee:

- 35 (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.

**Duration of licences**

45. Subject to Part 10, commercial television broadcasting licences and commercial radio broadcasting licences remain in force for 5 years.

**Applications for renewal**

46.(1) The ABA may renew a commercial television broadcasting licence or a commercial radio broadcasting licence if: 5

- (a) the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ABA, at least 20 weeks but not more than one year before the licence is due to expire; and 10
- (b) the application is accompanied by the renewal fee determined in writing by the ABA.

(2) If the ABA receives an application for renewal, the ABA must notify in the *Gazette* the fact that the application has been made.

**ABA to renew licences unless it is aware of special circumstances** 15

47.(1) Subject to subsection (2), if the ABA receives an application under section 46, the ABA must, by notice in writing given to the licensee, renew the licence for a period of 5 years.

(2) The ABA must refuse to renew a licence if the ABA decides that subsection 41(2) applies to the licensee. 20

(3) The ABA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

**Transfer of commercial broadcasting licences**

48. A commercial television broadcasting licensee or a commercial radio broadcasting licensee may transfer the licence to another person. 25

**Surrender of commercial broadcasting licences**

49. A commercial television broadcasting licensee or a commercial radio broadcasting licensee may, by notice in writing given to the ABA, surrender the licence.

**PART 5—CONTROL OF COMMERCIAL BROADCASTING LICENCES** 30

*Division 1—Preliminary*

**Interpretation—knowledge of company**

50.(1) For the purposes of this Part, if a director, the chief executive or a secretary of a company has knowledge of a matter, the company is taken to have knowledge of the matter. 35

(2) Subsection (1) does not limit the ways in which knowledge of a company can be established.

**Means of dealing with overlapping licence areas**

51. If:

- (a) more than 30% of the licence area population of a licence area is attributable to an overlap area; or
- 5 (b) a licence area is entirely within another licence area;

the rules in this Part apply to the 2 licence areas, but not between those licence areas and other licence areas, as if the 2 licence areas were one.

10 **Changes in licence area populations not to put persons in breach of this Part**

52. If:

- (a) the ABA makes a new determination of the licence area population of a licence area or of the population of Australia; and
- 15 (b) as a result of the determination, a person would be in breach of subsection 53(1) or 55(1) or (2);

those subsections continue to apply to the person as if the previous determination remained in force.

*Division 2—Limitation on control*

20 **Limitation on control of commercial television broadcasting licences**

53.(1) A person must not be in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.

- 25 (2) A person must not be in a position to exercise control of more than one commercial television broadcasting licence in the same licence area.

**Limitation on control of commercial radio broadcasting licences**

54. A person must not be in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area.

30 *Division 3—Limitation on directorships*

**Limitation on numbers of directorships—television**

- 35 55.(1) A person must not be a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of commercial television broadcasting licences whose combined licence area populations exceed 75% of the population of Australia.

(2) A person must not be:

- (a) in a position to exercise control of a commercial television broadcasting licence; and

- (b) a director of a company that is in a position to exercise control of another commercial television broadcasting licence; whose combined licence area populations exceed 75% of the population of Australia.
- (3) A person must not be: 5
- (a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
- (b) a director of a company that is in a position to exercise control of another commercial television broadcasting licence; 10
- if each of those licences have the same licence area.
- (4) A person must not be:
- (a) a director of a company that is in a position to exercise control of a commercial television broadcasting licence; and
- (b) in a position to exercise control of another commercial television broadcasting licence; 15
- if each of those licences have the same licence area.

**Limitation on numbers of directorships—radio**

56. A person must not be:
- (a) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of more than 2 commercial radio broadcasting licences in the same licence area; or 20
- (b) a director of a company that is, or of 2 or more companies that are, between them, in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and in a position to exercise control of another commercial radio broadcasting licence in the same licence area; or 25
- (c) in a position to exercise control of 2 commercial radio broadcasting licences in a licence area and a director of a company that is in a position to exercise control of another commercial radio broadcasting licence in the same licence area. 30

***Division 4—Limitation on foreign control of television***

**Foreign persons not to be in position to control commercial television broadcasting licence**

- 57.(1) A foreign person must not be in a position to exercise control of a commercial television broadcasting licence. 35
- (2) A foreign person must not have company interests in a commercial television broadcasting licensee that exceed 15%.
- (3) 2 or more foreign persons must not have company interests in a commercial television broadcasting licensee that exceed 20%. 40



**Limitation on foreign directorships—commercial television broadcasting licensees**

5       **58.(1)** Subject to subsection (2), not more than 20% of the directors of each commercial television broadcasting licensee may be foreign persons.

**(2)** The ABA may, in writing, approve the board of a commercial television broadcasting licensee containing a higher percentage of foreign persons for a period not exceeding 28 days if the ABA considers special circumstances exist that require such an approval.

10       **(3)** If the ABA has approved a breach of subsection (1), the ABA is not to grant another approval of the same breach.

***Division 5—Cross-media rules***

**Newspapers associated with commercial television or radio broadcasting licence areas**

15       **59.(1)** The ABA is to maintain an Associated Newspaper Register.

**(2)** For the purposes of this Part, a newspaper is associated with the licence area of a licence if the name of the newspaper is entered in the Register as being associated with the licence area of the licence.

20       **(3)** If the ABA is satisfied that at least 50% of the circulation of a newspaper is within the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence, the ABA is to enter the name of the newspaper in the Register in relation to that licence area.

25       **(4)** If the ABA is satisfied that less than 50% of the circulation of a newspaper that is entered in the Register in relation to a commercial television broadcasting licence or a commercial radio broadcasting licence is within the licence area of that licence, the ABA is to remove the name of the newspaper from the Register in relation to that licence area.

30       **(5)** The Register is to be open for public inspection, and a person is entitled to be given a copy of, or an extract from, any entry in the Register.

**(6)** The ABA may charge fees for inspections of the Register or for the provision of copies of or extracts from the Register.

35       **(7)** The ABA may supply copies of or extracts from the Register certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

**Limitation on control of commercial television broadcasting licences,  
commercial radio broadcasting licences and associated newspapers**

- 60.** A person must not be in a position to exercise control of:
- (a) a commercial television broadcasting licence and a commercial radio broadcasting licence that have the same licence area; or 5
  - (b) a commercial television broadcasting licence and a newspaper that is associated with the licence area of the licence; or
  - (c) a commercial radio broadcasting licence and a newspaper that is associated with the licence area of the licence.

**Limitation on cross-media directorships 10**

- 61.(1)** A person must not be a director of:
- (a) a company that is in a position to exercise control of a commercial television broadcasting licence and a company that is in a position to exercise control of a commercial radio broadcasting licence that has the same licence area; or 15
  - (b) a company that is in a position to exercise control of a commercial television broadcasting licence and a company that is in a position to exercise control of a newspaper that is associated with the licence area of that licence; or
  - (c) a company that is in a position to exercise control of a commercial radio broadcasting licence and a company that is in a position to exercise control of a newspaper that is associated with the licence area of that licence. 20
- (2)** A person must not:
- (a) be in a position to exercise control of a commercial television broadcasting licence; and 25
  - (b) be a director of:
    - (i) a company that is in a position to exercise control of a commercial radio broadcasting licence that has the same licence area; or 30
    - (ii) a company that is in a position to exercise control of a newspaper that is associated with the licence area of the commercial television broadcasting licence.
- (3)** A person must not:
- (a) be in a position to exercise control of a commercial radio broadcasting licence; and 35
  - (b) be a director of:
    - (i) a company that is in a position to exercise control of a commercial television broadcasting licence that has the same licence area; or 40
    - (ii) a company that is in a position to exercise control of a newspaper that is associated with the licence area of the commercial radio broadcasting licence.

(4) A person must not:

- 5 (a) be in a position to exercise control of a newspaper that is associated with the licence area of a commercial television broadcasting licence or a commercial radio broadcasting licence; and
- (b) be a director of a company that is in a position to exercise control of that licence.

***Division 6—Notification provisions***

**Requirement on licensees to notify control and directorships**

10 62.(1) Each commercial television broadcasting licensee and commercial radio broadcasting licensee must, within 3 months after the end of each financial year, give to the ABA in writing:

- 15 (a) details of the persons who, to the knowledge of the licensee, were in a position to exercise control of the licence at the end of that financial year; and
- (b) the name of each person who was a director of the licensee at the end of that financial year; and
- (c) the name of each foreign person who was a director of the licensee at the end of that financial year.

20 (2) The details are to be provided in a form approved in writing by the ABA.

Penalty:

- 25 (a) if the breach relates to a commercial television broadcasting licence—\$50,000; or
- (b) if the breach relates to a commercial radio broadcasting licence—\$5,000.

**Requirement to notify changes in control**

63.(1) If a commercial television broadcasting licensee or commercial radio broadcasting licensee becomes aware that:

- 30 (a) a person who was not in a position to exercise control of the licence has become in a position to exercise control of the licence; or
- (b) a person who was in a position to control the licence has ceased to be in that position;

35 the licensee must, within 7 days after becoming so aware, notify the ABA in writing of that event.

(2) The details are to be provided in a form approved in writing by the ABA.

Penalty:

- 40 (a) if the breach relates to a commercial television broadcasting licence—\$50,000; or

- (b) if the breach relates to a commercial radio broadcasting licence—\$5,000.

**Person who obtains control of commercial licence must notify the ABA**

**64.(1)** If a person who was not in a position to exercise control of a commercial television broadcasting licence or a commercial radio broadcasting licence becomes aware that that person is in a position to exercise control of the licence, the person must, within 7 days after becoming so aware, notify the ABA in writing of that position. 5

**(2)** The details are to be provided in a form approved in writing by the ABA. 10

Penalty:

- (a) if the breach relates to a commercial television broadcasting licence—\$50,000; or
- (b) if the breach relates to a commercial radio broadcasting licence—\$5,000. 15

**Person in control of commercial television licence must notify the ABA of newspaper interests**

**65.(1)** Each person who is in a position to exercise control of a commercial television broadcasting licence or a commercial radio broadcasting licence must, within 3 months after the end of each financial year, give to the ABA in writing details of any company interests that the person had at the end of that financial year in a newspaper that is associated with the licence area of the licence. 20

**(2)** The details are to be provided in a form approved in writing by the ABA. 25

Penalty:

- (a) if the breach relates to a commercial television broadcasting licence—\$50,000; or
- (b) if the breach relates to a commercial radio broadcasting licence—\$5,000. 30

***Division 7—Approval of temporary breaches***

**Offence for breaches without approval**

**66.(1)** If:

- (a) a transaction takes place that places a person in breach of a provision of Division 2, 3, 4 or 5; and 35
- (b) the person knew, or ought reasonably to have known, that a result of the transaction would be to place the person in breach of a provision of Division 2, 3, 4 or 5; and
- (c) the person was a party to the transaction or was in a position to prevent the transaction taking place; and 40

(d) the ABA has not approved the breach under subsection 58(2) or section 67;

the person is guilty of an offence.

Penalty:

5 (e) if the breach relates to a commercial television broadcasting licence—\$2,000,000; or

(f) if the breach relates to a commercial radio broadcasting licence—\$200,000.

10 (2) A person who breaches subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this subsection or any subsequent day) during which the breach of Division 2, 3, 4 or 5 continues.

15 (3) A prosecution for an offence under this section against a person in relation to a transaction cannot be commenced if the ABA has given the person a notice under section 70 in relation to the transaction and the time for compliance with the notice has not expired.

**Applications for prior approval of temporary breaches**

20 **67.(1)** A person may, before a transaction takes place or an agreement is entered into that would place a person in breach of a provision of Division 2, 3 or 5, make an application to the ABA for an approval of the breach.

(2) An application is to be made in accordance with a form approved in writing by the ABA.

25 (3) If the ABA considers that additional information is required before the ABA can make a decision on an application, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) If, after receiving an application, the ABA is satisfied that:

30 (a) if the transaction took place or the agreement was entered into, it would place a person in breach of a provision of Division 2, 3 or 5; and

(b) the person will take action to ensure that the breach of that provision ceases; and

35 (c) the breach is incidental to the objectives of the transaction or agreement;

40 the ABA may, by notice in writing given to the applicant, approve the breach arising as a result of the transaction or agreement and specify a period during which action must be taken to ensure that the breach ceases, being a period that commences on the day on which the transaction takes place or the agreement is entered into.

(5) The period specified in the notice must be 6 months, one year or 2 years.

(6) The ABA may specify in a notice the action that the ABA considers the person is to take so that the person is no longer in breach of the relevant provision.

(7) If the ABA does not, within 45 days after:

(a) receiving the application; or

(b) if the ABA has requested further information—receiving that further information;

approve or refuse to approve the breach arising as a result of the transaction or agreement, the ABA is to be taken to have approved the breach and allowed a period of 2 years before which the breach must cease.

#### **Extension of time for compliance with notice**

68.(1) A person who has been given a notice under section 67 may, within 3 months before the end of the period specified in the notice, apply in writing to the ABA for an extension of that period.

(2) The ABA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances.

(3) If the ABA considers that additional information is required before the ABA can make a decision on an application, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(4) The ABA must not grant more than one extension, and the period of any extension must not exceed:

(a) the period originally specified in the notice; or

(b) one year;

whichever is the lesser.

(5) In deciding whether to grant an extension to an applicant, the ABA is to have regard to:

(a) the endeavours that the applicant made in attempting to comply with the notice; and

(b) the difficulties that the applicant experienced in attempting to comply with the notice;

but the ABA must not have regard to any financial disadvantage that compliance with the notice may cause.

(6) If the ABA does not, within 45 days after:

(a) receiving the application; or

(b) if the ABA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ABA is to be taken to have extended that period by:

(c) the period originally specified in the notice; or

(d) one year;  
whichever is the lesser.

**Breach of notice under section 67 to constitute an offence**

5 **69.** A person who fails to comply with a notice under section 67 is guilty of an offence.

Penalty:

- 10 (a) if the breach relates to a commercial television broadcasting licence—\$2,000,000; or  
(b) if the breach relates to a commercial radio broadcasting licence—\$200,000.

***Division 8—Action by the ABA***

**Notices by the ABA**

15 **70.(1)** If the ABA is satisfied that a person is in breach of a provision of Division 2, 3, 4 or 5, the ABA may, by notice in writing given to:

- (a) the person; or  
(b) if the person is not the licensee and the breach is one that can be remedied by the licensee—the licensee;

20 direct the person or the licensee to take action so that the person is no longer in breach of that provision.

(2) The ABA is not to give a notice to a person under subsection (1) in relation to a breach if an approval under section 67 has been given in respect of the breach and the period specified under that section, or an extension of that period, has not expired.

25 (3) The notice is to specify a period during which the person must take action to ensure that the person is no longer in that position.

(4) The period must be one month, 6 months, one year or 2 years.

(5) If the ABA is satisfied that the breach was deliberate and flagrant, the period specified in the notice must be one month.

30 (6) If the ABA gives a notice under subsection (1) in respect of a breach that the ABA had approved under section 67, the ABA must specify a period of one month in the notice under subsection (1).

35 (7) If the ABA is satisfied that the person breached the relevant provision as a result of the actions of other persons none of whom is an associate of the person, a period of one year or 2 years must be specified, but such a period must not be specified in other circumstances.

40 (8) The Parliament recognises that, if a period of one month is specified in a notice, the person to whom the notice is given or another person may be required to dispose of shares in a way, or otherwise make arrangements, that could cause the person a considerable financial

disadvantage. Such a result is seen as necessary in order to discourage deliberate and flagrant breaches of this Part.

**Extension of time for compliance with notice**

71.(1) A person who has been given a notice under section 70 may, within 3 months before the end of the period specified in the notice, apply in writing to the ABA for an extension of that period. 5

(2) An application for an extension cannot be made if the period specified in the notice was one month.

(3) The ABA is not required to grant an extension, but may do so if, in its opinion, an extension is appropriate in all the circumstances. 10

(4) If the ABA considers that additional information is required before the ABA can make a decision on an application, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.

(5) The ABA must not grant more than one extension, and the period of any extension must not exceed: 15

- (a) the period originally specified in the notice; or
- (b) one year;

whichever is the lesser.

(6) In deciding whether to grant an extension to a person, the ABA is to have regard to: 20

- (a) the endeavours that the applicant made in attempting to comply with the notice; and
- (b) the difficulties experienced by the applicant in attempting to comply with the notice; and 25
- (c) the seriousness of the breach that led to the giving of the notice;

but the ABA must not have regard to any financial disadvantage that compliance with the notice may cause.

(7) If the ABA does not, within 45 days after:

- (a) receiving the application; or 30
- (b) if the ABA has requested further information—receiving that further information;

extend the period or refuse to extend the period originally specified in the notice, the ABA is to be taken to have extended that period by:

- (c) the period originally specified in the notice; or 35
- (d) one year;

whichever is the lesser.

**Breach of notice under section 70 to constitute an offence**

72. A person who fails to comply with a notice under section 70 is guilty of an offence. 40

Penalty:



- (a) if the breach relates to a commercial television broadcasting licence—\$2,000,000; or
- (b) if the breach relates to a commercial radio broadcasting licence—\$200,000.

5                    **Division 9—Special provision for small markets**

**Approval of breach of television ownership limits in small markets**

73.(1) If:

- (a) there is only one commercial television broadcasting licensee providing broadcasting services in a licence area; and
- 10        (b) additional commercial television broadcasting licences can be allocated in that licence area;

the existing licensee may apply in writing to the ABA for permission to operate a second commercial television broadcasting service in the licence area.

- 15        (2) If the ABA is satisfied that it is unlikely that another person would be interested in, and likely to be in a position to, operate another commercial television broadcasting service in the licence area, the ABA may, by notice in writing given to the licensee, give the licensee permission to operate a second service in the licence area for a period
- 20        of not more than 5 years specified in the notice.

- (3) If, at the end of the period so specified, the ABA is satisfied, on application in writing by the existing licensee not less than 45 days before the end of that period, that another person would not be interested in, and likely to be in a position to, operate a second
- 25        commercial television broadcasting service in the licence area, the ABA may, in writing, extend the original period by not more than 5 years.

(4) If:

- (a) an application is made to the ABA under subsection (1) or (3); and
- 30        (b) the ABA does not, within 45 days after receiving the application, by notice in writing given to the existing licensee, grant the permission or extend the period, as the case may be;

the ABA is taken to have granted the permission, or to have extended the period, at the end of that period of 45 days and, in the case of an

35        extension, to have extended the original period by 5 years.

(5) While a permission under this section is in force, the service to which the permission relates and the other like service are, for the purposes of this Part, to be taken to be one service provided under the one licence.

**Division 10—Prior opinions by the ABA**

**Requests to ABA to give an opinion on whether a person is in a position to control a licence, a newspaper or a company**

- 74.(1)** A person may apply to the ABA for an opinion as to whether:
- (a) the person is in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a newspaper or a company; or 5
  - (b) the person would, if a transaction took place or a contract, agreement or arrangement were entered into, being one details of which are given in the application, be in a position to exercise control of a commercial television broadcasting licence, a commercial radio broadcasting licence, a satellite subscription television broadcasting licence, a newspaper or a company. 10
- (2) An application must be in accordance with a form approved in writing by the ABA, and must state the applicant's opinion as to whether the applicant is, or would be, in a position to exercise control of the commercial television broadcasting licence, the commercial radio broadcasting licence, the satellite subscription television broadcasting licence, the newspaper or the company. 15 20
- (3) If the ABA considers that additional information is required before an opinion can be given, the ABA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ABA must, as soon as practicable after: 25
- (a) receiving the application; or
  - (b) if the ABA has requested further information—receiving that further information;
- give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company. 30
- (5) If the ABA has given an opinion under this section to a person that the person is not in a position to exercise control of a licence or newspaper, neither the ABA nor any other Government agency may, while the circumstances relating to the applicant and the licence, a newspaper or a company remain substantially the same as those advised to the ABA in relation to the application for the opinion, take any action against the person under this Act on the basis that the person is in a position to exercise control of the licence, newspaper or company. 35
- (6) If the ABA does not, within 45 days after: 40
- (a) receiving the application; or
  - (b) if the ABA has requested further information—receiving that further information;

give the applicant, in writing, its opinion as to whether the applicant is in a position to exercise control of the relevant licence, newspaper or company, the ABA is to be taken to have given an opinion at the end of that period that accords with the applicant's opinion.

- 5 (7) The ABA may charge a fee for providing an opinion under this section.

**Division 11—Miscellaneous**

**Register of matters under this Part**

- 10 75.(1) The ABA is to maintain a Register of:
- (a) notifications under Division 6; and
  - (b) approvals given by the ABA under section 67; and
  - (c) extensions granted by the ABA under section 68; and
  - (d) notices given by the ABA under section 70; and
  - (e) extensions granted by the ABA under section 71; and
  - 15 (f) approvals given by the ABA under section 73.
- (2) The ABA is not to include in the Register an approval under section 67 until the relevant transaction or agreement has taken place or been entered into.
- (3) The Register is to be open for public inspection, and a person
- 20 is entitled to be given a copy of, or an extract from, any entry in the Register.
- (4) The ABA may charge fees for inspections of the Register or for the provision of copies of or extracts from the Register.
- (5) The ABA may supply copies of or extracts from the Register
- 25 certified by a member, and a copy or extract so certified is admissible in evidence in all courts and proceedings without further proof or production of the original.

**Continuing offences**

- 30 76. In order to avoid any doubt, it is declared that section 4K of the *Crimes Act 1914* applies to obligations under this Part to comply with a notice and other obligations under this Part to do things within a particular period.

**Part has effect notwithstanding Trade Practices Act**

- 35 77. The provisions of this Part have effect notwithstanding the *Trade Practices Act 1974*.

**Part not to invalidate appointments**

78. Nothing in this Part invalidates an appointment of a person as a director of a company.

**PART 6—COMMUNITY BROADCASTING LICENCES**

**Interpretation**

79. In this Part, “company” includes an incorporated association.

**ABA to advertise for applications for BSB community broadcasting licences** 5

80.(1) Where the ABA is going to allocate one or more community broadcasting licences that are broadcasting services bands licences, the ABA is to advertise, in a manner determined by the ABA, for applications from companies that:

- (a) are formed in Australia or in an external Territory; and 10
- (b) represent a community interest.

(2) The advertisements are to include:

- (a) the date before which applications must be received by the ABA; and
  - (b) a statement specifying how details of: 15
    - (i) the conditions that are to apply to the licence; and
    - (ii) the licence area of the licence; and
    - (iii) any priorities that the Minister has, under subsection 84(1), directed the ABA to observe in the allocation of that licence or those licences; 20
- can be obtained.

(3) Applications must be in accordance with a form approved in writing by the ABA.

**When licences must not be allocated**

81.(1) A licence is not to be allocated to an applicant if the ABA decides that subsection 83(2) applies to the applicant. 25

(2) Subsection (1) does not require the ABA to consider the application of subsection 83(2) in relation to an applicant before allocating a licence to the applicant.

**Other community broadcasting licences** 30

82.(1) The ABA may allocate to a person, on application in writing by the person, a community broadcasting licence that is not a broadcasting services bands licence.

(2) Applications must:

- (a) be in accordance with a form approved in writing by the ABA; and 35
- (b) be accompanied by the application fee determined in writing by the ABA.

**When persons are regarded as suitable**

5     **83.(1)** For the purposes of this Part, a company is a suitable community broadcasting licensee or a suitable applicant for a community broadcasting licence if the ABA has not decided that subsection (2) applies to the company.

**(2)** The ABA may, if it is satisfied that allowing a particular company to provide or continue to provide broadcasting services under a community broadcasting licence would lead to a significant risk of:

- 10     (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 subsection applies to the company.

**(3)** In deciding whether such a risk exists, the ABA is to take into account only:

- 15     (a) the business record of the company; and  
      (b) the company's record in situations requiring trust and candour; and  
      (c) the business record of the chief executive and each director and secretary of the applicant; and  
20     (d) the record in situations requiring trust and candour of each such person; and  
      (e) whether the company, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.

25     **Allocation of community broadcasting licences**

**84.(1)** The Minister may give directions to the ABA to give priority to a particular community interest or interests, whether generally or in a particular licence area, in allocating community licences that are broadcasting services bands licences.

30     **(2)** In deciding whether to allocate a community broadcasting licence that is a broadcasting services bands licence to an applicant or to one of a group of applicants, the ABA is to have regard to:

- 35     (a) the extent to which the proposed service would meet the existing and perceived future needs of the community within the licence area of the proposed licence; and  
      (b) the nature and diversity of the interests of that community; and  
      (c) the nature and diversity of other broadcasting services (including national broadcasting services) available within that licence area; and  
40     (d) the capacity of the applicant to provide the proposed service; and  
      (e) the undesirability of one person being in a position to exercise control of more than one community broadcasting licence that

is a broadcasting services bands licence in the same licence area; and

- (f) the undesirability of the Commonwealth, a State or a Territory or a political party being in a position to exercise control of a community broadcasting licence.

5

**ABA not required to allocate community broadcasting licence to any applicant**

85. The ABA is not required to allocate a community broadcasting licence to any applicant.

**Conditions of community broadcasting licences**

10

86. Each community broadcasting licence is subject to:

- (a) the conditions set out in Part 5 of Schedule 2; and  
(b) such other conditions as are imposed under section 87.

**ABA may impose additional conditions on community broadcasting licences**

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87.(1) The ABA may, by notice in writing given to a community broadcasting licensee, vary or revoke a condition of the licence or impose an additional condition on the licence.

(2) If the ABA proposes to vary or revoke a condition or to impose a new condition, the ABA must give to the licensee:

20

- (a) written notice of its intention; and  
(b) a reasonable opportunity to make representations to the ABA in relation to the proposed action; and  
(c) publish the proposed changes in the *Gazette*.

(3) This section does not allow the ABA to vary or revoke a condition set out in Part 5 of Schedule 2.

25

(4) If the ABA varies or revokes a condition or imposes a new condition, the ABA must publish the variation, the fact of the revocation or the new condition, as the case may be, in the *Gazette*.

(5) Action taken under subsection (1) must not be inconsistent with:

30

- (a) determinations and clarifications under section 19; or  
(b) conditions set out in Part 5 of Schedule 2.

**Matters to which conditions may relate**

88.(1) Conditions of community broadcasting licences must be relevant to community broadcasting services.

35

(2) Without limiting the range of conditions that may be imposed, the ABA may impose a condition on a community broadcasting 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.

**Duration of community broadcasting licences**

- 5 **89.** Subject to Part 10, community broadcasting licences remain in force for 5 years.

**Applications for renewal of community broadcasting licences**

- 10 **90.(1)** The ABA may renew a community broadcasting licence if the licensee makes an application for renewal of the licence, in accordance with a form approved in writing by the ABA, at least 20 weeks but not more than one year before the licence is due to expire.

(2) If the ABA receives an application for renewal, the ABA must notify in the *Gazette* the fact that the application has been made.

**ABA to renew community broadcasting licences unless it is aware of special circumstances**

- 15 **91.(1)** Subject to subsection (2), if the ABA receives an application under section 90, the ABA must, by notice in writing given to the licensee, renew the licence for a period of 5 years.

(2) The ABA must refuse to renew a community broadcasting licence if the ABA decides that subsection 83(2) applies to the licensee.

- 20 (3) The ABA is not required to conduct an investigation or a hearing into whether a licence should be renewed.

**Surrender of community broadcasting licences**

**92.** A community broadcasting licensee may, by notice in writing given to the ABA, surrender the licence.

25 **PART 8—SUBSCRIPTION BROADCASTING AND NARROWCASTING CLASS LICENCES**

**Determination of class licences**

**117.** The ABA may, by notice published in the *Gazette*, determine a class licence for the provision of:

- 30 (a) subscription radio broadcasting services; or  
(b) subscription radio narrowcasting services; or  
(c) subscription television narrowcasting services; or  
(d) open narrowcasting radio services; or  
(e) open narrowcasting television services.

35 **Conditions of class licences**

**118.(1)** The ABA may include in a class licence conditions that, having regard to:

- (a) the objects of this Act and the regulatory policy set out in section 4; and

(b) the matters referred to in section 22; it considers should be imposed on the provision of services under that licence.	
(2) Different conditions may be specified for:	
(a) different categories of broadcasting services; and	5
(b) services providing radio programs and services providing television programs.	
(3) Each class licence is subject to the conditions set out in Part 7 of Schedule 2.	
<b>Matters to which conditions may relate</b>	10
<b>119.(1)</b> Conditions of class licences must be relevant to the broadcasting services to which those licences relate.	
(2) Without limiting the range of conditions that may be imposed, the ABA may impose a condition on a class licence:	
(a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or	15
(b) designed to ensure that a breach of a condition by the licensee does not recur; or	
(c) designed to ensure compliance with the film classification system administered by the Office of Film and Literature Classification.	20
<b>Variation of class licences</b>	
<b>120.(1)</b> The ABA may, by notice published in the <i>Gazette</i> :	
(a) vary or revoke conditions specified in a class licence; or	
(b) specify additional conditions of the licence.	
(2) Action taken under subsection (1) must not be inconsistent with:	25
(a) determinations and clarifications under section 19; or	
(b) conditions set out in Part 7 of Schedule 2.	
(3) Before publishing a notice under subsection (1), the ABA must:	
(a) publicise its intention to vary the licence, stating:	
(i) the subject matter of the proposed variation; and	30
(ii) a place at which copies of the licence and of the proposed variation may be bought; and	
(iii) an address to which representations concerning the proposed variation can be sent; and	
(iv) the last date for making those representations; and	35
(b) give due consideration to any representations so made.	
<b>Class licences and variations to be disallowable by the Parliament</b>	
<b>121.</b> Class licences, and instruments varying class licences, are disallowable instruments for the purposes of section 46A of the <i>Acts Interpretation Act 1901</i> .	40



**PART 9—PROGRAM STANDARDS**

**Program standards for children's programs and Australian content**

**122.(1)** The ABA must, by notice in writing:

- 5 (a) determine standards that are to be observed by commercial television broadcasting licensees; and  
(b) determine standards that are to be observed by community television broadcasting licensees.

(2) Standards under subsection (1) for commercial television broadcasting licensees are to relate to:

- 10 (a) programs for children; and  
(b) the Australian content of programs.

(3) Standards under subsection (1) for community television broadcasting licensees are to relate to programs for children.

15 (4) Standards must not be inconsistent with this Act or the regulations.

**Development of codes of practice**

**123.(1)** It is the intention of the Parliament that radio and television industry groups representing:

- 20 (a) commercial broadcasting licensees; and  
(b) community broadcasting licensees; and  
(c) providers of subscription broadcasting services; and  
(d) providers of subscription narrowcasting services; and  
(e) providers of open narrowcasting services;

25 develop, in consultation with the ABA and taking account of any relevant research conducted by the ABA, codes of practice that are to be applicable to the broadcasting operations of each of those sections of the industry.

(2) Codes of practice developed for a section of the broadcasting industry may relate to:

- 30 (a) preventing the broadcasting of programs that, in accordance with community standards, are not suitable to be broadcast by that section of the industry; and  
(b) methods of ensuring that the protection of children from exposure to program material which may be harmful to them  
35 is a high priority; and  
(c) methods of classifying programs that reflect community standards; and  
(d) promoting accuracy and fairness in news and current affairs programs; and  
40 (e) preventing the broadcasting of programs that:

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- (i) simulate news or events in a way that misleads or alarms the audience; or
  - (ii) depict the actual process of putting a person into a hypnotic state; or
  - (iii) are designed to induce a hypnotic state in the audience; 5  
or
  - (iv) use or involve the process known as “subliminal perception” or any other technique that attempts to convey information to the audience by broadcasting messages below or near the threshold of normal awareness; and 10
  - (f) in the case of codes of practice developed by commercial broadcasting licensees—broadcasting time devoted to advertising; and
  - (g) in the case of codes of practice developed by commercial radio broadcasting licensees—the broadcasting of Australian music; and 15
  - (h) methods of:
    - (i) handling complaints from the public about program content or compliance with codes of practice; and 20
    - (ii) reporting to the ABA on complaints so made; and
  - (i) captioning of programs for the hearing impaired; and
  - (j) in the case of codes of practice developed by community broadcasting licensees:
    - (i) the kinds of sponsorship announcements that may be broadcast by those licensees; or 25
    - (ii) the kinds of sponsorship announcements that particular kinds of program may carry; and
  - (k) in the case of codes of practice developed by subscription broadcasting licensees—dealings with customers of the licensees, including methods of billing, fault repair, privacy and credit management; and 30
  - (l) such other matters relating to program content as are of concern to the community.
- (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: 35
- (a) the portrayal in programs of physical and psychological violence;
  - (b) the portrayal in programs of sexual conduct and nudity;
  - (c) the use in programs of offensive language; 40
  - (d) the portrayal in programs of the use of drugs, including alcohol and tobacco;
  - (e) the portrayal in programs 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 program content as are of concern to the community.

5 (4) If:

(a) a group representing a particular section of the broadcasting industry develops a code of practice to be observed in the conduct of the broadcasting operations of that section of the industry; and

10 (b) the ABA 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 the providers of broadcasting services in that section of the industry; and

15 (iii) members of the public have been given an adequate opportunity to comment on the code;

the ABA must include that code in the Register of codes of practice.

**ABA to maintain Register of codes of practice**

20 124.(1) The ABA is to maintain a Register in which it includes all codes of practice registered under section 123.

(2) The Register is to be open for public inspection.

(3) The Register may be maintained by electronic means.

**ABA may determine program standards where codes of practice fail or where no code of practice developed**

25 125.(1) If:

(a) the ABA is satisfied that there is convincing evidence that a code of practice registered under section 123 is not operating to provide appropriate community safeguards for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and

30

(b) the ABA is satisfied that it should determine a standard in relation to that matter;

the ABA must, by notice in writing, determine a standard in relation to that matter.

35 (2) If:

(a) no code of practice has been registered under section 123 for a matter referred to in subsection 123(2) in a particular section of the broadcasting industry; and

40

(b) the ABA is satisfied that it should determine a standard in relation to that matter;

the ABA must, by notice in writing, determine a standard in relation to that matter.

**Consultation on standards**

126. The ABA must, before determining, varying or revoking a standard, seek public comment on the proposed standard or the variation or revocation.

**Notification of determination or variation or revocation of standards** 5

127. If the ABA determines or varies or revokes a standard, the ABA 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. 10

**Standards to be disallowable by the Parliament**

128. Standards determined under section 122 or 125, and variations and revocations of those standards, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

**Limitation of ABA's power in relation to standards** 15

129.(1) Subject to subsection (2), the ABA must not determine a standard that requires that, before programs are broadcast, the programs, or a sample of the programs, be approved by the ABA or by a person or body appointed by the ABA.

(2) The ABA may determine such a standard in relation to programs for children. 20

**Application of the Trade Practices Act**

130. Nothing in this Part is to be taken as specifically authorising any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*. 25

**PART 10—REMEDIES FOR BREACHES OF LICENSING PROVISIONS**

*Division 1—Offences for providing unlicensed services*

**Prohibition on providing a commercial television broadcasting service without a licence** 30

131. A person must not provide a commercial television broadcasting service unless the person has a licence to provide that service.  
Penalty: \$2,000,000.

**Prohibition on providing a subscription television broadcasting service without a licence** 35

132.(1) A person must not provide a subscription television broadcasting service unless the person has been allocated a licence, under Part 7, to provide that service.

Penalty:

- (a) if the service is provided with the use of a satellite—\$2,000,000;  
or
- (b) in any other case—\$200,000.

- 5 (2) A person must not, before 1 July 1997, provide a subscription television broadcasting service with the use of a satellite unless the service is provided through a subscription television satellite.  
Penalty for an offence against this subsection: \$2,000,000.

10 **Prohibition on providing a commercial radio broadcasting service without a licence**

133. A person must not provide a commercial radio broadcasting service unless the person has a licence to provide that service.  
Penalty: \$200,000.

15 **Prohibition on providing a community television broadcasting service without a licence**

134. A person must not provide a community television broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.  
Penalty: \$50,000.

20 **Prohibition on providing a community radio broadcasting service without a licence**

135. A person must not provide a community radio broadcasting service with the use of the broadcasting services bands unless the person has a licence to provide that service.

25 Penalty: \$5,000.

**Continuing offences**

30 136. A person who breaches a provision of this Division is guilty of a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.

***Division 2—Action by ABA where a person provides a service without a licence***

**Notices for providing broadcasting services without appropriate authority**

- 35 137. If the ABA is satisfied that:
- (a) a person is providing:
    - (i) a commercial television broadcasting service; or
    - (ii) a commercial radio broadcasting service; or
    - (iii) a subscription television broadcasting service;

without a licence to provide that service; or  
(b) a person is providing a community broadcasting service without a licence to provide that service;  
the ABA may, by notice in writing given to the person, direct the person to cease to provide that service. 5

**Breach of notice under section 137 to constitute an offence**

**138.(1)** A person who fails to comply with a notice under section 137 is guilty of an offence.

Penalty:

- (a) if the notice was given under subparagraph 137(a)(i) or (iii)—\$2,000,000; or 10
- (b) if the notice was given under subparagraph 137(a)(ii)—\$200,000; or
- (c) if the notice was given under paragraph 137(b)—\$5,000.

(2) A person who breaches subsection (1) is guilty of a separate offence in respect of each day (including a day of a conviction under this subsection or any subsequent day) during which the failure to comply with the notice continues. 15

**Division 3—Action in relation to breaches by licensees**

**Offence for breach of conditions of licences and class licences 20**

**139.(1)** A commercial television broadcasting licensee who breaches a condition of the licence set out in subclause 7(1) of Schedule 2 is guilty of an offence.

Penalty: \$200,000.

(2) A subscription television broadcasting licensee who breaches a condition of a subscription television broadcasting licence set out in subclause 10(1) of Schedule 2 is guilty of an offence. 25

Penalty: \$100,000.

(3) A commercial radio broadcasting licensee who breaches a condition of the licence set out in subclause 8(1) of Schedule 2 is guilty of an offence. 30

Penalty: \$50,000.

(4) A community broadcasting licensee who breaches a condition of the licence set out in subclause 9(1) of Schedule 2 is guilty of an offence. 35

Penalty: \$5,000.

(5) A person who provides a subscription radio broadcasting service, a subscription narrowcasting service or an open narrowcasting service in breach of a condition set out in subclause 11(1) of Schedule 2 is guilty of an offence. 40

Penalty for an offence against this subsection: \$5,000.

**Continuing offences**

5     **140.** A person who breaches section 139 is guilty of a separate offence in respect of each day (including a day of a conviction under this section or any subsequent day) during which the breach continues.

**Notices to stop breaches of conditions of licences, class licences or of codes of practice**

**141.(1)** If the ABA is satisfied that:

- 10     (a) a commercial television broadcasting licensee, a commercial radio broadcasting licensee or a community broadcasting licensee is breaching a condition of the licence; or
- 15     (b) a person who is in a position to exercise control of a commercial television broadcasting licence or a commercial radio broadcasting licence is causing the licensee to breach a condition of the licence; or
- 20     (c) a subscription television broadcasting licensee is breaching a condition of a subscription television broadcasting licence; or
- (d) a person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence;

the ABA may, by notice in writing given to the person, direct the person to take action to ensure that the service is provided in a way that conforms to the requirements of the licence or class licence.

25     **(2)** If the ABA is satisfied that a person who is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services is doing so in deliberate disregard of a code of practice that applies to those services and that is included in the Register of codes of practice, the ABA may, by notice in writing given

30     to the person, direct the person to take action to ensure that those services are provided in accordance with that code of practice.

**(3)** The notice is to specify a period, not exceeding one month, during which the relevant action must be taken.

**Breach of notice under section 141 to constitute an offence**

35     **142.** A person who fails to comply with a notice under section 141 is guilty of an offence.

Penalty:

- 40     (a) if the notice was given to a commercial television broadcasting licensee, a person who is in a position to exercise control of a commercial television broadcasting licence or to a satellite subscription television broadcasting licensee—\$2,000,000; or
- (b) if the notice was given to a subscription television broadcasting

licensee, other than a satellite subscription television broadcasting licensee—\$200,000; or

- (c) if the notice was given to a commercial radio broadcasting licensee or a person who is in a position to exercise control of a commercial radio broadcasting licence—\$50,000; or 5
- (d) in any other case—\$5,000.

#### **Suspension and cancellation**

**143.(1)** If a commercial television broadcasting licensee, a commercial radio broadcasting licensee, a subscription television broadcasting licensee or a community broadcasting licensee: 10

- (a) fails to comply with a notice under section 141; or
- (b) breaches a condition of the licence;

the ABA may, by notice in writing given to the person:

- (c) suspend the licence for such period, not exceeding 3 months, as is specified in the notice; or 15
- (d) cancel the licence.

**(2)** If the ABA proposes to take action under subsection (1), the ABA must give to the person:

- (a) written notice of its intention; and
- (b) a reasonable opportunity to make representations to the ABA in relation to the proposed action. 20

#### ***Division 4—Action in relation to class licences***

##### **Application to Federal Court**

**144.(1)** If the ABA is satisfied that a person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the ABA may apply to the Federal Court for an order that the person cease providing those services. 25

**(2)** If the Federal Court is satisfied, on such an application, that the person is providing subscription radio broadcasting services, subscription narrowcasting services or open narrowcasting services otherwise than in accordance with the relevant class licence, the Federal Court may order the person to cease providing those services. 30

#### ***Division 5—Miscellaneous***

##### **Continuing offences** 35

**145.** In order to avoid any doubt, it is declared that section 4K of the *Crimes Act 1914* applies to the obligations under this Part to comply with a notice, other than a notice under section 137.



**Limitation on prosecutions**

5     **146.** A prosecution for an offence under this Part against a person in relation to a matter cannot be commenced if the ABA has given the person a notice under section 141 in relation to the matter and the time for compliance with the notice has not expired.

**PART 11—COMPLAINTS TO THE ABA**

***Division 1—Complaints relating to action under licences and class licences***

**Complaints relating to offences or breach of licence conditions**

10     **147.** If a person believes that another person who is providing a broadcasting service has:

- (a) committed an offence against this Act or the regulations; or
- (b) breached a condition of a licence or a class licence;

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

15     **Complaints under codes of practice**

**148.** If:

- (a) a person has made a complaint to a provider of broadcasting services on a matter relating to:

- 20         (i) program content; or
- (ii) compliance with a code of practice that applies to those services and that is included in the Register of codes of practice; and

- 25         (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:

- 30             (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 ABA about the matter.

**Investigation of complaints by the ABA**

**149.(1)** Subject to subsection (2), the ABA must investigate the complaint.

35     **(2)** The ABA need not investigate the complaint if it is satisfied that:

- 40         (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 section 147—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 ABA must notify the complainant of the results of such an investigation.

***Division 2—Complaints relating to national broadcasting services*** 5

**Complaints relating to national broadcasting services**

150. If:

- (a) a person has made a complaint to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation on the ground that that national broadcasting service has acted contrary to a code of practice developed by that national broadcasting service and notified to the ABA; and 10
- (b) either:
  - (i) the person has not received a response within 60 days after making the complaint; or 15
  - (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 ABA about the matter.

**Investigation of complaints relating to the ABC or SBS by the ABA**

151.(1) Subject to subsection (2), the ABA must investigate the complaint. 20

(2) The ABA 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 25
- (b) the complaint is not relevant to a code of practice developed by that national broadcasting service.

**Action by ABA where complaint justified**

152.(1) If, having investigated a complaint, the ABA is satisfied that: 30

- (a) the complaint was justified; and
- (b) the ABA should take action under this section to encourage the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation to comply with the relevant code of practice;

the ABA may, by notice in writing given to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, recommend that it take action to comply with the relevant code of practice and take such other action in relation to the complaint as is specified in the notice. 35

(2) That other action may include broadcasting or otherwise publishing an apology or retraction.

(3) The ABA must notify the complainant of the results of such an investigation.

5 **ABA may report to Minister on results of recommendation**

**153.(1)** If:

- (a) the ABA has made a recommendation to the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation under section 152; and
- 10 (b) the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation, as the case may be, does not, within 30 days after the recommendation was given, take action that the ABA considers to be appropriate;

the ABA may give the Minister a written report on the matter.

- 15 (2) The Minister must cause a copy of the report to be laid before each House of the Parliament within 7 sitting days of that House after the day on which he or she received the report.

**PART 12—THE AUSTRALIAN BROADCASTING AUTHORITY**

*Division 1—Establishment and constitution of the ABA*

20 **Establishment of the ABA**

**154.(1)** An authority called the Australian Broadcasting Authority is established.

(2) The ABA:

- (a) is a body corporate with perpetual succession; and
- 25 (b) has a seal; and
- (c) may sue and be sued in its corporate name.

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

30 **How the ABA is to be constituted**

**155.(1)** The ABA is to consist of:

- (a) a Chairperson; and
- (b) a Deputy Chairperson; and
- (c) not more than 5 other members.

- 35 (2) The members are to be appointed by the Governor-General.

(3) The Chairperson and Deputy Chairperson are to be appointed as full-time members.

(4) The other members may be appointed as full-time members or as part-time members, but members appointed as part-time members may be assigned by the Minister, acting on the advice of the ABA, on a full-time basis to a particular investigation or hearing.

**Minister may appoint associate members** 5

**156.(1)** The Minister may appoint persons to be associate members of the ABA for the purposes of:

- (a) a particular investigation or hearing; or
- (b) investigations or hearings of a particular type.

(2) An associate member's instrument of appointment must specify whether the associate member: 10

- (a) is appointed as a full-time associate member or a part-time associate member; and
- (b) is appointed generally or for the purposes of:
  - (i) a particular investigation or hearing; or 15
  - (ii) investigations or hearings of a particular type.

(3) A person may hold 2 or more appointments under this section at the same time.

**Period of appointment of members and associate members**

**157.(1)** A member holds office for the period, not exceeding 5 years, specified in the instrument of appointment. 20

(2) A person may, on one occasion only, be re-appointed as a member.

(3) Subject to subsection (4), an associate member holds office for the period, not exceeding 5 years, specified in the instrument of appointment, but is eligible for re-appointment. 25

(4) If an associate member has been appointed for the purposes of a particular investigation or hearing, the associate member holds office:

- (a) until the completion of the investigation or hearing; or
- (b) until the end of the period specified in the instrument of appointment; 30

whichever first occurs.

(5) If a member or an associate member is conducting, or is part of the panel conducting, an investigation or hearing for the ABA, the Minister may extend the term of the member's appointment until the completion of the investigation or hearing. 35

**Division 2—Functions and powers of the ABA**

**Primary functions of the ABA**

**158.** The primary functions of the ABA are:

- (a) to provide advice to the Minister in relation to the spectrum 40

- plan and frequency band plans under the *Radiocommunications Act 1983* and the designation under that Act of bands for broadcasting services use; and
- 5 (b) to plan the availability of segments of the broadcasting services bands on an area basis; and
- (c) to allocate, renew, suspend and cancel licences and to take other enforcement action under this Act; and
- 10 (d) to conduct investigations or hearings relating to the allocating of licences for community radio and community television services; and
- (e) to design and administer price-based systems for the allocation of commercial television broadcasting licences and commercial radio broadcasting licences; and
- (f) to collect any fees payable in respect of licences; and
- 15 (g) to conduct or commission research into community attitudes on issues relating to programs; and
- (h) to assist broadcasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards; and
- 20 (i) to monitor compliance with those codes of practice; and
- (j) to develop program standards relating to broadcasting in Australia; and
- (k) to monitor compliance with those standards; and
- 25 (l) to monitor and investigate complaints concerning broadcasting services (including national broadcasting services); and
- (m) to inform itself and advise the Minister on technological advances and service trends in the broadcasting industry; and
- (n) to monitor, and to report to the Minister on, the operation of this Act.

30 **Additional functions of the ABA**

159. The ABA has such other functions as are conferred on it by this or another Act.

**General obligations of the ABA**

35 160. The ABA is to perform its functions in a manner consistent with:

- (a) the objects of this Act and the regulatory policy described in section 4; and
- (b) any general policies of the Government notified by the Minister under section 161; and
- 40 (c) any directions given by the Minister in accordance with this Act; and
- (d) Australia's obligations under any convention to which Australia

is a party or any agreement between Australia and a foreign country.

**Minister may notify the ABA of general policies of the Government that are to apply to the ABA**

161. The Minister may notify the ABA in writing of general policies of the Government that are to apply to the ABA. 5

**Minister may give directions to ABA**

162.(1) The Minister may give written directions to the ABA as to the performance of its functions but, except as otherwise specified in this Act, directions are to be only of a general nature. 10

(2) The Minister must cause a copy of each direction given to the ABA to be published in the *Gazette* as soon as practicable after giving the direction.

**ABA not otherwise subject to direction**

163. Except as otherwise provided by this or another Act, the ABA is not subject to direction by or on behalf of the Commonwealth. 15

**General powers of the ABA**

164.(1) In addition to any other powers conferred on it by this or another Act, the ABA has power to do things that are necessary or convenient to be done for or in connection with the performance of its functions. 20

(2) The ABA has power:

- (a) to acquire, hold and dispose of real and personal property; and
- (b) to enter into contracts.

**Division 3—Staff of the ABA** 25

**Staff**

165.(1) The staff of the ABA are to be persons appointed or employed under the *Public Service Act 1922*.

(2) The Chairperson has all the powers of a Secretary under the *Public Service Act 1922* as they relate to the branch of the Australian Public Service comprising the staff of the ABA. 30

(3) The ABA may make arrangements with an authority of the Commonwealth for the services of officers of that authority to be made available for the purposes of the ABA.

**Consultants** 35

166. The ABA may engage consultants to assist it in the performance of its functions.

**Division 4—Administrative provisions**

**Administrative provisions**

167. The administrative provisions set out in Schedule 3 apply to the ABA.

5 **PART 13—INFORMATION GATHERING BY THE ABA**

**Division 1—Introduction**

**Obtaining of information by the ABA**

168.(1) In informing itself on any matter relevant to its functions, the ABA:

- 10 (a) may consult with such persons, bodies and groups as it thinks fit, and may form consultative committees for that purpose; and  
(b) may conduct investigations and hold hearings; and  
(c) may otherwise inform itself in any manner it thinks fit.

15 (2) Subject to any directions by the Minister under this Part, the procedure that the ABA adopts in informing itself on any matter relevant to its functions is to be that which the ABA considers:

- (a) will be the quickest and most economical in the circumstances; and  
20 (b) will also promote the due administration of this Act.

**Decision-making by the ABA not limited to matters discovered by investigation or hearing**

169. In making a decision on any matter, the ABA is not limited to a consideration of material made available through an investigation or hearing conducted in relation to the matter, but may take into account such other matters as it considers relevant, including the knowledge and experience of the members.

**Division 2—Investigations**

**Investigations by the ABA**

30 170. The ABA may conduct investigations for the purposes of the performance or exercise of any of its functions and powers.

**Minister may direct an investigation**

35 171. If the Minister is satisfied that a particular matter should be investigated in the interests of the due administration of this Act, the Minister may direct the ABA in writing to conduct an investigation into the matter.

**ABA may call for written submissions from the public**

172. The ABA may, in conducting an investigation for the purposes of the performance or exercise of any of its functions and powers, call for written submissions from members of the public.

**Notice requiring appearance for examination**

5

173. For the purposes of an investigation, the ABA may give a notice in writing to a person summoning the person:

- (a) to attend before a delegate of the ABA named in the notice to produce documents or to answer questions; or
  - (b) to provide documents or other information to the ABA; 10
- relevant to the subject matter of the investigation.

**Examination on oath or affirmation**

174.(1) If a person is summoned to attend before a delegate of the ABA, the delegate may examine that person on oath or affirmation and, for that purpose: 15

- (a) may require the person to take an oath or make an affirmation; and
- (b) may administer an oath or affirmation to the person.

(2) The oath or affirmation is to be an oath or affirmation that the statements the person will make will be true to the best of the person's knowledge or belief. 20

(3) The delegate may require the person to answer a question that is put to the person at an examination and that is relevant to a matter that the ABA is investigating or is to investigate.

**Examination to take place in private**

25

175. The examination of a person for the purposes of an investigation must be conducted in private, but the person is entitled to have an adviser present at the examination.

**Record to be made of examination**

176.(1) If a person is examined by a delegate of the ABA, a record must be made of the examination and the person is entitled to be given a written copy of the record. 30

(2) If the record of the examination of a person is made in electronic form, the person is, if the person so requests, to be given a copy of the record in that form. 35

**Production of documents for inspection**

177. The ABA may, by notice in writing given to a person, require the person:

- (a) to make available for inspection by a member of the staff of the ABA any documents in the possession of the person that 40



may contain information relevant to the subject matter of an investigation; and

(b) to permit that member to make copies of any such documents.

**Report on investigation**

5      **178.(1)** The ABA may prepare a report on an investigation, and must prepare a report on an investigation conducted at the direction of the Minister and give a copy of each report conducted at the direction of the Minister to the Minister.

10     **(2)** If a report on an investigation relates to conduct that could constitute an offence under this Act or another law of the Commonwealth, the ABA may give a copy of the report or of a part of the report to the Director of Public Prosecutions.

**Publication of report**

15     **179.(1)** Except in the case of a report prepared as a result of an investigation directed by the Minister, the ABA may cause a copy of a report on an investigation to be published.

**(2)** The Minister may direct the ABA to publish a report on an investigation directed by the Minister.

20     **(3)** The ABA is not required to publish, or to disclose to a person to whose affairs it relates, a report or part of a report if the publication or disclosure would:

- (a) disclose matter of a confidential character; or
- (b) be likely to prejudice the fair trial of a person.

**Person adversely affected by report to be given opportunity to comment**

25     **180.** If publication of matter in a report or part of a report would or would be likely to adversely affect the interests of a person, the ABA must not publish the report or the part of the report until it has given the person a reasonable period, not exceeding 30 days, to make representations, either orally or in writing, in relation to the matter.

30                                                    *Division 3—Hearings*

**Interpretation—members to include associates**

**181.** In this Division, “member” includes an associate member.

**Power to hold hearings**

35     **182.** The ABA may hold hearings for the purposes of the performance or exercise of any of its functions or powers.

**Minister may direct ABA to hold a hearing**

40     **183.** If the Minister is satisfied that the ABA should, in the interests of the due administration of this Act, hold a hearing in relation to any matter, the Minister may direct the ABA in writing to hold a hearing in relation to the matter.

**Procedure for conduct of hearings**

**184.(1)** Subject to this Division, the procedure for the conduct of a hearing is within the discretion of the ABA.

(2) The ABA may give directions, either generally or in relation to a particular case, for the procedures to be followed in relation to the conduct of hearings. 5

**ABA may direct holding of conference**

**185.(1)** The ABA may, at any stage of a hearing, direct persons participating or seeking to participate in the hearing to attend a conference before a member of the ABA or a member of the staff of the ABA for the purpose of: 10

- (a) discussing matters relevant to the hearing; or
- (b) clarifying any of the matters to be dealt with by the hearing; or
- (c) resolving any differences between the persons participating in the hearing. 15

(2) If a person who is directed to participate in a conference in relation to a hearing fails, without reasonable excuse, to attend the conference, the person may be excluded from participation or further participation in the hearing.

**Hearings to be informal, quick and economical** 20

**186.(1)** A hearing is to be conducted:

- (a) with as little technicality and formality; and
- (b) as quickly and economically;

as the requirements of this Act and a proper consideration of the matters before the ABA permit. 25

(2) In holding a hearing, the ABA is not bound by the rules of evidence.

**Hearings to be in public except in exceptional cases**

**187.(1)** Subject to subsection (2), a hearing conducted by the ABA must take place in public. 30

(2) A hearing or a part of a hearing may be conducted in private if:

- (a) evidence that may be given, or a matter that may arise, during the hearing or the part of the hearing is of a confidential nature; or
- (b) the ABA is satisfied that hearing a matter or part of a matter in public would not be conducive to the due administration of this Act. 35

**Public notice of hearings**

188. If the ABA is to conduct a hearing in public, the ABA must give reasonable public notice of the conduct of the hearing.

**Confidential material not to be published**

- 5 189. If a hearing or part of a hearing takes place in public, the ABA may order that evidence or other material presented to the hearing, or material in a submission lodged with the ABA under section 196, that is, in the opinion of the ABA, of a confidential nature not be published, or that its disclosure be restricted as directed by the ABA.

10 **Directions as to private hearings**

190. If a hearing or part of a hearing takes place in private, the ABA:

- (a) must give directions as to the persons who may be present at the hearing or the part of the hearing; and  
15 (b) may give directions restricting the disclosure of evidence or other material presented at the hearing or the part of the hearing.

**Constitution of ABA for conduct of hearings**

20 191. The ABA is to be constituted for the purposes of a hearing by a panel consisting of such members as the Chairperson directs.

**Presiding member**

192. A panel conducting a hearing is to be presided over by the Chairperson or, if the Chairperson is not a member of the panel, by such member of the panel as the Chairperson directs.

25 **Reconstitution of hearing panel**

193.(1) If, during the course of a hearing:

- (a) it appears to the Chairperson that, because of the importance of the matters in issue the panel conducting a hearing should be reconstituted by the addition to that panel of one or more  
30 additional members; or  
(b) a member of the panel conducting the hearing is unable to continue with the hearing;

the Chairperson may direct that the panel be reconstituted.

35 (2) All proceedings in the hearing that have taken place before the reconstitution of the panel are, unless the panel as reconstituted otherwise directs, to be taken to have taken place before the reconstituted panel.

**Exercise of powers in relation to conduct of hearing**

40 194. The powers of the ABA in relation to the conduct of a particular hearing may be exercised:

- (a) by the panel conducting that hearing; or

- (b) by the Chairperson; or
- (c) by a member of the ABA authorised by the Chairperson to exercise those powers in relation to the hearing.

**Summons to give evidence or produce documents**

- 195.(1)** The member presiding at a hearing may: 5
- (a) by notice in writing given to a person, summon that person to appear before the ABA as constituted for the purposes of the hearing to give evidence in relation to the subject matter of the hearing or to produce to the ABA such documents as are specified in the notice, or to do both; or 10
  - (b) require a person appearing to give evidence either to take an oath or to make an affirmation; or
  - (c) administer an oath or affirmation to a person so appearing.
- (2) The oath or affirmation to be taken or made by a person is an oath or affirmation that the evidence the person will give will be true. 15

**Written submissions may be made to hearing**

**196.** A person may lodge with the ABA any submissions in writing that the person wishes the ABA to take into account in relation to the subject matter of the hearing.

**Evidence and submissions to be taken into account by ABA** 20

- 197.** The ABA must take into account:
- (a) evidence given, or a submission made, to it at a hearing; or
  - (b) a submission lodged with it in relation to the hearing;
- in making a decision on a matter to which the evidence or submission relates. 25

**Representation at hearings**

- 198.(1)** A person who wishes to participate in a hearing may be represented at the hearing by another person.
- (2) As far as practicable, the ABA is to ensure that a person is not at a disadvantage at a hearing because that person is not represented by another person. 30

**Reports on hearings**

- 199.(1)** If the ABA has completed a hearing, the ABA must prepare and publish a report setting out its findings as a result of the hearing.
- (2) If the hearing was conducted at the direction of the Minister, the ABA must give a copy of the report to the Minister. 35
- (3) The ABA is not required to include in a report any material:
- (a) that is of a confidential nature; or

- (b) the disclosure of which is likely to prejudice the fair trial of a person; or
- (c) that is the subject of an order or direction under section 189 or 190.

5

**Division 4—General**

**Protection of members and persons giving evidence**

200.(1) A person who is a member of the panel conducting a hearing has in the performance of his or her duties as a member of the panel the same protection and immunity as a Justice of the High Court.

10 (2) A lawyer appearing before the ABA at a hearing as the representative of another person has the same protection and immunity as a barrister has in appearing for a party in proceedings in the High Court.

15 (3) A person who is summoned to appear at a hearing, or a person who gives evidence or produces documents at an investigation or a hearing, has the same protection as a witness in a proceeding in the High Court.

**Protection of panel conducting hearing**

201. A person must not:

- 20 (a) obstruct a member of a panel conducting a hearing; or
- (b) disrupt a hearing; or
- (c) do any other act or thing that would, if the hearing were a proceeding in the High Court, constitute a contempt in the face of that Court.

25 Penalty: Imprisonment for one year.

**Non-compliance with requirement to give evidence**

202.(1) A person required to give evidence or to produce documents at a hearing must not, without reasonable excuse:

- 30 (a) fail to attend as required by the notice; or
- (b) fail to appear and report from day to day unless excused or released from further attendance.

(2) A person required to answer a question, to give evidence or to produce documents under this Part must not, without reasonable excuse:

- 35 (a) when required to take an oath or make an affirmation, refuse or fail to take the oath or make the affirmation; or
- (b) refuse or fail to answer a question that the person is required to answer; or
- (c) refuse or fail to produce a document that the person is required to produce.

40 Penalty: Imprisonment for one year.

(3) For the avoidance of doubt, it is declared that it is a reasonable excuse for a person to refuse to answer a question or to produce a document if the answer to the question or the production of the document would tend to incriminate the person.

**Proceedings for defamation not to lie** 5

203. No action or proceeding, whether civil or criminal, lies:

- (a) against the Commonwealth, the Minister, the ABA, a member of the staff of the ABA, a person who is a member of the panel constituting a hearing or a person acting with the authority of the ABA in respect of the printing or publishing of a report of an investigation or a transcript of proceedings at a hearing; or 10
- (b) in respect of the publication, by any means, of a fair and accurate report of proceedings at a hearing.

**PART 14—APPEALS TO THE ADMINISTRATIVE APPEALS TRIBUNAL** 15

**Appeals to the Administrative Appeals Tribunal**

204. Subject to this section, an application may be made to the Administrative Appeals Tribunal for a review of a decision set out in column 1 of the table made under the provision of this Act set out in column 2, but such an application may only be made by the person described in column 3. 20

**TABLE**

Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
Declaration that a program is not an Australian drama program	Subsection 6(3)	The producer of the program
Refusal to allocate licence	Subsection 40(1)	The applicant
That a person is not a suitable applicant or licensee (Commercial)	Subsection 41(2)	The person
Variation of licence conditions or imposition of new conditions (Commercial)	Subsection 43(1)	The licensee
Refusal to approve higher percentage of foreign directors	Subsection 58(2)	The licensee

*Broadcasting Services No. 110, 1992*

<b>Column 1 Decision</b>	<b>Column 2 Provision</b>	<b>Column 3 Person who may apply</b>
To enter a newspaper in Register	Subsection 59(3)	The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area
Refusal to remove newspaper from Register	Subsection 59(4)	The publisher of a newspaper or a commercial television broadcasting licensee in the relevant licence area
Refusal to approve temporary breach or determination of period of approval	Subsection 67(4)	The applicant for approval
Refusal to extend time for compliance	Subsection 68(2)	The applicant
Refusal to extend time for compliance	Subsection 71(3)	The applicant
Refusal to permit licensee to operate second service	Subsection 73(2)	The licensee or another person who is interested in operating the licence
Refusal to extend period for operating second service	Subsection 73(3)	The licensee
That a person is not a suitable applicant or licensee (Community)	Subsection 83(2)	The person
Variation of licence conditions or imposition of new conditions (Community)	Subsection 87(1)	The licensee
Refusal to allocate licence	Subsection 98(1)	The applicant

Column 1 Decision	Column 2 Provision	Column 3 Person who may apply
That a person is not a suitable applicant or licensee	Subsection 99(2)	The person
Variation of conditions or imposition of new conditions	Subsection 100(2)	The licensee
To enter a newspaper in the Register	Subsection 105(2)	The publisher
Refusal to remove newspaper from the Register	Subsection 105(3)	The publisher
Variation of class licence conditions or imposition of new conditions	Subsection 120(1)	A person operating under the class licence
Refusal to include a code of practice in the Register	Subsection 123(4)	The relevant industry group
Suspension or cancellation of licence	Subsection 143(1)	The licensee

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

205. If the ABA makes a decision that is reviewable under section 204, the ABA 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.

5

**PART 15—MISCELLANEOUS**

**Broadcasting taken to be publication in permanent form**

10

206. For the purposes of the law of defamation, the broadcasting of matter is taken to be publication of the matter in a permanent form.

**Amounts of fees**

207. Where the Minister or the ABA may determine a fee under this Act, the amount of the fee so determined must not exceed the amount that the Minister or the ABA estimates to be costs of processing the application, or doing the thing, to which the fee relates.

15



**Supplying false or misleading information**

208. A person must not, in an application to the ABA, or in a response to the ABA for a request for information, make a statement that the person knows to be false or misleading in a material particular.

5 Penalty: Imprisonment for one year.

**Prosecutions**

209.(1) An offence against this Act may be prosecuted at any time.

10 (2) A prosecution for an offence against this Act the maximum penalty for which exceeds \$50,000 for a natural person may be brought only in the Federal Court.

(3) Subsection (2) does not apply to an offence the maximum penalty for which may include a term of imprisonment.

(4) The Federal Court has jurisdiction to hear and determine matters arising under this Act.

15 **Publication of opinions**

210.(1) Subject to subsection (2), if the ABA gives an opinion under section 21 or 74, the ABA must cause a copy of the opinion to be published in the *Gazette*.

(2) The ABA must not publish such an opinion until:

20 (a) in the case of an opinion under section 21—the service to which it relates has commenced; or

(b) in the case of an opinion under section 74—the transaction has taken place or the contract, agreement or arrangement has been entered into.

25 **Service of notices**

211. In addition to other methods of giving a notice to a person, a notice under this Act may be given to a person by telex or by facsimile transmission.

**Special provisions for re-transmission of programs**

30 212.(1) Subject to subsection (2), the regulatory regime established by this Act does not apply to a service that does no more than:

(a) re-transmit programs that are transmitted by a national broadcasting service; or

35 (b) re-transmit programs that are transmitted by a commercial broadcasting licensee or a community broadcasting licensee:

(i) within the licence area of that licence; or

(ii) outside the licence area of that licence in accordance with permission in writing given by the ABA.

40 (2) No action, suit or proceeding lies against a person in respect of the re-transmission by the person of programs as mentioned in

subsection (1) unless, at the time of the re-transmission, the person is also a licensee.

**Penalties for continuing offences**

213. If an offence against this Act is a continuing offence (whether under this Act or because of section 4K of the *Crimes Act 1914*), the maximum penalty for each day that the offence continues is 10% of the maximum penalty that could be imposed in respect of the principal offence. 5

**Procedure relating to continuing offences**

214.(1) Where subsection 66(2), section 136, subsection 138(2) or section 140 applies to an offence against a provision of this Act, charges against the same person for any number of offences against that provision may be joined in the same information, complaint or summons if those charges are founded on the same facts or form, or are part of a series of offences of the same or a similar character. 10 15

(2) If a person is convicted of 2 or more offences against such a provision, the court may impose one penalty in respect of both or all of those offences, but that penalty must not exceed the sum of the maximum penalties that could be imposed if a separate penalty were imposed in respect of each offence. 20

**Review of television broadcasting industry**

215. The Minister must, before 1 July 1997, conduct a review of the television broadcasting industry to assess:

- (a) the national benefits that would accrue if more than 3 commercial television broadcasting services were permitted in licence areas; and 25
- (b) the operation of the condition relating to Australian content on satellite subscription television broadcasting licensees.

**Ministerial consultative and advisory bodies**

216. The Minister may form consultative or advisory bodies to assist the Minister in the administration of this Act. 30

**Regulations**

217.(1) The Governor-General may make regulations prescribing matters: 35

- (a) required or permitted to be prescribed by this Act; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may prescribe penalties, not exceeding \$25,000 for a company or \$5,000 for a natural person, for offences against the regulations. 40

*Broadcasting Services No. 110, 1992*

**Channel sharing**

5     **218.(1)** The regulations may make provision for the allocation by the ABA of additional commercial television broadcasting licences, commercial radio broadcasting licences and community broadcasting licences on the application of an existing licensee.

**(2)** Those additional licences are:

- (a)** to be allocated to a person other than the licensee; and
  - (b)** to allow the provision of broadcasting services with the use of the same part of the broadcasting services bands or other means of delivery as is used by the licensee.
- 10

**(3)** The provisions of this Act, other than the provisions dealing with advertising for or allocating licences, apply to those additional licences.

15     **(4)** If such an additional licence would use a part of the broadcasting services bands being used by a community broadcasting licensee, services under that licence can only be provided with the approval of the ABA.

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## **SCHEDULE 1**

### **CONTROL AND OWNERSHIP OF COMPANY INTERESTS**

#### **PART 1—INTRODUCTION**

##### **Control—general**

**1.(1)** This Schedule is intended to provide a means of finding out who is in a position to exercise control of commercial television broadcasting licences, commercial radio broadcasting licences, newspapers and companies and a means of tracing company interests.

This Schedule recognises that the concept of control of a commercial broadcasting licence, a newspaper or a company can be a complex one.

The holding of company interests is not the only way to be in a position to exercise control. Clauses 2 and 3 set out the rules for deciding when a position to exercise control exists. While company interests may be important in deciding that question, they are only one issue. In some cases, it may be important to look at agreements and arrangements between people and at accustomed courses of conduct between people. In this respect, the definition of “associate” in section 6 of this Act is important.

There are obvious examples of control. Where a person has company interests exceeding 50% in a company, the person could be expected to be in a position to exercise control of the company.

Generally, a person who has company interests exceeding 15% in a company is, for most practical purposes, in a position to exert significant influence over the company. Therefore, a person who has company interests exceeding 15% in a company is, in the absence of proof to the contrary, to be regarded as being in a position to exercise control of the company.

Again, there are cases where a person who would, looking at the person’s company interests (say 51%), be expected to be in a position to exercise control of the company but is not because of a number of other circumstances. Such a situation could arise, for example, where the person had given undertakings to a lender that the lender have a significant say in the activities of the company. Looking at the situation from the lender’s point of view, control can come about without any company interest at all.

Control of a company may also come about through company interests of 15% or less. This could happen where a person holds company interests of say 10% but no other person holds company interests of more than say 2% and those other persons do not act in concert.

A person may be in a position to exercise control of only the media activities of a licensee or a newspaper, but that position is nevertheless

**SCHEDULE 1—continued**

to be regarded as a position to exercise control of the licence or the newspaper.

(2) Because of the complexities involved in this area, it is not possible to provide rules which will give a definite answer in all cases. Therefore, the ABA is given a monitoring role over the broadcasting industry and suitable powers of investigation in order to reach a conclusion as to whether a person is in a position to exercise control or not. In order to provide certainty for persons involved in the industry, the ABA is also given, under section 74, a power to give a binding opinion on the question of control.

**PART 2—WHEN PERSON IS IN A POSITION  
TO EXERCISE CONTROL**

**When person is in a position to exercise control**

**2.(1)** For the purposes of this Schedule, a person is in a position to exercise control of a licence or a company if:

- (a) the person, either alone or together with an associate of the person, is in a position to exercise control of the licensee or the company; or
- (b) in the case of a licence:
  - (i) the person is the licensee; or
  - (ii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of the selection or provision of a significant proportion of the programs broadcast by the licensee; or
  - (iii) the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the licensee in providing broadcasting services under the licence; or
- (c) in the case of a non-licensee company—the person, either alone or together with an associate of the person, is in a position to exercise (whether directly or indirectly) control of a significant proportion of the operations of the company; or
- (d) the person, either alone or together with an associate of the person, is in a position to:
  - (i) veto any action taken by the board of directors of the licensee or the company; or
  - (ii) appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the licensee or the company; or

**SCHEDULE 1—continued**

- (iii) exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the licensee or the company; or
- (e) the licensee or the company or more than 50% of its directors:
  - (i) act, or are accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;  
in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Paragraph (1)(b) does not apply to the provision of programs by a person to a licensee under an agreement for the supply of programs to a licensee if the conditions of the agreement relate only to the programs so supplied or their promotion.

(3) An employee of a licensee or of a non-licensee company is not, except through an association with another person, to be regarded as being in a position to exercise control of a licence or a company under subclause (1) purely because of being an employee.

(4) More than one person may be in a position to exercise control of a licence or a company.

**When person is in a position to exercise control of a newspaper**

**3.(1)** For the purposes of this Schedule, a person is in a position to exercise control of a newspaper if:

- (a) the person is the publisher of the newspaper; or
- (b) the person is in a position, either alone or together with an associate of the person and whether directly or indirectly:
  - (i) to exercise control of a significant proportion of the operations of the publisher in publishing the newspaper; or
  - (ii) to exercise control of the selection or provision of a significant proportion of the material to be published in the newspaper; or
- (c) if the newspaper is published by a company:
  - (i) the person is in a position, either alone or together with an associate of the person, to exercise control of the company; or
  - (ii) the person, either alone or together with an associate of the person, is in a position to veto any action taken by the board of directors of the company; or

**SCHEDULE 1—continued**

- (iii) the person, either alone or together with an associate of the person, is in a position to appoint or secure the appointment of, or veto the appointment of, at least half of the board of directors of the company; or
- (iv) the person, either alone or together with an associate of the person, is in a position to exercise, in any other manner, whether directly or indirectly, direction or restraint over any substantial issue affecting the management or affairs of the company; or
- (v) the company or more than 50% of its directors:
  - (A) act, or are accustomed to act; or
  - (B) under a contract or an arrangement or understanding (whether formal or informal) are intended or expected to act;in accordance with the directions, instructions or wishes of, or in concert with, the person or of the person and an associate of the person acting together or, if the person is a company, of the directors of the person.

(2) Subparagraph (1)(b)(ii) does not apply to the provision of material by a person to a newspaper under an agreement for the supply of material of that kind if the conditions of the agreement relate only to the material so supplied.

(3) An employee of the publisher of a newspaper is not, except through an association with another person, to be regarded as being in a position to control the newspaper under subclause (1) purely because of being an employee.

**Special provisions for authorised lenders**

**4.(1)** Subject to subclause (2), if an authorised lender has a loan agreement with a media company:

- (a) the agreement; and
- (b) any other agreement or transaction that is:
  - (i) associated with the loan agreement; and
  - (ii) entered into in the ordinary course of carrying on a business of providing financial accommodation; and
- (c) anything done under the loan agreement or under an agreement or transaction referred to in paragraph (b), being a thing done in the ordinary course of carrying on a business of providing financial accommodation;

are to be disregarded in deciding whether the lender or any controller of the lender is in a position to exercise control of the media company or of any licence or newspaper of which the media company is in a position to exercise control.

**SCHEDULE 1—continued**

(2) Subclause (1) does not apply in relation to being in a position to exercise control of a licence if the lender or a controller of the lender:

- (a) prevents the licensee from complying with a condition of the licence; or
- (b) controls the selection or provision of any of the programs to be broadcast by the licensee; or
- (c) appoints or secures the appointment of at least half of the board of directors of the licensee; or
- (d) vetoes the appointment of at least half of the board of directors of the licensee otherwise than:
  - (i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and
  - (ii) in the ordinary course of carrying on a business of providing financial accommodation.

(3) Subclause (1) does not apply in relation to being in a position to exercise control of a newspaper if the lender or a controller of the lender:

- (a) controls the selection or provision of any of the material to be published in the newspaper; or
- (b) appoints or secures the appointment of at least half of the board of directors of the media company that publishes the newspaper; or
- (c) vetoes the appointment of at least half of the board of directors of the media company that publishes the newspaper otherwise than:
  - (i) under a loan agreement or an agreement or transaction referred to in paragraph (1)(b); and
  - (ii) in the ordinary course of carrying on a business of providing financial accommodation.

(4) In this clause:

**“authorised lender”** means:

- (a) a bank within the meaning of the *Banking Act 1959*; or
- (b) a corporation formed under the law of a State or Territory to carry on the business of banking within Australia; or
- (c) a corporation whose sole or principal business is the provision of financial accommodation to other persons, being a corporation:
  - (i) that is registered as a financial institution under the *Financial Corporations Act 1974*; or
  - (ii) in respect of which a declaration under subclause (5) is in force; or



**SCHEDULE 1—continued**

- (iii) in respect of which an application for such a declaration has been made but not finally disposed of;

**“controller”**, in relation to an authorised lender, means a person who is in a position to exercise control of the lender;

**“loan agreement”**, in relation to a company, means an agreement entered into in the ordinary course of carrying on a business of providing financial accommodation under which:

- (a) financial accommodation is provided to the company; or
- (b) money is deposited with the company; or
- (c) a debt or liability (whether or not financial) of the company arises;

whether or not:

- (d) the financial accommodation, money, debt or liability is secured; or
- (e) money payable by the company under the agreement is presently payable; or
- (f) liability arising under the agreement is unconditional;

**“media company”** means:

- (a) a company that holds a commercial television broadcasting licence or a commercial radio broadcasting licence; or
- (b) a company that holds a subscription television broadcasting licence; or
- (c) a company that publishes a newspaper; or
- (d) a company that is in a position to exercise control of such a company.

(5) The ABA may, in writing, declare a corporation (whether formed inside or outside Australia) whose sole or principal business is the provision of financial accommodation to other persons to be an authorised lender for the purposes of this clause.

**PART 3—DEEMED CONTROL**

**Explanation of examples**

5. In an example in this Part, a percentage written next to an arrow indicates that the person before the arrow has company interests in the company to which the arrow is pointing which exceeds that percentage.

**The 15% rule**

6.(1) If a person has company interests in a company exceeding 15%, the person is, in the absence of proof to the contrary, to be regarded as being in a position to exercise control of the company.

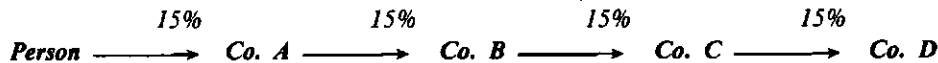
**SCHEDULE 1—continued**

(2) If another person who is not an associate has company interests in the company exceeding 50%, the person referred to in subclause (1) is not to be regarded as being in a position to exercise control of the company only by the operation of this rule.

**Application of method through chain of companies**

7. The method described in clause 6 can be applied in the case of a chain of companies. Where a company interest of more than 15% is maintained throughout the chain, the person can still be expected to be in a position to exercise control of the last company in the chain.

**Example:**



Here the person could ordinarily be expected to be in a position to exercise control of Company D. This would, of course, be subject to the exception in subclause 6(2).

The exception in subclause 6(2) could apply at any level in the chain of companies.

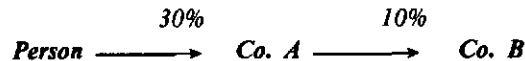
**PART 4—TRACING OF OWNERSHIP**

**Tracing of ownership**

8. Company interests can be traced through a chain of companies using a method known as the fractional tracing method. This method applies a formula to decide what company interest a person has.

This method is best demonstrated by an example.

**Example:**



The person's company interest in Company B is worked out using the formula:

$$\text{Company Interest 1} \times \text{Company Interest 2}$$

where:

"Company Interest 1" is the company interest of the person, expressed as a fraction, in Company A;

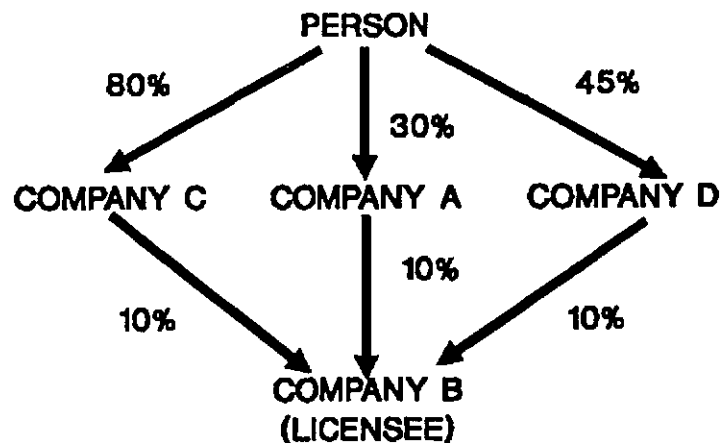
"Company Interest 2" is the company interest of Company A, expressed as a fraction, in Company B.

In this case, the formula produces:  $3/10 \times 1/10$ , which means that the person has a 3% company interest in Company B.

SCHEDULE 1—continued

Interests traced in this way can be added. If Company B is a licensee and the person had, through other chains of companies, a further 12.5% company interest in Company B, the person would *prima facie* be regarded as being in a position to exercise control of Company B under Part 3 of this Schedule because the person would have company interests exceeding 15% in Company B.

*Example:*



In this example, the person has a 15.5% company interest in Company B. This is made up of 3% (through Company A), 8% (through Company C) and 4.5% (through Company D).

This method of tracing ownership may be used through any number of companies. However, the ABA is not required to trace every minor company interest.

**SCHEDULE 2**

**STANDARD CONDITIONS**

**PART 1—INTERPRETATION**

**Definitions**

1. In this Schedule:

**“election”** means an election to a Parliament or a local government authority of a State or Territory;

**“election advertisement”**, in relation to an election, means:

- (a) an advertisement:
  - (i) that contains election matter that relates to that election; and
  - (ii) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or
- (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
- (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party;

**“election matter”**, in relation to an election, means matter of any of the following kinds:

- (a) matter commenting on, or soliciting votes for, a candidate at the election;
- (b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;
- (c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;
- (d) matter referring to a meeting held or to be held in connection with the election;

**“election period”** means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days

**SCHEDULE 2—continued**

before the polling day for the election and ends at the close of the poll on that day; and

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

**“medicine”** means a drug within the meaning of the Therapeutic Goods Regulations made under the *Therapeutic Goods Act 1989*, but does not include such a drug that, under paragraph 3(2)(b) of that Act, is not therapeutic goods for use in humans;

**“person”** includes a political party, a corporation and any other association (whether incorporated or unincorporated);

**“political matter”** means any political matter, including the policy launch of a political party;

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

**“relevant period”**, in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day;

**“required particulars”**, in relation to a political matter that is broadcast, means:

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

**SCHEDULE 2—continued**

- (i) the name of the person who authorised the broadcasting of the political matter; and
  - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter;

**“required period”**, in relation to the keeping of a record in relation to political matter, means:

- (a) subject to paragraph (b), the period of 6 weeks commencing on the day on which the matter was broadcast; or
- (b) if the matter relates to an election or referendum and was broadcast during the election period in relation to the election or referendum—the period commencing on the day on which the matter was broadcast and ending:
  - (i) at the end of the period referred to in paragraph (a); or
  - (ii) if that period ends before the end of the election period in relation to the election or referendum—the day on which that election period ends;

or such longer period as the ABA, before the end of that period, directs by notice in writing to the broadcaster concerned.

**Interpretation—certain things do not amount to broadcasting of advertisements**

**2.(1)** For the purposes of this Schedule, a person is not taken to broadcast an advertisement if:

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and
- (b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

**(2)** For the purposes of this Schedule, the broadcasting by a community broadcasting licensee of:

- (a) community information material or community promotional material; or
- (b) a sponsorship announcement that acknowledges financial support by a person of the licensee, whether or not the announcement:
  - (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
  - (ii) promotes activities, events, products, services or programs of the person; or

**SCHEDULE 2—continued**

- (c) material that announces or promotes the service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the services provided under the licence;

is not taken to be the broadcasting of an advertisement.

**PART 2—SPECIAL CONDITIONS**

**Broadcasting of political or controversial material**

**3.(1)** In this clause, “**broadcaster**” means:

- (a) a commercial television broadcasting licensee; or
- (b) a commercial radio broadcasting licensee; or
- (c) a community broadcasting licensee; or
- (d) a subscription television broadcasting licensee; or
- (e) a person providing broadcasting services under a class licence.

(2) If, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election, being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.

(3) This clause does not require a broadcaster to broadcast any matter free of charge.

**Identification of certain political matter**

**4.(1)** In this clause, “**broadcaster**” means:

- (a) a commercial television broadcasting licensee; or
- (b) a commercial radio broadcasting licensee; or
- (c) a community broadcasting licensee; or
- (d) a subscription television broadcasting licensee; or
- (e) a person providing broadcasting services under a class licence.

(2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the ABA.

(3) A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period

**SCHEDULE 2—continued**

and must give to the ABA any particulars of the record that the ABA, by written notice, requires.

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

**Records of matter broadcast**

5.(1) In this clause, “**broadcaster**” means:

- (a) a commercial television broadcasting licensee; or
- (b) a commercial radio broadcasting licensee; or
- (c) a community broadcasting licensee; or
- (d) a subscription television broadcasting licensee; or
- (e) a person providing broadcasting services under a class licence.

(2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the ABA.

(3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:

- (a) 6 weeks from the date on which the matter was broadcast; or
- (b) if a complaint has been made about the matter—for 60 days from the date on which the matter was broadcast;

or for such longer period as the ABA, in special circumstances, directs in writing.

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

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

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

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



**SCHEDULE 2—continued**

(8) If the ABA is of the opinion that a matter of which a record has been made under this clause is of sufficient historic interest to justify its being permanently preserved, the ABA may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or authority specified by the ABA, and the person to whom the direction is given must comply with the direction but is entitled to fair compensation.

(9) A broadcaster must, without charge, make available to the ABA, upon request, any specified record made by the broadcaster under subclause (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).

**Advertisements relating to medicines**

6.(1) In this clause, “broadcaster” means:

- (a) a commercial television broadcasting licensee; or
- (b) a commercial radio broadcasting licensee; or
- (c) a subscription television broadcasting licensee; or
- (d) a person providing broadcasting services under a class licence.

(2) A broadcaster must not broadcast an advertisement relating to a medicine unless the text of the proposed advertisement has been approved:

- (a) by the Secretary to the Department of Community Services and Health under subclause (3); or
- (b) by the Minister on appeal to the Minister under this clause.

(3) A person may apply, in writing, to the Secretary to the Department of Community Services and Health for approval of the text of a proposed advertisement relating to a medicine.

(4) If an application is made, the Secretary to the Department of Community Services and Health may, in writing, approve or disapprove the text.

(5) The Secretary to the Department of Community Services and Health must give the applicant written notice of the approval or disapproval.

(6) If:

- (a) an application is made under subclause (2); and
- (b) the Secretary to the Department of Community Services and Health does not notify the applicant of the Secretary’s approval or disapproval of the text within 60 days after the day on which the application was made;

the Secretary is taken to have approved the text under subclause (3) at the end of that period.

**SCHEDULE 2—continued**

(7) The Secretary to the Department of Community Services and Health may, by signed instrument, delegate his or her power under this clause to approve the text of an advertisement to:

- (a) a medical officer of a State; or
- (b) the Proprietary Medicines Association of Australia or any other body:
  - (i) carrying out, or associated with, research into medicines; or
  - (ii) formed to represent the interests of manufacturers or distributors of medicines.

(8) An applicant may appeal in writing to the Minister from a decision of the Secretary to the Department of Community Services and Health under this clause, and the Minister must decide the appeal.

**PART 3—COMMERCIAL TELEVISION BROADCASTING LICENCES**

**Conditions of commercial television broadcasting licences**

7.(1) Each commercial television broadcasting licence is subject to the following conditions:

- (a) the licensee will not broadcast an advertisement or sponsorship announcement for, or for the use of, cigarettes, cigarette tobacco or any other tobacco product;
- (b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
- (c) the articles of association of the licensee will at all times contain provisions under which:
  - (i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and
  - (ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and
  - (iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a

**SCHEDULE 2—continued**

- position to exercise control of another licence, and giving particulars of any such position; and
- (iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of this Act; and
  - (v) any election of directors to the board of the licensee will be invalid if the election would result in more than 20% of the directors of the licensee being foreign persons;
- (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
  - (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
  - (f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1983* in relation to the use of the part of the radiofrequency spectrum used by the licensee;
  - (g) the licensee will not broadcast a program that has been refused classification, or has been classified as "X", by the Office of Film and Literature Classification;
  - (h) the licensee will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
  - (i) the licensee will commence to provide broadcasting services within one year of being allocated the licence or within such longer period as is notified in writing by the ABA;
  - (j) the licensee will comply with the requirements of clauses 3, 4, 5 and 6.
- (2) Each commercial television broadcasting licence is also subject to the following conditions:
- (a) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;
  - (b) the licensee will remain a suitable licensee;
  - (c) the licensee will broadcast matter of a religious nature during

**SCHEDULE 2—continued**

such periods as the ABA determines and, if the ABA so directs, will do so without charge;

- (d) the licensee will not provide commercial television broadcasting services under the licence outside the licence area of the licence unless the provision of those services outside that licence area occurs accidentally or as a necessary result of the provision of commercial television broadcasting services within the licence area.

**PART 4—COMMERCIAL RADIO BROADCASTING LICENCES**

**Standard conditions of commercial radio broadcasting licences**

**8.(1)** Each commercial radio broadcasting licence is subject to the following conditions:

- (a) the licensee will not broadcast an advertisement or sponsorship announcement for, or for the use of, cigarettes, cigarette tobacco or any other tobacco product;
- (b) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
- (c) the articles of association of the licensee will at all times contain:
  - (i) provisions under which a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of this Act; and
  - (ii) provisions under which the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and
  - (iii) provisions under which a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and
  - (iv) provisions under which a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to

**SCHEDULE 2—continued**

continue to be the holder of those shares having regard to the provisions of Part 5 of this Act;

- (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
  - (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
  - (f) if the licence is a broadcasting services bands licence—the licensee will keep in force a licence under the *Radiocommunications Act 1983* in relation to the use of the part of the radiofrequency spectrum used by the licensee;
  - (g) the licensee will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
  - (h) the licensee will commence to provide broadcasting services within one year of being allocated the licence or within such longer period as is notified in writing by the ABA;
  - (i) the licensee will comply with the requirements of clauses 3, 4, 5 and 6.
- (2) Each commercial radio broadcasting licence is also subject to the following conditions:
- (a) the licensee will provide a service that, when considered together with other broadcasting services available in the licence area of the licence (including another service operated by the licensee), contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area;
  - (b) the licensee will remain a suitable licensee;
  - (c) the licensee will not provide commercial radio broadcasting services under the licence outside the licence area of the licence unless the provision of those services outside the licence area occurs accidentally or as a necessary result of the provision of commercial radio broadcasting services within the licence area.

**PART 5—COMMUNITY BROADCASTING LICENCES**

**Conditions applicable to services provided under community broadcasting licences**

9.(1) Each community broadcasting licence is subject to the following conditions:

- (a) the licensee will not broadcast an advertisement or sponsorship

**SCHEDULE 2—continued**

announcement for, or for the use of, cigarettes, cigarette tobacco or any other tobacco product;

- (b) the licensee will not broadcast advertisements, and the licensee will not broadcast sponsorship announcements otherwise than as mentioned in subclause (3);
- (c) the licensee will comply with program standards applicable to the licence under Part 9 of this Act;
- (d) the licensee will, if the Minister, by notice in writing given to the licensee, so requires broadcast, without charge, such items of national interest as are specified in the notice;
- (e) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
- (f) the licensee will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
- (g) the licensee will not broadcast a program that has been refused classification, or has been classified as "X", by the Office of Film and Literature Classification;
- (h) the licensee will commence the provision of broadcasting services within one year of being allocated the licence or within such longer period as is notified in writing by the ABA;
- (i) the licensee will comply with the requirements of clauses 3, 4, 5 and 6.

(2) Each community broadcasting licence is also subject to the following conditions:

- (a) the licensee will remain a suitable licensee;
- (b) the licensee will continue to represent the community interest that it represented at the time when the licence was allocated;
- (c) the licensee will encourage members of the community that it serves to participate in:
  - (i) the operations of the licensee in providing the service;  
and
  - (ii) the selection and provision of programs under the licence;
- (d) the licensee will not provide community broadcasting services under the licence outside the licence area of the licence unless the provision of those services outside that licence area occurs accidentally or as a necessary result of the provision of community broadcasting services within the licence area.

**SCHEDULE 2—continued**

(3) A community broadcasting licensee may broadcast sponsorship announcements that run in total for not more than 4 minutes in any hour of broadcasting.

(4) A community television broadcasting licensee may broadcast sponsorship announcements only during periods before programs commence, after programs end or during natural program breaks.

(5) In working out the length of time devoted to the broadcasting of sponsorship announcements, account is not to be taken of the broadcasting by a community broadcasting licensee of any of the following:

- (a) material that publicises programs to be broadcast by the licensee;
- (b) material that promotes the licensee's products, services or activities for the broadcast of which the licensee does not receive any consideration in cash or in kind;
- (c) community information or community promotional material for the broadcast of which the licensee does not receive any consideration in cash or in kind;
- (d) sponsorship announcements consisting of moving text that is overlaid on a test pattern.

(6) Paragraph (1)(b) applies to a community broadcasting service provided for remote Aboriginal community purposes as if the words "for which the licensee receives any consideration in cash or in kind" were inserted after "advertisements".

**PART 6—SUBSCRIPTION TELEVISION BROADCASTING LICENCES**

**Conditions applicable to subscription television broadcasting licences**

**10.(1)** Each subscription television broadcasting licence is subject to the following conditions:

- (a) the licensee will not broadcast an advertisement or sponsorship announcement for, or for the use of, cigarettes, cigarette tobacco or any other tobacco product;
- (b) the licensee will comply with program standards applicable under Part 9 of this Act;
- (c) the articles of association of the licensee will at all times contain provisions under which:
  - (i) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 7 of this Act; and
  - (ii) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention

**SCHEDULE 2—continued**

of Part 7 of this Act continuing or of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in subparagraph (iii) or (iv); and

- (iii) a person who becomes the holder of shares in the licensee is required to provide to the company a statutory declaration stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares and stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of another licence, and giving particulars of any such position; and
- (iv) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to his or her eligibility to continue to be the holder of those shares having regard to the provisions of Part 7 of this Act;
- (d) the licensee will, if the Minister notifies the licensee in writing that an emergency has arisen which makes it important in the public interest that persons authorised by the Minister have control over matter broadcast using the licensee's broadcasting facilities, allow those persons access to and control over those facilities;
- (e) the licensee will not acquire the right to broadcast an event on the subscription television broadcasting service to which a notice in force under subsection 115(1) of this Act applies unless a national broadcaster or a commercial television broadcasting licensee has acquired the right to broadcast that event;
- (f) the licensee will not broadcast a program that has been refused classification, or has been classified as "X", by the Office of Film and Literature Classification;
- (g) the licensee will ensure that access to programs classified as "R" by the Office of Film and Literature Classification is restricted by disabling devices acceptable to the ABA but will not broadcast such an "R" classified program until the ABA has completed extensive, Australia-wide qualitative and quantitative research on community standards of taste and decency in relation to classifications for pay television and on what levels of violence and depiction of sex should be allowed, and the ABA has approved the broadcast of such programs;
- (h) the licensee will not use its subscription broadcasting service in the commission of an offence against another Act or a law of a State or Territory;



**SCHEDULE 2—continued**

- (i) the licensee will comply with the requirements of clauses 3, 4 and 5.
- (2) Each subscription television broadcasting licence is also subject to the following conditions:
  - (a) the licensee will remain a suitable licensee;
  - (b) subscription fees will continue to be the predominant source of revenue for the service.

**PART 7—SERVICES PROVIDED UNDER CLASS LICENCES**

**Conditions applicable to broadcasting services provided under class licences**

- 11.(1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:
    - (a) the person will not broadcast an advertisement or sponsorship announcement for, or for the use of, cigarettes, cigarette tobacco or any other tobacco product;
    - (b) the person will comply with program standards applicable to the licence under Part 9 of this Act;
    - (c) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
    - (d) the person will comply with the requirements of clauses 3, 4, 5 and 6.
  - (2) The provision by a person of a subscription broadcasting service or a subscription narrowcasting service under a class licence is also subject to the condition that subscription fees will continue to be the predominant source of revenue for the service.
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### **SCHEDULE 3**

#### **ADMINISTRATIVE PROVISIONS APPLICABLE TO THE ABA**

##### **Terms and conditions applicable to members and associate members**

1. The Minister is to determine in writing those terms and conditions of office of the members and associate members that are not set out in this Act.

##### **Remuneration and allowances of members and associate members**

2.(1) A member or an associate member is to be paid:

- (a) such remuneration as is determined by the Remuneration Tribunal; or
- (b) if no determination of that remuneration by the Tribunal is in operation—such remuneration as is prescribed.

(2) A member is to be paid such allowances as are prescribed.

(3) A member is to be paid such other benefits as the Minister determines in writing.

(4) Those other benefits may include benefits by way of financial or other assistance in connection with housing, transport, insurance, long service leave or superannuation.

##### **Outside employment**

3.(1) The Chairperson must not engage in paid employment outside the duties of his or her office without the approval of the Minister.

(2) The Deputy Chairperson and full-time members and associate members must not engage in paid employment outside the duties of their offices without the approval of the Chairperson.

##### **Leave of absence**

4.(1) The Chairperson, the Deputy Chairperson and each full-time member and associate member has such recreation leave entitlements as are determined by the Remuneration Tribunal.

(2) The Minister may grant leave of absence (other than recreation leave) to the Chairperson on such terms and conditions as to remuneration or otherwise as the Minister determines in writing.

(3) The Chairperson may grant leave of absence (other than recreation leave) to another member or an associate member on such terms and conditions as to remuneration or otherwise as the Chairperson determines in writing.

**SCHEDULE 3—continued**

**Acting appointments**

**5.(1) If:**

- (a) there is a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
- (b) the Chairperson is absent from duty or from Australia or is otherwise unable to perform the duties of the office of Chairperson;

the Deputy Chairperson is to act as the Chairperson during the vacancy, absence or inability.

(2) If the Deputy Chairperson is not available, the Minister may appoint another member to act as the Chairperson during the vacancy, absence or inability.

**(3) If:**

- (a) there is a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to the office; or
- (b) the Deputy Chairperson is absent from duty or from Australia or is otherwise unable to perform the duties of the office of Deputy Chairperson;

the Minister may appoint another member to act as the Deputy Chairperson during the vacancy, absence or inability.

(4) The Minister may appoint a person to act in the office of a member (other than the Chairperson or Deputy Chairperson):

- (a) during a vacancy in the office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the occupant of the office is absent from duty or from Australia or is otherwise unable to perform the duties of the office including a period when the member is acting as the Chairperson or Deputy Chairperson.

(5) A person appointed to act during a vacancy must not continue to act for more than 12 months.

(6) A person acting in an office under this clause is entitled to the same remuneration and allowances that are payable to the holder of the office in lieu of his or her own remuneration and allowances, but retains his or her own other benefits.

(7) Anything done by a person purporting to act under an appointment under this clause is not invalid merely because:

- (a) the occasion for the appointment had not arisen; or
- (b) there was a defect or irregularity in connection with the appointment; or

**SCHEDULE 3—continued**

- (c) the appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

**Disclosure of interests by members**

6.(1) This clause applies if a member:

- (a) is to take part or is taking part in deciding a matter before the ABA; and
- (b) has or acquires a direct or indirect pecuniary or other interest that could conflict with the member's duties in taking part in deciding the matter.

(2) If the member is not the Chairperson, the member must disclose the interest to the Chairperson.

(3) If the member is not the Chairperson and the Chairperson becomes aware that the member has the interest, the Chairperson must:

- (a) if the Chairperson considers that the member should not take part or continue to take part in deciding the matter—direct the member accordingly; or
- (b) in any other case—cause the interest to be disclosed to the persons concerned in the matter.

(4) If the member is the Chairperson, he or she must cause the interest to be disclosed to the persons concerned in the matter.

(5) Subject to any direction of the Chairperson under subclause (3), the member is not to take part or continue to take part in deciding the matter unless everyone concerned in it consents.

**Disclosure of interests by other persons**

7.(1) This clause applies where:

- (a) an associate member or a member of the staff of the ABA is to take part or is taking part in deciding a matter before the ABA; and
- (b) the person has or acquires a direct or indirect pecuniary or other interest that could conflict with the person's duties in taking part in deciding the matter.

(2) The person must:

- (a) immediately notify the ABA of the interest; and
- (b) do whatever is necessary to avoid a conflict.

**Resignation**

8. A member or an associate member may resign from office by instrument in writing sent to the Minister.

**SCHEDULE 3—continued**

**Termination of appointment**

**9.(1)** The Governor-General may terminate the appointment of a member for misbehaviour or physical or mental incapacity.

**(2)** The Minister may terminate the appointment of an associate member for misbehaviour or physical or mental incapacity.

**(3)** If:

- (a)** the Chairperson, the Deputy Chairperson or a full-time member or associate member becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or
- (b)** the Chairperson, the Deputy Chairperson or a full-time member or associate member engages, except with the approval of the Minister, in paid employment outside the duties of his or her office; or
- (c)** the Chairperson, the Deputy Chairperson or a full-time member or associate member is absent from duty, except on leave of absence granted under clause 4, for 14 consecutive days or for 28 days in any year; or
- (d)** a part-time member is absent from 3 consecutive meetings of the ABA without the approval of the Chairperson; or
- (e)** a member or associate member fails, without reasonable excuse, to comply with clause 6 or 7;

the person's appointment may be terminated.

**(4)** A termination of appointment under subclause (3) is to be made:

- (a)** in the case of a member—by the Governor-General; or
- (b)** in the case of an associate member—by the Minister.

**(5)** If an appointment is terminated under this clause, the Minister must cause to be tabled in the Parliament a statement setting out the reasons for that action.

**Procedures that apply to meetings of the ABA**

**10.(1)** The ABA is to hold such meetings as are necessary for the efficient performance of its functions.

**(2)** The Chairperson may convene a meeting at any time.

**(3)** The Chairperson is to preside at all meetings at which he or she is present.

**(4)** If the Chairperson is not present at a meeting:

- (a)** the Deputy Chairperson is to preside; or

**SCHEDULE 3—continued**

(b) if the Deputy Chairperson is not present—the members present are to appoint a member to preside.

(5) At a meeting, 3 members constitute a quorum.

(6) Questions arising at a meeting are to be determined by a majority of the votes of the members present and voting.

(7) The person presiding at a meeting has a deliberative vote and, if necessary, also has a casting vote.

(8) The ABA may, subject to this Schedule, regulate proceedings at its meetings as it considers appropriate.

(9) The Chairperson may permit members to participate in a particular meeting, or some or all meetings, by telephone, closed-circuit television or any other means of communication, and a member who so participates is to be regarded as being present at the meeting.

**Resolutions without meetings**

11. If the ABA so determines, a resolution is to be taken to have been passed at a meeting of the ABA if:

- (a) without meeting, a majority of the number of members indicate agreement with the resolution in accordance with the method determined by the ABA; and
- (b) that majority would, if present at a meeting of the ABA, have constituted a quorum under subclause 10(5); and
- (c) all members were informed of the proposed resolution, or reasonable efforts had been made to inform all members of the proposed resolution.

**Liability to taxation**

12.(1) Subject to subclause (3), the ABA is not subject to taxation under any law of the Commonwealth or of a State or Territory.

(2) Sales tax is not payable by the ABA, or by any other person, on goods that are for use by the ABA.

(3) The regulations may provide that subclause (1) or (2) does not apply to taxation under a specified law.

**Estimates**

13.(1) The ABA must prepare estimates, in the form directed by the Minister, of its receipts and expenditure for:

- (a) each financial year; and
- (b) if the Minister so directs—for any other period specified by the Minister.

(2) The ABA must give the estimates to the Minister not later than such date as the Minister directs.

**SCHEDULE 3—continued**

(3) The ABA's money must be spent in accordance with the estimates approved by the Minister.

**Application of Division 3 of Part XI of the Audit Act**

14. The ABA is a public authority to which Division 3 of Part XI of the *Audit Act 1901* applies.

**Money of the ABA**

15.(1) There is payable to the ABA such money as is appropriated by the Parliament for the purposes of the ABA.

(2) The Minister for Finance may give directions as to the amounts in which, and the times at which, that money is to be paid to the ABA.

**Application of money**

16.(1) Subject to subclause (2), money of the ABA may only be applied:

- (a) in discharge of the expenses or liabilities incurred by the ABA in connection with the performance of its functions or the exercise of its powers; or
- (b) in payment of remuneration or allowances payable under this Act; or
- (c) in making any other payments required to be made under this Act.

(2) Money of the ABA that is not immediately required for its purposes may be invested:

- (a) on fixed deposit with the Reserve Bank of Australia or another bank approved by the Treasurer; or
- (b) in securities of the Commonwealth; or
- (c) in another manner approved by the Treasurer.

**Limitation on expenditure on contracts**

17. The ABA must not, without the approval of the Minister, enter into a contract under which the ABA is to pay or receive an amount exceeding \$1,000,000 or such greater amount as is prescribed.

**Delegation**

18.(1) Subject to subclause (2), the ABA may, in writing, delegate all or any of its powers to:

- (a) a member; or
- (b) an associate member; or
- (c) a member of the staff of the ABA.

(2) The ABA is not to delegate the power to:

- (a) cancel or suspend licences; or

**SCHEDULE 3—continued**

- (b) decide that a person is not suitable to be allocated or to continue to hold a licence; or
  - (c) impose, vary or revoke a condition on a licence; or
  - (d) determine, vary or revoke a program standard; or
  - (e) determine or vary priorities under section 24; or
  - (f) prepare or vary frequency allotment plans under section 25; or
  - (g) prepare or vary licence area plans under section 26; or
  - (h) give an opinion under section 21 or 74; or
  - (i) approve or refuse to approve temporary breaches under section 67; or
  - (j) issue, or extend the time for compliance with, a notice; or
  - (k) refer a matter under this Act to the Director of Public Prosecutions; or
  - (l) initiate a hearing.
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*[Minister's second reading speech made in—  
Senate on 4 June 1992  
House of Representatives on 25 June 1992]*