



Radiocommunications Act 1992

No. 174 of 1992

**An Act about management of the radiofrequency spectrum,
and other matters**

[Assented to 11 December 1992]

The Parliament of Australia enacts:

CHAPTER 1—PRELIMINARY
PART 1.1—FORMAL MATTERS

5 Short title

1. This Act may be cited as the *Radiocommunications Act 1992*.

Commencement

2. This Act commences on 1 July 1993.

PART 1.2—OBJECT OF THIS ACT

The object of this Act

3. The object of this Act is to provide for management of the radiofrequency spectrum in order to:

- (a) maximise, by ensuring the efficient allocation and use of the spectrum, the overall public benefit derived from using the radiofrequency spectrum; 5
- (b) make adequate provision of the spectrum for use by public or community services;
- (c) provide a responsive and flexible approach to meeting the needs of users of the spectrum; 10
- (d) encourage the use of efficient radiocommunication technologies so that a wide range of services of an adequate quality can be provided;
- (e) provide an efficient, equitable and transparent system of charging for the use of spectrum, taking account of the value of both commercial and non-commercial use of spectrum; 15
- (f) support the communications policy objectives of the Commonwealth Government;
- (g) provide a regulatory environment that maximises opportunities for the Australian communications industry in domestic and international markets; 20
- (h) promote Australia's interests concerning international agreements, treaties and conventions relating to radiocommunications or the radiofrequency spectrum. 25

Outline of this Act

4. In order to achieve this object:

- (a) Chapter 2 provides for radio frequency planning that involves preparation of:
 - (i) a spectrum plan and frequency band plans (see Part 2.1); and 30
 - (ii) marketing plans and conversion plans (see Part 2.2); and
- (b) Chapter 3 provides for licensing radiocommunications under:
 - (i) spectrum licences (see Part 3.2); and
 - (ii) apparatus licences (see Part 3.3); and 35
 - (iii) class licences (see Part 3.4);
- (c) Chapter 3 also provides for registration of licences (see Part 3.5); and
- (d) Chapter 4 provides for general regulatory requirements aimed at: 40
 - (i) providing for standards and other technical regulation (see Part 4.1); and

- (ii) regulating various acts relating to radio emissions, particularly those involving interference with radiocommunications (see Part 4.2); and
- (iii) settling interference disputes (see Part 4.3); and
- 5 (iv) providing for restricted use zones (see Part 4.4); and
- (e) Chapter 5 provides for various other matters dealing with the administration and enforcement of this Act, in particular establishment of the Spectrum Management Agency and appointment of the Spectrum Manager (see Part 5.1).

10 PART 1.3—INTERPRETATIVE PROVISIONS

Definitions

5. In this Act, unless the contrary intention appears:

“AAT” means the Administrative Appeals Tribunal;

15 “ABA” means the Australian Broadcasting Authority established under the *Broadcasting Services Act 1992*;

“advisory guideline” means an advisory guideline made under section 262;

“aircraft” includes a balloon;

“apparatus licence” means an apparatus licence issued under Part 3.3;

20 “apparatus licence tax” means a tax imposed under the *Radiocommunications (Receiver Licence Tax) Act 1983* or the *Radiocommunications (Transmitter Licence Tax) Act 1983*;

“Australia”, when used in a geographical sense, includes the external Territories;

25 “Australian aircraft” means an aircraft that is in Australian control or is registered in accordance with the Air Navigation Regulations as an Australian aircraft;

“Australian satellite” means a space satellite that is declared by the regulations to be an Australian satellite for the purposes of this Act;

30 “Australian vessel” means a vessel that is in Australian control or:

(a) not being an air-cushion vehicle—is an Australian boat within the meaning of the *Fisheries Management Act 1991*; or

35 (b) being an air-cushion vehicle—would be an Australian boat within the meaning of that Act if it were a boat within the meaning of that Act;

“authority”, in relation to the Commonwealth, a State or a Territory, means:

(a) a Department; or

40 (b) a body (whether incorporated or unincorporated) established for a public purpose by or under the law of the Commonwealth, the State or the Territory, as the case may be; or

(c) any other body corporate in which:

- (i) the Commonwealth, the State or the Territory, as the case may be; or
 - (ii) a body corporate referred to in paragraph (b);
has a controlling interest;
- “broadcasting services bands licence”** has the same meaning as in the *Broadcasting Services Act 1992*; 5
- “broadcasting station”** means a transmitter that is operating for the purposes of:
- (a) a broadcasting services bands licence; or
 - (b) the provision of a national broadcasting service within the meaning of the *Broadcasting Services Act 1992*; 10
- “certificate”** means a certificate of proficiency or a compliance certificate;
- “certificate of proficiency”** means a certificate of proficiency issued under section 121; 15
- “change”**, in relation to information in the Register, means any one or more of the following:
- (a) the addition of matter to the information;
 - (b) the alteration of matter included in the information;
 - (c) the deletion of matter from the information; 20
- “class licence”** means a class licence issued under Part 3.4;
- “Commonwealth officer”** means:
- (a) a Minister; or
 - (b) a person who, whether on a full-time or a part-time basis, and whether in a permanent capacity or otherwise: 25
 - (i) is in the service or employment of the Commonwealth, the Administration of a Territory or an authority of the Commonwealth; or
 - (ii) holds or performs the duties of any office or position established by or under a law of the Commonwealth or a Territory; or 30
 - (c) a member of the Defence Force; or
 - (d) a member or staff member of the Australian Federal Police; or
 - (e) a member of the police force of a Territory;
- “compliance certificate”** means a certificate issued under section 184; 35
- “conciliator”** means a person appointed under section 202;
- “conciliator’s report”** means a report by a conciliator under section 208;
- “conversion plan”** means a plan prepared under section 38;
- “core condition”** means a condition included in a spectrum licence under section 66; 40
- “Department”** means:

- (a) in relation to the Commonwealth—a Department within the meaning of the *Public Service Act 1922*; or
- (b) in relation to a State or Territory—a body that, in relation to that State or Territory, is a body of such a kind.
- 5 “**device**” has the meaning given in subsection 9(1);
“**disputed conduct**” means conduct (including any act and any refusal or omission to act) of a kind referred to in paragraph 205(1)(a);
“**environment**” means the physical environment;
“**Federal Court**” means the Federal Court of Australia;
- 10 “**foreign aircraft**” means an aircraft that is not an Australian aircraft;
“**foreign vessel**” means a vessel that is not an Australian vessel;
“**frequency band**” means any contiguous range of radio frequencies;
“**frequency band plan**” means a plan prepared under section 32;
“**import**” means import into Australia;
- 15 “**in Australian control**” means in the control or possession of one or more of any of the following:
- (a) the Commonwealth (including an arm of the Defence Force) or a State or Territory;
- (b) an authority of the Commonwealth;
- 20 (c) an authority of a State;
- (d) an authority of a Territory;
- “**inspector**” has the meaning given in section 267;
- “**interference**” means:
- 25 (a) in relation to radiocommunications—interference to, or with, radiocommunications that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by a device; or
- (b) in relation to the uses or functions of devices—interference to, or with, those uses or functions that is attributable, whether
- 30 wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by a device;
- “**licence**” means a spectrum licence, an apparatus licence or a class licence;
- “**licensee**” means:
- 35 (a) in relation to a spectrum licence—the person specified in the licence as the licensee, whether the licence was originally issued to that person or subsequently assigned to him or her; or
- (b) in relation to an apparatus licence—the person to whom the licence was issued;
- 40 and, in Part 2 of the Schedule, includes the person from whom the spectrum licence in question, or the part of the spectrum licence in question, was resumed;
- “**marketing plan**” means a plan prepared under section 39;

- “member”**, in relation to the Australian Federal Police, includes a special member of the Australian Federal Police;
- “member of the crew”**, in relation to an aircraft or vessel, includes the person in charge of the aircraft or vessel;
- “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
- “non-standard device”** has the meaning given in subsection 9(2);
- “non-standard transmitter”** has the meaning given in subsection 9(3);
- “part”**, in relation to a spectrum licence, means: 10
- (a) a specified portion of the frequencies at which operation of radiocommunications devices is authorised under the licence; or
 - (b) a specified portion of the area within which operation of radiocommunications devices is so authorised; or 15
 - (c) a specified portion of the frequencies at which operation of radiocommunications devices is so authorised in a specified portion of the area within which operation of radiocommunications devices is so authorised;
- “period of emergency”** means a period declared to be a period of emergency under subsection 219(1); 20
- “permit”** means a permit issued under section 167;
- “pre-acquisition declaration”** means a declaration published in the *Gazette* under clause 1 of Part 1 of the Schedule;
- “public or community service”** has the meaning given in section 10; 25
- “qualified operator”** means a person who holds a certificate of proficiency;
- “radiocommunication”** has the meaning given in section 6;
- “radiocommunications device”** has the meaning given in subsection 7(1);
- “radiocommunications receiver”** has the meaning given in subsection 7(3); 30
- “radiocommunications transmitter”** has the meaning given in subsection 7(2);
- “radio emission”** has the meaning given in subsection 8(1);
- “receiver licence”** means an apparatus licence of the kind referred to in subsection 97(3); 35
- “reception”**, in relation to radio emission, includes interception;
- “recognised testing authority”** means a person in relation to whom, or a body in relation to which, a determination under section 183 is in force; 40
- “Register”**, except in section 183, means the Register of Radiocommunications Licences established under section 143;
- “restrictive order”** means an order made under subsection 222(1);

“**resumption notice**” means a notice published in the *Gazette* under clause 3 of Part 1 of the Schedule;

“**SMA**” means the Spectrum Management Agency established under section 232;

5 “**spectrum**” means the range of frequencies within which radiocommunications are capable of being made;

“**spectrum access charge**” means a spectrum access charge fixed under section 294;

“**spectrum licence**” means a spectrum licence issued under Part 3.2;

10 “**spectrum plan**” means:

(a) in relation to a time before the first plan prepared under section 30 comes into effect—the last plan prepared under section 18 of the *Radiocommunications Act 1983*; and

15 (b) in relation to a time after the first plan prepared under section 30 comes into effect—a plan prepared under section 30;

“**standard**” means a standard made under section 162;

“**State officer**” means a person who, whether on a full-time basis or a part-time basis, and whether in a permanent capacity or otherwise:

20 (a) is in the service or employment of a State or an authority of a State; or

(b) holds or performs the duties of any office or position established by or under a law of a State;

and includes a member of the police force of a State;

25 “**supply**” includes supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase;

“**technical licence specification**” means a technical licence specification determined by the SMA under section 179;

“**television program**” includes so much of a television program as consists only of sounds or images;

30 “**this Act**” includes the regulations;

“**transmitter**” has the meaning given in subsection 8(2);

“**transmitter licence**” means an apparatus licence of the kind referred to in subsection 97(2);

“**vessel**” means a vessel or boat of any description, and includes:

35 (a) an air-cushion vehicle; and

(b) any floating structure.

Definition of radiocommunication

6.(1) For the purposes of this Act, **radiocommunication** is:

(a) radio emission; or

40 (b) reception of radio emission;

for the purpose of communicating information between persons and persons, persons and things or things and things.

(2) The reference in subsection (1) to communicating information includes communicating information between a part of a thing and:

- (a) another part of the same thing; or
- (b) the same part of that thing;

(as, for example, in the operation of a radar device).

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Note: Division 3 of Part 1.4 has the effect of extending the concept of radiocommunication in certain circumstances.

Definitions of radiocommunications device, radiocommunications transmitter and radiocommunications receiver

7.(1) For the purposes of this Act, a **radiocommunications device** is: 10

- (a) a radiocommunications transmitter other than a radiocommunications transmitter of a kind specified in the regulations; or

- (b) a radiocommunications receiver of a kind specified in the regulations. 15

(2) For the purposes of this Act, a **radiocommunications transmitter** is:

- (a) a transmitter designed or intended for use for the purpose of radiocommunication; or

- (b) anything (other than a line within the meaning of the *Telecommunications Act 1991*) designed or intended to be ancillary to, or associated with, such a transmitter for the purposes of that use. 20

(3) For the purposes of this Act, a **radiocommunications receiver** is:

- (a) anything designed or intended for use for the purposes of radiocommunication by means of the reception of radio emission; or 25

- (b) anything (other than a line within the meaning of the *Telecommunications Act 1991*) designed or intended to be ancillary to, or associated with, such a thing for the purposes of that use. 30

(4) This Act does not preclude the same thing from being both a radiocommunications receiver and a radiocommunications transmitter, or any other kind of transmitter, for the purposes of this Act.

Definitions of radio emission and transmitter 35

8.(1) For the purposes of this Act, a **radio emission** is any emission of electromagnetic energy of frequencies less than 420 terahertz without continuous artificial guide, whether or not any person intended the emission to occur.

(2) For the purposes of this Act, a **transmitter** is: 40

- (a) anything designed or intended for radio emission; or

- (b) any other thing, irrespective of its use or function or the purpose of its design, that is capable of radio emission.

Definitions of device, non-standard device and non-standard transmitter

9.(1) For the purposes of this Act, a **device** is:

- 5 (a) a radiocommunications transmitter; or
- (b) any other transmitter; or
- (c) a radiocommunications receiver; or
- (d) any other thing any use or function of which is capable of being interfered with by radio emission.

10 (2) For the purposes of this Act, a **non-standard device** is a device that:

- 15 (a) if the device has not been altered or modified in a material respect after its manufacture or, if it has been imported, after its importation—does not comply with a standard that was applicable to it when it was manufactured or imported, as the case may be; or
- (b) if the device was so altered or modified—does not comply with a standard that was applicable to it when it was so altered or modified.

20 (3) For the purposes of this Act, a **non-standard transmitter** is a transmitter that is a non-standard device.

Public or community services

25 **10.(1)** For the purposes of this Act, a **public or community service** is a service provided by a body or organisation of a kind specified by the Minister, by written instrument, to be bodies or organisations for the purposes of this section.

(2) Each such body or organisation must either be:

- (a) an authority of the Commonwealth, a State or a Territory; or
- (b) a body or organisation that:
 - 30 (i) is not carried on for the purpose of profit or gain to its members; and
 - (ii) applies its profits (if any) or other income in achieving its objects; and
 - 35 (iii) does not provide for making any distribution, whether in money, property or otherwise, to its members.

(3) The instrument is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

References to offences against this Act etc.

11.(1) A reference in this Act to an offence against this Act or to an offence against a provision of this Act includes a reference to an offence against section 6, 7 or 7A, or subsection 86(1), of the *Crimes Act 1914* that relates to this Act or that provision, as the case requires. 5

(2) A reference in this Act to a conviction of an offence includes a reference to:

- (a) making an order under section 19B of the *Crimes Act 1914* in relation to the offence; or
- (b) payment, under regulations made under of paragraph 314(2)(d), of a penalty in relation to the offence. 10

PART 1.4—APPLICATION OF THIS ACT

Outline of this Part

12.(1) This Part is about the scope of this Act's operation, and the situations in which that operation is extended or restricted. 15

(2) Division 1 applies this Act to the Crown.

(3) Division 2 describes how questions of location affect the application of this Act.

(4) Division 3 brings certain activities within the concept of radiocommunication for the purposes of this Act. 20

(5) Division 4 is about the situations and activities that are exempt from the operation of this Act.

Division 1—General

Crown to be bound

13.(1) Subject to subsection (2), this Act binds the Crown in all its capacities. 25

(2) Nothing in this Act renders the Crown liable to be prosecuted for an offence.

Division 2—Provisions relating to location and similar matters

Operation of this Division 30

14. This Division has effect subject to Division 4.

Application to external Territories

15. This Act extends to all the external Territories.

Application outside Australia

16.(1) Except so far as the contrary intention appears, this Act applies outside Australia (whether or not in a foreign country), but only in relation to:

- 5 (a) Australian citizens ordinarily resident in Australia, in respect of radio emissions intended to be received in Australia, other than:
- 10 (i) radio emissions made by a genuine member of the crew of a foreign vessel or foreign aircraft in the course of his or her duties as such a member; or
- (ii) radio emissions made from a foreign country by a person in the performance of a duty imposed by the law of that country; and
- 15 (b) members of the crew of Australian aircraft and Australian vessels; and
- (c) Australian aircraft, Australian satellites and Australian vessels; and
- (d) anything to which this Act extends because of section 17.

20 (2) For the purposes of paragraph (1)(a), a radio emission that is intended to be retransmitted to Australia is taken to be intended to be received in Australia.

(3) Section 195 applies without limitation outside Australia (whether or not in a foreign country).

Adjacent areas

25 17.(1) Subject to subsection (2), this Act applies in relation to the adjacent areas in respect of the States and Territories as if references in this Act to Australia, when used in a geographical sense, included references to the adjacent areas in respect of the States and Territories.

30 (2) The extended application given to this Act by subsection (1) extends only in relation to:

- (a) acts, matters and things directly or indirectly connected with exploration of, or exploitation of the resources of, the continental shelf of Australia or of an external Territory; and
- 35 (b) acts done by or in relation to, and matters, circumstances and things affecting, or any person who is in adjacent area for a reason directly or indirectly connected with such exploration or exploitation.

(3) In this section:

40 “adjacent area”, in relation to a State or Territory, has the same meaning as in the *Petroleum (Submerged Lands) Act 1967*.

Application to the atmosphere etc.

18. Except so far as the contrary intention appears, references in this Act to Australia, a foreign country, a place or any waters include references to the space (including the atmosphere and outer space) above.

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Division 3—Provisions extending the concept of radiocommunication

Operation of this Division

19.(1) This Division:

- (a) only applies in relation to anything to which this Act extends under Division 2; and
- (b) has effect subject to Division 4.

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(2) Subsections 20(1) and (2) and sections 21 and 22 each have effect without prejudice to the effect that this Act has apart from that subsection or section.

Radio transmissions for the purpose of measurement

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20.(1) This Act applies in relation to:

- (a) a measurement transmission made in the course of, or in relation to:
 - (i) trade and commerce between Australia and places outside Australia; or
 - (ii) trade and commerce among the States; or
 - (iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or
 - (iv) any trading activity of a trading corporation, or any other activity of the corporation carried on for the purpose of its trading activities; or
 - (v) any other activity carried on by a trading corporation; or
 - (vi) any financial activity of a financial corporation, or any other activity of the corporation carried on for the purpose of its financial activities; or
 - (vii) any other activity carried on by a financial corporation; or
 - (viii) the operation of lighthouses, lightships, beacons or buoys; or
 - (ix) the making of astronomical or meteorological observations; or
- (b) a measurement transmission made by or on behalf of the Commonwealth, an authority or instrumentality of the Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or

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(c) a measurement transmission made in a Territory or a place outside Australia; or

(d) any other measurement transmission;

in the same way as it applies in relation to radiocommunication.

5 Note: Section 6 sets out the general meaning of "radiocommunication".

(2) This Act applies in relation to:

(a) a measurement transmitter used in the course of, or in relation to:

10 (i) trade and commerce between Australia and places outside Australia; or

(ii) trade and commerce among the States; or

(iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or

15 (iv) any trading activity of a trading corporation, or any other activity of the corporation carried on for the purpose of its trading activities; or

(v) any other activity carried on by a trading corporation; or

20 (vi) any financial activity of a financial corporation, or any other activity of the corporation carried on for the purpose of its financial activities; or

(vii) any other activity carried on by a financial corporation; or

(viii) the operation of lighthouses, lightships, beacons or buoys; or

25 (ix) the making of astronomical or meteorological observations; or

30 (b) a measurement transmitter used by or on behalf of the Commonwealth, an authority or instrumentality of the Commonwealth, a foreign corporation or a body corporate incorporated in a Territory; or

(c) a measurement transmitter in a Territory or a place outside Australia; or

(d) any other measurement transmitter;

35 in the same way as it applies in relation to a radiocommunications transmitter.

Note: Subsection 7(2) sets out the general meaning of "radiocommunications transmitter".

(3) This section does not apply with respect to:

(a) State banking that does not extend beyond the limits of the State concerned; or

40 (b) State insurance that does not so extend.

(4) In this section:

“financial corporation” means a financial corporation to which paragraph 51(xx) of the Constitution applies, and includes a body corporate formed within the limits of Australia that carries on as its sole or principal business the business of:

- (a) banking within the meaning of paragraph 51(xiii) of the Constitution; or 5
- (b) insurance within the meaning of paragraph 51(xiv) of the Constitution;

“foreign corporation” means a foreign corporation to which paragraph 51(xx) of the Constitution applies; 10

“measurement transmission” means radio emission for purposes connected with making a measurement by means of the propagation or other qualities of radio emission;

“measurement transmitter” means a transmitter designed or intended for measurement transmission; 15

“trading corporation” means a trading corporation to which paragraph 51(xx) of the Constitution applies.

Astronomical and meteorological observations

21. This Act applies to a radio emission in connection with making astronomical or meteorological observations in the same way as it applies to a radiocommunication. 20

Lighthouses etc.

22. This Act applies to a radio emission in connection with the operation of lighthouses, lightships, beacons and buoys in the same way as it applies to a radiocommunication. 25

Division 4—Matters to which this Act does not apply

Foreign satellites, vessels and aircraft

23.(1) This Act does not apply to space satellites that are not Australian satellites.

(2) This Act does not apply to transmitters or radiocommunications receivers on board a foreign vessel that is travelling, or is in transit, (whether in or outside Australia) on a voyage: 30

- (a) from a point outside Australia to a port in Australia; or
- (b) from a port in Australia to a point outside Australia; or
- (c) from a point outside Australia to another point outside Australia. 35

(3) This Act does not apply to transmitters or radiocommunications receivers on board a foreign aircraft that is travelling, or is in transit, (whether in or outside Australia) on a voyage:

- (a) from a point outside Australia to an airport in Australia; or
- (b) from an airport in Australia to a point outside Australia; or 40

(c) from a point outside Australia to another point outside Australia.

(4) Subsections (2) and (3) apply subject to the provisions of any agreement, treaty or convention between Australia and any other countries that makes provision in relation to radio emission.

5 Defence research and intelligence

24.(1) This Act does not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Department of Defence, in the performance of his or her functions or duties as such a member or officer in relation to the operation of an organisation:

- 10 (a) that is part of the Defence Force or part of the Department of Defence; and
- (b) the purpose of which relates to:
 - 15 (i) research for purposes connected with defence; or
 - (ii) intelligence.

(2) This Act does not apply in relation to anything done or omitted to be done by or on behalf of:

- (a) the Australian Secret Intelligence Service; or
- (b) the Australian Security Intelligence Organisation.

20 Special defence undertakings

25. This Act does not apply to anything done or omitted to be done by a person performing a function or duty in relation to the operation of a facility that is:

- 25 (a) jointly operated by the Commonwealth and a foreign country; and
- (b) a special defence undertaking for the purposes of the *Defence (Special Undertakings) Act 1952*.

Additional exemption for defence matters

30 26.(1) Subject to subsection (2), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Department of Defence, if:

- (a) the act or omission takes place in the performance of one of his or her functions or duties as such a member or officer; and
- 35 (b) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
 - (i) military command and control; or
 - (ii) intelligence; or
 - (iii) weapons systems.

40 (2) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the

provisions of those Parts, to a member of the Defence Force, or to an officer of the Department of Defence, in the performance of one of his or her functions or duties as mentioned in subsection (1).

Defence, police and emergency personnel

27.(1) This section applies to a person performing a function or duty in relation to: 5

- (a) the defence, security or international relations of:
 - (i) Australia; or
 - (ii) a foreign country whose naval, military or air force is acting in co-operation with the Defence Force of Australia; or 10
- (b) the Australian Federal Police or the police force of a State or Territory; or
- (c) a fire-fighting, civil defence or rescue organisation; or
- (d) an ambulance service; or 15
- (e) the Royal Flying Doctor Service; or
- (f) any other organisation whose sole or principal purpose involves securing the safety of persons during an emergency.

(2) The regulations may provide for exemption of acts or omissions, by members of a class of persons to whom this section applies, from all or any of Parts 3.1, 4.1 or 4.2, or specified provisions of those Parts. 20

Use of devices by the SMA

28. Parts 3.1, 4.1 and 4.2 do not apply to anything done by the SMA in connection with the use of a device in performing its functions or exercising its powers under this Act. 25

CHAPTER 2—RADIO FREQUENCY PLANNING

Outline of this Chapter

29.(1) This Chapter provides for the preparation of plans that will govern the allocation of the spectrum under the licensing systems provided for in Chapter 3. 30

- (2)** Part 2.1 is about preparing:
 - (a) a spectrum plan that covers so much of the spectrum as is relevant to regulation of radiocommunications under this Act; and
 - (b) frequency band plans that cover particular parts of the spectrum in more detail. 35

(3) Part 2.2 is about the additional plans necessary to enable selected parts of the spectrum to be allocated under the spectrum licensing system, namely:

- (a) conversion plans that govern conversion into spectrum licences 40

of apparatus licences that apply in the parts of the spectrum in question; and

- 5 (b) marketing plans that govern allocation under spectrum licences of so much of the parts of the spectrum in question as have not been allocated under apparatus licences.

PART 2.1—SPECTRUM PLANS AND FREQUENCY BAND PLANS

Spectrum plans

10 30.(1) The SMA may, by written instrument, prepare a spectrum plan.

(2) A spectrum plan must:

- 15 (a) divide into such number of frequency bands as the SMA thinks appropriate so much of the spectrum as the SMA thinks necessary for the purpose of regulating radiocommunications under this Act; and
- (b) designate one or more bands to be used primarily for the general purposes of defence; and
- (c) specify the general purpose or purposes for which each other band may be used.

20 (3) In this section:

“used” includes:

- (a) reserved for future use; and
- (b) reserved for the prevention or control of interference to radiocommunications.

25 Planning of broadcasting services bands

31. The Minister may, after consultation with the SMA and the ABA, and in accordance with the spectrum plan, by written instrument:

- (a) designate a part of the spectrum as being primarily for broadcasting purposes; and
- 30 (b) refer it to the ABA for planning under Part 3 of the *Broadcasting Services Act 1992*.

Frequency band plans

32.(1) The SMA may, by written instrument, prepare frequency band plans, each relating to one or more frequency bands.

35 (2) Subsection (1) does not apply in relation to a frequency band within a part of the spectrum referred to the ABA under section 31.

(3) A frequency band plan must not be inconsistent with the spectrum plan.

(4) A frequency band plan:

- (a) must make provision in relation to the purpose or purposes for which the band or bands may be used; and
- (b) without limiting paragraph (a), may provide for;
 - (i) the one or more purposes for which any part of a band (including any particular frequency or frequency channel) may be used; and 5
 - (ii) parts of the spectrum to be reserved for provision of public or community services.
- (5) A frequency band plan:
 - (a) may be of general application or may be limited as provided in the plan; and 10
 - (b) without limiting paragraph (a), may apply:
 - (i) with respect to a specified area; and
 - (ii) with respect to a specified period.
- (6) In this section: 15
 - “used” includes:
 - (a) reserved for future use; and
 - (b) reserved for the prevention or control of interference to radiocommunications.
- Publication etc. of plans** 20
- 33.(1)** Before preparing a spectrum plan or a frequency band plan, the SMA must, by notice published in the *Gazette*:
 - (a) state that a draft of the plan is available for public comment; and
 - (b) state how copies of the draft may be obtained; and 25
 - (c) invite interested parties to make representations about the draft plan on or before the day specified in the notice; and
 - (d) specify an address or addresses to which representations about the draft plan may be sent.
- (2) The day specified under paragraph (1)(c) must be at least one month later than the day on which the notice is published. 30
- (3) A person may, not later than the day specified under paragraph (1)(c), make representations to the SMA about the draft plan.
- (4) The SMA:
 - (a) must give due consideration to any representations so made; and 35
 - (b) may, having considered the representations, alter the draft plan.
- (5) The requirements of this section do not apply to the draft plan as altered under paragraph (4)(b).
- (6) This section does not apply to the preparation of a plan if the SMA is satisfied that the preparation of the plan is a matter of urgency. 40

Revocation and variation of plans

34.(1) The SMA may, at any time, revoke or vary a spectrum plan or frequency band plan.

5 (2) Section 33 applies to such a revocation or variation as if references in that section to the draft of a plan were references to the proposal for such a revocation or variation.

(3) In the case of a variation, the plan as varied must comply with any requirements under section 30 or 32, as the case requires.

Disallowance of plans

10 35. A spectrum plan prepared under section 30 and frequency band plans, and revocations and variations under section 34, are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 2.2—CONVERSION PLANS AND MARKETING PLANS

15 **Designation of parts of the spectrum for spectrum licences**

36.(1) The Minister may, after consultation with the SMA, give to the SMA a written notice designating a specified part of the spectrum to be allocated by issuing spectrum licences.

20 (2) The notice is to be expressed to apply generally or with respect to one or more specified areas.

(3) The SMA may, at the Minister's request or on its own initiative, make recommendations to the Minister about notices that should be given.

25 (4) Before making a recommendation, the SMA must give members of the public reasonable opportunity to make representations to the SMA about the recommendation it should make.

(5) The Minister must not give a notice that relates wholly or partly to a part of the spectrum referred to the ABA under section 31.

Preparation or variation of frequency band plans

30 37. The SMA may, before preparing a conversion plan or a marketing plan under this Part, prepare a frequency band plan under section 32, or vary a frequency band plan under section 34, in order to assist it in preparing the conversion plan or marketing plan.

Conversion plans

35 38.(1) On receiving a notice designating a specified part of the spectrum to be allocated by issuing spectrum licences, the SMA must, by written instrument, prepare a conversion plan that sets out the procedures and timetable for issuing spectrum licences to replace existing

apparatus licences that authorise operation of radiocommunications devices:

- (a) at frequencies within that part of the spectrum; and
 - (b) if the notice is expressed to apply only with respect to one or more specified areas—within such areas. 5
- (2) The conversion plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the plan applies.
- (3) The conversion plan may contain such other additional matters as the SMA thinks fit. 10
- (4) The conversion plan must not be inconsistent with:
- (a) the spectrum plan; or
 - (b) a frequency band plan that relates, wholly or partly, to the part of the spectrum to which the conversion plan relates.
- (5) This section does not apply if there are no apparatus licences to which such a conversion plan would apply. 15

Marketing plans

- 39.(1)** On receiving a notice designating a part of the spectrum to be allocated by issuing spectrum licences, the SMA must also, by written instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices: 20
- (a) at frequencies, within that part of the spectrum, that will not be used under spectrum licences issued in accordance with the conversion plan; and
 - (b) if the notice is expressed to apply only with respect to one or more specified areas—within such areas. 25
- (2) The marketing plan is to apply to:
- (a) spectrum licences that might be issued that do not replace apparatus licences; and
 - (b) spectrum licences that are issued under section 58. 30
- (3) The marketing plan need not require spectrum licences issued in accordance with it to apply to the whole of the area or areas to which the plan applies.
- (4) Without limiting the matters that the marketing plan may contain, it may indicate: 35
- (a) the procedures to be followed for issuing spectrum licences in accordance with the plan; and
 - (b) the timetable for issuing spectrum licences in accordance with the plan; and
 - (c) how the spectrum dealt with under the plan is to be apportioned amongst the spectrum licences to be issued; and 40

- (d) how much of the spectrum dealt with under the plan is to be reserved for public community services; and
- (e) the conditions, or types of conditions, that may be included in spectrum licences to be issued.

5 (5) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated by auction, by tender, for a pre-determined price or for a negotiated price.

(6) The marketing plan must not be inconsistent with:

- 10 (a) the spectrum plan; or
- (b) a frequency band plan that relates, wholly or partly, to the part of the spectrum to which the marketing plan relates.

Consultation on draft plans

15 **40.(1)** The SMA may, before preparing a conversion plan or a marketing plan:

- (a) make available to the public, in any way it thinks appropriate, copies of a draft of the plan; and
- (b) invite interested parties to make representations to the SMA about the draft plan.

20 (2) This section does not limit any other action the SMA may take in consulting with persons about a conversion plan or a marketing plan.

Delays in preparing plans

25 **41.(1)** If the SMA thinks that preparation of a conversion plan or a marketing plan may be unduly delayed because of difficulties in preparing the plan so far as it relates to some of the frequencies within the part of the spectrum in respect of which the plan is to be prepared, the SMA may:

- 30 (a) decide that, in order not to delay the preparation of a plan in relation to frequencies for which the difficulties do not apply, the task of preparing the plan should be divided into one of preparing more than one plan; and
- (b) prepare those plans at different times.

35 (2) Each of the plans so prepared is taken to have been prepared under section 38 or 39, as the case requires, and this Part applies to the preparation of each plan accordingly.

Variation of plans

42.(1) The SMA may, at any time, vary a conversion plan or a marketing plan.

40 (2) This Part applies in relation to a variation of a conversion plan or a marketing plan in the same way that it applies in relation to the preparation of the plan.

Publication of plans

43.(1) As soon as practicable after preparing or varying a conversion plan or a marketing plan, the SMA must cause to be published in the *Gazette* a notice setting out details of where copies of the plan, or an up-to-date version of the plan, can be purchased at a reasonable cost. 5

(2) The SMA must take all reasonable steps to ensure that members of the public can obtain copies as set out in the notice.

Expressions of interest in spectrum licences

44. This Part does not prevent the SMA, prior to preparing a conversion plan or a marketing plan, from seeking from members of the public, in any way the SMA thinks appropriate, expressions of interest in being issued with spectrum licences in accordance with such a plan. 10

CHAPTER 3—LICENSING OF RADIOCOMMUNICATIONS

Outline of this Chapter 15

45.(1) This Chapter provides for the 3 systems of licences that apply to radiocommunications and for registration of licences.

(2) Part 3.1 prohibits unlicensed radiocommunications, except in emergency situations, and allows for civil proceedings to be taken in some circumstances. 20

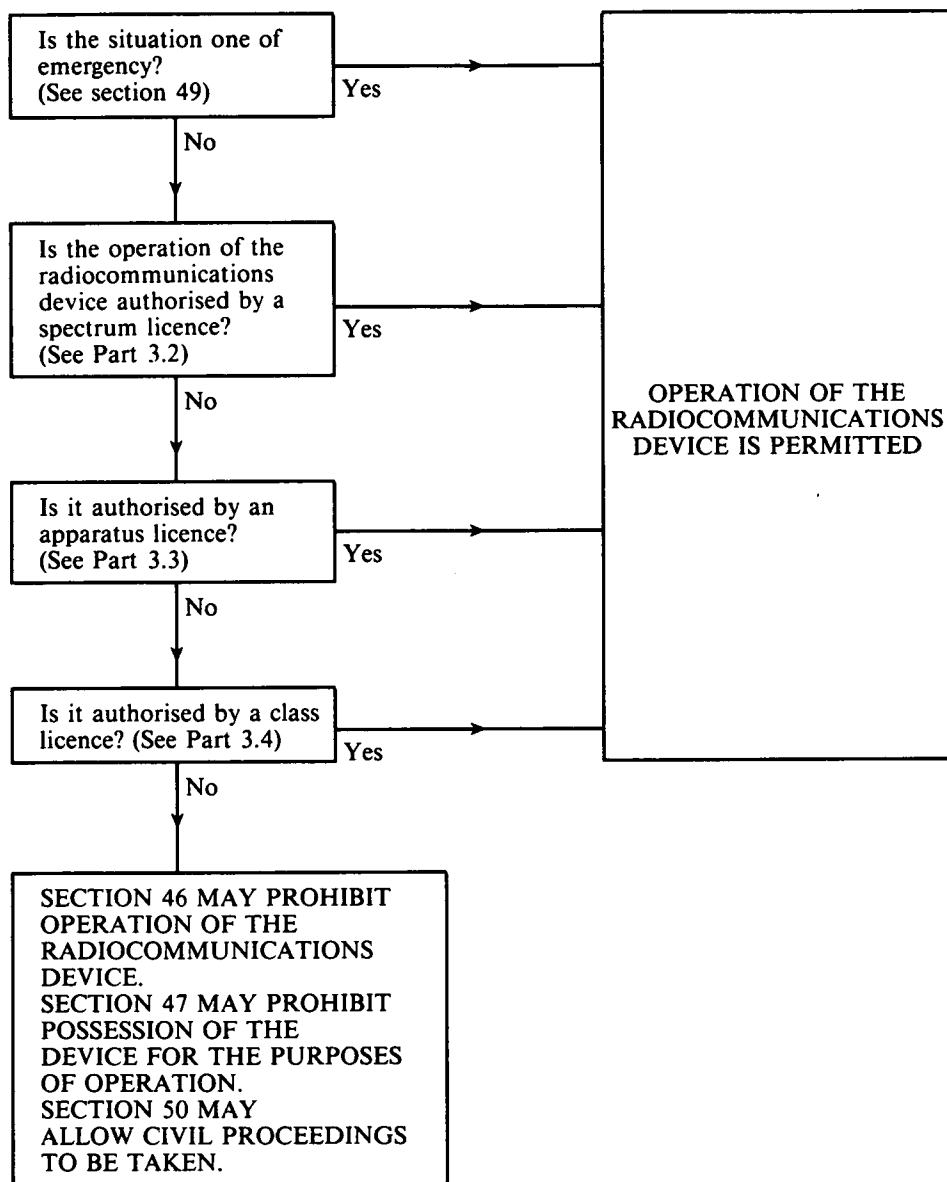
(3) Part 3.2 provides for spectrum licences, under which licensees may use parts of the spectrum.

(4) Part 3.3 provides for apparatus licences, under which licensees may operate the radiocommunications devices to which the licences relate. 25

(5) Part 3.4 provides for class licences, under which any person may operate radiocommunications devices that come within the terms of the licences.

(6) Part 3.5 provides for registration of these licences in a Register of Radiocommunications Licences. 30

(7) The following diagram shows how this Chapter applies to a particular operation of a radiocommunications device.



PART 3.1—UNLICENSED RADIOCOMMUNICATIONS

Division 1—Offences

Unlicensed operation of radiocommunications devices

46. Subject to section 49, a person must not, without reasonable excuse, knowingly or recklessly operate a radiocommunications device otherwise than as authorised by: 5

- (a) a spectrum licence; or
- (b) an apparatus licence; or
- (c) a class licence.

Penalty: 10

- (a) if the radiocommunications device is a radiocommunications transmitter:
 - (i) if the offender is an individual—imprisonment for 2 years; or
 - (ii) otherwise—\$150,000; or 15
- (b) if the radiocommunications device is not a radiocommunications transmitter—\$2,000.

Unlawful possession of radiocommunications devices

47. Subject to section 49, a person must not, without reasonable excuse, have a radiocommunications device in his or her possession for the purpose of operating the device otherwise than as authorised by: 20

- (a) a spectrum licence; or
- (b) an apparatus licence; or
- (c) a class licence.

Penalty: 25

- (a) if the radiocommunications device is a radiocommunications transmitter:
 - (i) if the offender is an individual—imprisonment for 2 years; or
 - (ii) otherwise—\$150,000; or 30
- (b) if the radiocommunications device is not a radiocommunications transmitter—\$2,000.

Additional provisions about possession of radiocommunications devices

48.(1) Without limiting section 47, a person is taken, for the purposes of that section, to have a radiocommunications device in his or her possession for the purpose of operation if it is in his or her possession, otherwise than for the purpose of supply to another person, and can be operated merely by doing one or more of the following: 35

- (a) connecting the device to an electric power supply by means of an electric plug or other electrical connection; 40

- (b) connecting a microphone to the device by inserting a microphone plug into the device;
- (c) switching on the device;
- (d) switching on any other equipment relevant to the device's operation;
- (e) adjusting settings by manipulating the device's external switches, dials or other controls;
- (f) connecting the device to an antenna.

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(2) Subsection (1) only applies in the absence of any evidence to the contrary.

(3) A reference in this Division to a person having a radiocommunications device in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

15

Emergency operation etc. of radiocommunications devices

49.(1) A person does not contravene section 46 or 47 by operating a radiocommunications device, or having a radiocommunications device in his or her possession, in the reasonable belief that the operation or possession was necessary for the purpose of:

20

- (a) securing the safety of a vessel or aircraft that was in danger; or
- (b) dealing with an emergency involving a serious threat to the environment; or
- (c) dealing with an emergency involving risk of death of, or injury to, persons; or
- (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

25

(2) In proceedings for an offence against section 46 or 47, the burden of proving any of the matters referred to in subsection (1) lies on the defendant.

30

(3) Nothing in this section limits the scope of the expression "reasonable excuse" in section 46 or 47.

Division 2—Civil proceedings

Civil proceedings

50.(1) If a person ("the defendant"):

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- (a) operates a radiocommunications device in a way that is not in accordance with any licence; and
- (b) that operation causes interference to radiocommunications carried on by another person ("the plaintiff") under a spectrum licence;

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the plaintiff may apply to the Federal Court for relief.

- (2) The court may grant all or any of the following forms of relief:
- (a) an injunction restraining the defendant from causing such interference, from causing interference of a similar kind or from causing or permitting others to cause interference of the same or a similar kind; 5
 - (b) an order directing the defendant to do a specified act for the purpose of:
 - (i) placing the plaintiff as nearly as practicable in the position in which he or she would have been but for the interference; or 10
 - (ii) otherwise mitigating detriment to the plaintiff arising out of the interference;
 - (c) damages against the defendant in respect of loss suffered by the plaintiff as a result of the interference, including loss of any benefit that the plaintiff might reasonably have been expected to obtain but for the interference; 15
 - (d) such other relief as the court thinks just.

PART 3.2—SPECTRUM LICENCES

Outline of this Part 20

51.(1) This Part is about spectrum licences, under which licensees are authorised to use parts of the spectrum.

- (2) Division 1 is about issuing spectrum licences, in particular:
- (a) converting apparatus licences into spectrum licences under conversion plans and (in some cases) marketing plans (Subdivision A); and 25
 - (b) issuing spectrum licences for unencumbered spectrum under marketing plans (Subdivision B); and
 - (c) what spectrum licences will contain (Subdivision C).
- (3) Division 2 is about varying spectrum licences. 30
- (4) Division 3 is about suspending and cancelling spectrum licences.
- (5) Division 4 is about re-issuing spectrum licences.
- (6) Division 5 is about trading spectrum licences.
- (7) Division 6 enables the SMA to resume spectrum licences:
- (a) by agreement with the licensee (Subdivision A); or 35
 - (b) by the compulsory process set out in the Schedule (Subdivision B).

Division 1—Issuing spectrum licences

Subdivision A—Converting apparatus licences into spectrum licences

Application of this Subdivision

5 52.(1) This Subdivision applies to an apparatus licence if the apparatus licence authorises the operation of a radiocommunications device:

- (a) at frequencies within a part of the spectrum to which a conversion plan applies; and
- 10 (b) if the conversion plan applies only with respect to one or more specified areas—within such an area.

(2) The holder of such an apparatus licence is referred to in this Subdivision as the licensee.

Preparation of draft spectrum licences

15 53.(1) As soon as practicable after preparing a conversion plan, the SMA must, in respect of each apparatus licence to which this Subdivision applies as a result of the conversion plan, prepare a draft of a spectrum licence to replace the apparatus licence.

20 (2) The draft spectrum licence must, so far as is practicable, authorise the operation of radiocommunications devices to the same extent as, or to a greater extent than, they are authorised under the apparatus licence to be replaced.

Notification of draft spectrum licences

54.(1) The SMA must give to the licensee:

- (a) a copy of the draft spectrum licence; and
- 25 (b) a notice inviting the licensee to make representations about the draft spectrum licence on or before the day specified in the notice.

(2) The day specified in the notice must be at least one month later than the day on which the notice is given to the licensee.

30 **Representations about draft spectrum licences**

55.(1) The licensee may, on or before the day specified in the notice, make representations to the SMA about the proposed spectrum licence.

(2) The SMA:

- (a) must give due consideration to any representations so made; and
- 35 (b) may, having considered the representations, alter the draft spectrum licence.

Offer of spectrum licences

56.(1) The SMA must, as soon as practicable after the day specified in the notice, give to the licensee a written offer to issue to the licensee a spectrum licence to replace the licensee's apparatus licence.

(2) The offer must: 5

(a) identify the spectrum licence that the SMA proposes to issue; and

(b) specify the amount of spectrum access charge that the licensee must pay to the Commonwealth for the spectrum licence; and

(c) specify the day on which the offer will close. 10

Note: Spectrum access charges are determined under Part 5.7.

(3) The day specified in the offer must be at least one month later than the day on which the offer is given to the licensee.

Issuing of spectrum licences on acceptance of offers

57.(1) The SMA must issue the spectrum licence to the licensee if, on or before the day specified in the offer, the licensee gives the SMA a written notice: 15

(a) accepting the offer; and

(b) agreeing to pay the amount of spectrum access charge specified in the offer. 20

Note: Spectrum access charges are determined under Part 5.7.

(2) The spectrum licence comes into force on the day specified in the licence.

(3) Immediately before it comes into force, the apparatus licence that it is to replace ceases to be in force. 25

Failures to accept offers

58.(1) If the licensee:

(a) notifies the SMA, on or before the day specified in the offer, that the licensee does not accept the offer; or

(b) fails to give the SMA notice under section 57 before that day; 30
the SMA may allocate the spectrum licence in the manner provided for in sections 60 to 63, and issue the spectrum licence accordingly.

(2) The spectrum licence comes into force on the day specified in the licence.

(3) Immediately before it comes into force, the apparatus licence that it is to replace ceases to be in force. 35

(4) If the licensee had paid an apparatus licence tax for the apparatus licence, the SMA must refund to the licensee such portion of the tax as corresponds to the part of the period of the apparatus licence that had, immediately before the licence ceased to be in force, not elapsed. 40

Compliance with plans

59.(1) The SMA must ensure that, in issuing a spectrum licence under this Subdivision, the SMA had complied with any requirements relating to:

- 5 (a) issuing the licence; or
(b) the procedures to be followed prior to its issue;
that are imposed by the relevant conversion plan.

(2) In addition to subsection (1), if the spectrum licence is issued under section 58, the SMA must also ensure that it has complied with any requirements relating to:

- 10 (a) issuing the licence; or
(b) the procedures to be followed prior to its issue;
that are imposed by the relevant marketing plan.

(3) Failure to comply with this section does not affect the validity of a spectrum licence.

Subdivision B—Issuing spectrum licences for unencumbered spectrum

Procedures for allocating spectrum licences

60.(1) The SMA must determine, in writing, the procedures to be applied in allocating spectrum licences under this Subdivision:

- 20 (a) by auction; or
(b) by tender; or
(c) by allocation for a pre-determined price or a negotiated price.

(2) The procedures for allocation by auction may, for example, deal with any of the following matters:

- 25 (a) the types of auction;
(b) advertising of auctions;
(c) entry fees for prospective bidders;
(d) reserve prices (if any);
30 (e) deposits (if any) payable by successful bidders;
(f) methods of payment for licences.

(3) The procedures for allocation by tender may, for example, deal with any of the following matters:

- (a) the types of tender;
(b) advertising of tenders;
35 (c) entry fees for prospective tenderers;
(d) reserve prices (if any);
(e) the method for resolving which of 2 or more equal tenders is to be successful;
(f) deposits (if any) payable by successful tenderers;
40 (g) methods of payment for licences.

(4) The procedures for allocation for a pre-determined or negotiated price may, for example, deal with any of the following matters:

- (a) the way in which prices are to be determined or negotiated;
- (b) advertising of proposed allocations;
- (c) methods of payment for licences.

5

Preparation of draft spectrum licences

61(1) After a marketing plan has been prepared, the SMA may prepare drafts of spectrum licences that are to be allocated in accordance with the marketing plan.

(2) Drafts of spectrum licences so prepared need not be complete, but each must contain a draft of its core conditions.

10

Issue of spectrum licences

62.(1) The SMA may allocate such a spectrum licence in accordance with the procedures determined under section 60 but not otherwise.

(2) The SMA must issue the spectrum licence to the person to whom it is allocated if the person:

15

- (a) pays to the SMA the spectrum access charge for issuing the licence; or
- (b) reaches an agreement with the SMA for the payment of that spectrum access charge.

20

Note: Spectrum access charges are determined under Part 5.7.

Compliance with marketing plans

63.(1) The SMA must ensure that, in issuing a spectrum licence under this Subdivision, the SMA has complied with any requirements relating to:

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- (a) issuing the licence; or
- (b) the procedures to be followed prior to its issue; that are imposed by the relevant marketing plan.

(2) Failure to comply with this section does not affect the validity of a spectrum licence.

30

Subdivision C—Contents of spectrum licences

Authorisation to use part of the spectrum

64.(1) A spectrum licence authorises:

- (a) the person specified in the licence as the licensee; and
- (b) subject to section 68, any person authorised by that person; to operate a radiocommunications device in accordance with the licence.

35

(2) Operation of a radiocommunications device is not authorised by the spectrum licence if it is not in accordance with the conditions of the licence.

Duration of spectrum licences

65.(1) A spectrum licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.

5 (2) Subject to Division 3, a spectrum licence remains in force for the period specified in the licence.

(3) The licence may specify any period up to 10 years.

Core conditions of spectrum licences

66.(1) A spectrum licence must include the following core conditions:

10 (a) a condition specifying the part or parts of the spectrum in which operation of radiocommunications devices is authorised under the licence;

15 (b) a condition specifying the maximum permitted level of radio emission, in parts of the spectrum outside such a part, that may be caused by operation of radiocommunications devices under the licence;

(c) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence;

20 (d) a condition specifying the maximum permitted level of radio emission, outside that area, that may be caused by operation of radiocommunications devices under the licence.

(2) The area specified in the condition referred to in paragraph (1)(c) may be the whole of Australia.

25 (3) A spectrum licence may also include a core condition specifying the periods during which operation of radiocommunications devices is authorised under the licence.

(4) Without limiting subsection (3), the periods specified may include times during each day or times during particular days of each week.

Conditions about payment of charges

30 67. A spectrum licence must include a condition that the licensee meet all obligations (if any) of the licensee to pay:

(a) charges fixed by determinations made under section 293; and

(b) spectrum access charges fixed by determinations made under section 294.

35 **Conditions about third party use**

68.(1) Except as provided by this section, the licensee of a spectrum licence may authorise other persons to operate radiocommunications devices under the licence.

(2) A spectrum licence:

40 (a) must include a condition that any operation of a

radiocommunications device under the licence by a person other than the licensee must comply with any rules made under subsection (3); and

- (b) must include a condition that the licensee must notify any persons whom he or she authorises to operate radiocommunications devices under the licence of their obligations under this Act, in particular:
- (i) if applicable, the registration requirements under Part 3.5 for operation of radiocommunications devices under the licence; and
 - (ii) any rules made under subsection (3).

(3) The SMA may, by written instrument, make rules about the operation of radiocommunications devices under spectrum licences by persons other than licensees, including rules about the way in which licensees may authorise those persons to operate radiocommunications devices under spectrum licences.

(4) Rules are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Conditions about registration of radiocommunications transmitters

69.(1) A spectrum licence must include a condition that radiocommunications transmitters not be operated under the licence unless the requirements of the SMA under Part 3.5 for registration of the transmitter under that Part have been met.

(2) The condition may exempt radiocommunications transmitters of particular kinds from meeting those requirements.

Conditions about technical licence specifications

70. A spectrum licence may include a condition that operation of radiocommunications devices of specified kinds under the licence must be in accordance with any technical licence specifications, as in force from time to time, referred to in the licence.

Other conditions of spectrum licences

71.(1) The SMA may include such other conditions in a spectrum licence as it thinks fit.

(2) The SMA's power under this section is not limited by sections 67 to 70.

Division 2—Varying spectrum licences

Variation with agreement

72.(1) Subject to subsection (2), the SMA may, with the written agreement of the licensee of a spectrum licence, vary the licence by:

- (a) including one or more further conditions; or

(b) revoking or varying any conditions of the licence.

(2) The conditions as varied must still comply with the requirements of Subdivision C of Division 1.

Variation without agreement

5 73.(1) Subject to subsection (2), the SMA may, by written notice given to the licensee of a spectrum licence, vary the licence by:

(a) including one or more further conditions; or

(b) revoking or varying any conditions of the licence, other than core conditions.

10 (2) The conditions as varied must still comply with the requirements of Subdivision C of Division 1.

Note: Variations of spectrum licences under this section are reviewable under Part 5.6.

Division 3—Suspending and cancelling spectrum licences

Application of this Division

15 74. This Division applies to a spectrum licence if the SMA is satisfied that the licensee, or a person authorised by the licensee to operate a radiocommunications device under the licence, has:

(a) contravened a condition of the licence, or in any other way contravened this Act; or

20 (b) operated a radiocommunications device under the licence, or purportedly under the licence:

(i) in contravention of any other law (whether written or unwritten) of the Commonwealth, a State or a Territory; or

25 (ii) in the course of contravening such a law.

Suspending spectrum licences

75.(1) The SMA may, by written notice given to the licensee, suspend the spectrum licence.

Note: Suspensions of spectrum licences are reviewable under Part 5.6.

30 (2) The notice must give the reasons for suspending the licence.

(3) The SMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

Period of suspension

35 76.(1) Subject to subsection (2), the suspension of the spectrum licence, unless it is sooner revoked, ceases:

(a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she

is convicted of the offence—on the expiration of 14 days after the date of the conviction; or

- (b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or
- (c) in any other case—on the expiration of 28 days after the suspension.

5

(2) If:

- (a) the notice of suspension specifies a day as the day on which the suspension of the spectrum licence ceases; and
- (b) that day occurs before the day fixed under subsection (1);

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the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.

(3) In subsection (1):

“proceedings” does not include proceedings by way of appeal or review.

15

Cancelling spectrum licences

77.(1) The SMA may, by written notice given to the licensee, cancel the spectrum licence.

Note: Cancellations of spectrum licences are reviewable under Part 5.6.

- (2) The notice must give the reasons for cancelling the licence.

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Division 4—Re-issuing spectrum licences

Notice of spectrum licences that are about to be re-issued

78. The SMA must, from time to time, cause to be published in the *Gazette* a notice that:

- (a) states where information about the spectrum licences that will expire during the 2 years immediately following publication of the notice, and the parts of the spectrum to which they relate, may be obtained; and
- (b) invites expressions of interest from persons who wish to have issued to them spectrum licences relating to those parts of the spectrum.

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30

Preparation of draft spectrum licences for re-issue

79.(1) The SMA may, at any time during the period of 2 years prior to a spectrum licence expiring, prepare:

- (a) a draft of a new spectrum licence that would wholly or partly replace that licence; or
- (b) drafts of 2 or more new spectrum licences that, taken together, would wholly or partly replace that licence.

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(2) The conditions included in a draft licence need not be the same conditions as those included in the licence that is to be replaced.

40

Procedures for re-allocating spectrum licences

5 **80.** The procedures determined under section 60 apply, so far as they are capable of applying, to re-allocating spectrum licences under this Division in the same way that they apply to allocating spectrum licences under Subdivision B of Division 1.

Re-issue of spectrum licences

81.(1) The SMA may re-allocate a spectrum licence in accordance with the procedures determined under section 60 (as they apply because of section 80), but not otherwise.

10 **(2)** The SMA must issue the spectrum licence to the person to whom it is re-allocated if the person:

(a) pays to the SMA the spectrum access charge for issuing the licence; or

15 (b) reaches an agreement with the SMA for payment of that spectrum access charge.

Re-issue of spectrum licences to the same licensees in the public interest

20 **82.(1)** The SMA may, without following the procedures determined under section 60 (as they apply because of section 80), re-issue a spectrum licence to the person to whom it was previously issued if:

(a) the licence was used in the provision of a service included in a class of services specified in a determination under subsection (2); or

25 (b) the SMA is satisfied that special circumstances exist as a result of which it is in the public interest for that person to continue to hold the licence.

(2) Subsection (1) does not imply that the SMA must issue such a spectrum licence without the person:

30 (a) paying to the SMA the spectrum access charge for issuing the licence; or

(b) reaching an agreement with the SMA for payment of that spectrum access charge.

35 **(3)** The Minister may determine, by written instrument, a specified class of services for which re-issuing spectrum licenses to the same licensees would be in the public interest.

(4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

40 **(5)** The SMA must notify the licensee in writing if the core conditions of the re-issued licence differ from the core conditions of the licence it replaces.

Note: Changes in the core conditions of such re-issued licences are reviewable decisions under Part 5.6.

(6) This section does not prevent a spectrum licence being issued under section 81 to a person to whom it was previously issued.

Contents of re-issued spectrum licences

83. Subdivision C of Division 1 applies to spectrum licences re-issued under this Division in the same way that it applies to spectrum licences issued under Division 1. 5

Commencement of re-issued spectrum licences

84. A spectrum licence re-issued under this Division comes into force on the day specified in the licence, not being a day occurring earlier than the expiry of the spectrum licence it replaces. 10

Division 5—Trading spectrum licences

Trading spectrum licences

85.(1) Subject to subsection (2) and section 86, the licensee of a spectrum licence may assign, or otherwise deal with, the whole or any part of the licence. 15

(2) An assignment must comply with any rules made under section 88.

Registration of assignments etc.

86.(1) The parties to an assignment under section 85 must give to the SMA such information about the assignment as the SMA requires for the purpose of amending the Register to take account of the assignment. 20

(2) The assignment cannot take effect before the Register is amended under Part 3.5 to take it into account.

Variation etc. of spectrum licences to take assignments into account 25

87.(1) The SMA may do one or more of the following if it is satisfied it is necessary or convenient to do so in order to give effect to an assignment under section 85:

- (a) vary a spectrum licence by specifying in it as the licensee a different person from the person currently specified; 30
- (b) vary the conditions of a spectrum licence by:
 - (i) including one or more further conditions; or
 - (ii) revoking or varying any conditions;
- (c) issue one or more new spectrum licences;
- (d) cancel one or more existing spectrum licences. 35

(2) A licence as varied, or a new licence issued, under subsection (1) must comply with the requirements of Subdivision C of Division 1.

Note: Variations and cancellations under this section are reviewable under Part 5.6.

Rules about assignments etc.

88.(1) The SMA may determine, by written instrument, rules:

- (a) for assignments of spectrum licences; and
- (b) setting out the circumstances in which spectrum licences are to be varied, issued or cancelled under section 87.

(2) The rules may, for example, restrict assignments of spectrum licences that were issued for the provision of public or community services.

(3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 6—Resuming spectrum licences

Subdivision A—Resuming spectrum licences by agreement

SMA may resume spectrum licences by agreement

89.(1) The SMA may resume a spectrum licence, or a part of a spectrum licence, under an agreement entered into with the licensee.

(2) Without limiting the matters that may be included in the agreement, if a part of the licence is to be resumed, the agreement must specify variations to the conditions included in the remaining part of the licence that will be made to give effect to the variation.

Effect of resumption

90.(1) If the whole of the licence is resumed, it ceases to have effect:

- (a) at the end of the day specified for that purpose in the agreement; or
- (b) if such a day is not specified—at the end of the day on which the agreement is entered into.

(2) If a part of the licence is resumed:

- (a) that part of the licence ceases to have effect at the end of the day on which the SMA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and
- (b) the SMA must vary, in a way that gives effect to the variations specified in the agreement, the conditions included in the remaining part of the licence.

Subdivision B—Resuming spectrum licences by compulsory process

SMA may resume spectrum licences compulsorily

91.(1) Subject to subsection (2), the SMA may resume a spectrum licence, or a part of a spectrum licence.

(2) The SMA must not resume the licence unless:

- (a) the Minister has given his or her written approval for the resumption; and
- (b) the SMA has followed the resumption procedures set out in Part 1 of the Schedule.

Effect of resumption 5

92.(1) If the whole of the licence is resumed, it ceases to have effect:

- (a) on the day specified for that purpose in the notice of resumption; or
- (b) if such a day is not specified—at the end of the day on which the notice is given. 10

(2) If a part of the licence is resumed:

- (a) that part of the licence ceases to have effect at the end of the day on which the SMA makes the necessary changes to the information in the Register under section 146 to take the resumption into account; and 15
- (b) the SMA must vary, in the way that in its opinion best gives effect to the resumption, the conditions included in the remaining part of the licence.

Note: Variations under this section are reviewable under Part 5.6.

Payment of compensation 20

93.(1) Part 2 of the Schedule sets out the procedures to be followed for determining the compensation payable for:

- (a) resuming the licence or the part of the licence; or
- (b) publishing a pre-acquisition declaration that is revoked before resumption of the licence, or the part of the licence, takes place. 25

(2) If an amount of compensation is determined under those procedures to be payable to a person, the Commonwealth must pay that amount to that person, together with the amount of interest payable under section 94.

Interest payable on resumption etc. 30

94.(1) Interest is payable on the amount of compensation in respect of the period:

- (a) starting:
 - (i) if the licence or the part of the licence is resumed—on the day the resumption took place; or 35
 - (ii) if the pre-acquisition declaration was revoked before the resumption took place—on the day the pre-acquisition declaration was served on the licensee; and
- (b) finishing at the end of the day on which the compensation is paid. 40

(2) Interest is payable at the rate specified in, or ascertained in accordance with, the regulations.

Reaching agreements during the compulsory process

5 **95.(1)** This Subdivision does not prevent the SMA entering into an agreement under section 89 under which a spectrum licence or a part of a spectrum licence is resumed even though the SMA was, until the agreement was entered into, in the process of resuming the licence, or the part of the licence, under section 91.

10 (2) On entering into the agreement, the SMA must stop the process of resuming the licence, or the part of the licence, under this Subdivision.

PART 3.3—APPARATUS LICENCES

Outline of this Part

15 **96.(1)** This Part is about apparatus licences, under which licensees are authorised to operate the radiocommunications devices to which the licences relate.

(2) Division 1 is about the types of apparatus licences that may be issued.

(3) Division 2 is about issuing apparatus licences.

20 (4) Division 3 is about the conditions to which apparatus licences are subject.

(5) Division 4 is about licensees authorising third parties to operate radiocommunications devices under apparatus licences.

(6) Division 5 is about requirements to have qualified operators to operate radiocommunications devices under some apparatus licences.

25 (7) Division 6 is about suspending and cancelling apparatus licences.

(8) Division 7 is about renewing apparatus licences.

Division 1—Types of apparatus licences

Transmitter licences and receiver licences

30 **97.(1)** The SMA may issue:
(a) transmitter licences; and
(b) receiver licences.

(2) A transmitter licence authorises:

(a) the person specified in the licence as the licensee; and
35 (b) subject to Division 4, any person authorised by that person under section 114;

to operate specified radiocommunications transmitters, or radiocommunications transmitters of a specified kind.

(3) A receiver licence authorises:
(a) the person specified in the licence as the licensee; and
(b) subject to Division 4, any person authorised by that person under section 114;
to operate specified radiocommunications receivers, or radiocommunications receivers of a specified kind. 5

(4) Operation of a radiocommunications device is not authorised by the relevant apparatus licence if it is not in accordance with the conditions of the licence.

Types of transmitter licences and receiver licences 10

98.(1) The SMA may determine, by written instrument, the types of transmitter licences and the types of receiver licences that it may issue.

(2) The SMA must not issue an apparatus licence that is not a transmitter licence or receiver licence of a type so determined. 15

(3) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Division 2—Issuing apparatus licences

Applications for apparatus licences

99.(1) A person may apply in writing to the SMA for an apparatus licence of the type specified in the application. 20

(2) The application must be in a form approved by the SMA.

(3) The SMA may approve different forms for the different types of apparatus licence.

Issuing apparatus licences 25

100.(1) Subject to section 102, upon such application being made, the SMA may issue to the applicant an apparatus licence of the type applied for.

(2) The SMA must not issue an apparatus licence authorising operation of a radiocommunications transmitter within a part of the spectrum designated under section 31 except in accordance with a decision of the ABA under subsection 34(1) of the *Broadcasting Services Act 1992*. 30

(3) Subsection (2) does not prevent the SMA from issuing an apparatus licence authorising operation of a radiocommunications transmitter for transmitting a broadcasting service if: 35

- (a) the licence authorises operation of the transmitter only within a part of the spectrum that constitutes capacity reserved under paragraph 31(1)(a) of the *Broadcasting Services Act 1992*; and
- (b) the broadcasting service in question is a broadcasting service of a kind for which the capacity has been so reserved. 40

(4) In deciding whether to issue an apparatus licence, the SMA must have regard to:

- (a) all matters that it considers relevant; and
- (b) without limiting paragraph (a), the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the licence.

(5) The SMA must not issue an apparatus licence to the applicant if, in the 2 years preceding the application, the applicant has been the licensee of an apparatus licence that has been cancelled.

(6) Without limiting subsection (4), in deciding whether to issue a transmitter licence, the SMA must have regard to the following additional matters:

- (a) if a licence that the SMA may issue as a result of the application would be a licence in respect of which persons operating the transmitters are required under section 119 to be qualified operators in relation to the licence—whether:

- (i) the applicant; or
- (ii) each person specified by the applicant as a person whom the applicant proposes to authorise under the licence to operate the transmitters;

is a qualified operator in relation to such a licence;

- (b) whether the SMA is satisfied that the proposed operation of the transmitters is not reasonably likely to cause:

- (i) death of, or injury to, persons; or
- (ii) loss of, or damage to, property.

(7) If the SMA refuses to issue the licence, it must give the applicant a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to issue apparatus licences are reviewable under Part 5.6.

(8) Nothing in this Act prevents 2 or more apparatus licences (whether transmitter licences or receiver licences or both) from being contained in the same instrument.

Testing of radiocommunications devices

101.(1) If the SMA thinks it necessary for the purposes of paragraph 100(4)(b), the SMA may, by written notice given to the applicant for a transmitter licence or a receiver licence, request the applicant to:

- (a) submit to the SMA the radiocommunications device specified in the notice, at a time and place specified in the notice, for testing; or
- (b) permit the SMA, or a person authorised by the SMA, to test the radiocommunications device so specified.

(2) A radiocommunications device submitted under paragraph (1)(a) for testing must be returned to the applicant within a reasonable time.

Transmitter licences for certain broadcasting services

102.(1) If a broadcasting services bands licence (the “related licence”) is allocated to a person under Part 4 or 6 of the *Broadcasting Services Act 1992*, the SMA must issue to the person a transmitter licence that authorises operation of one or more specified radiocommunications transmitters for transmitting the broadcasting service concerned in accordance with the related licence. 5

(2) If the related licence is transferred, that transmitter licence is taken to be issued to the person to whom the related licence is transferred. 10

Duration of apparatus licences

103.(1) An apparatus licence comes into force on the day on which it is issued or on such later day as is specified in the licence for the purpose.

(2) Subject to Division 6, an apparatus licence (other than an apparatus licence issued under section 102) remains in force for the period specified in the licence. 15

(3) The licence may specify any period not exceeding 5 years.

(4) A transmitter licence issued under section 102:

(a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and 20

(b) does not have effect while the related licence referred to in that section is suspended.

Compliance with plans

104. The SMA must not issue an apparatus licence that is inconsistent with the spectrum plan or any relevant frequency band plan. 25

Parts of the spectrum allocated for spectrum licences

105.(1) Subject to subsection (2), the SMA must not issue an apparatus licence that authorises the operation of radiocommunications devices at frequencies that are within a part of the spectrum that is designated under section 36 to be allocated by issuing spectrum licences. 30

(2) The SMA may issue such an apparatus licence if it is satisfied that the special circumstances of the particular case justify the issuing of the licence. 35

Price-based allocation system for certain transmitter licences

106.(1) The SMA may determine in writing a price-based allocation system for issuing specified transmitter licences.

(2) A system so determined:

- (a) subject to subsection (3), may apply generally or in respect of a particular area; and
- (b) may apply only in relation to a specified range of frequencies; and
- 5 (c) may require payment of an application fee, but not a fee that would be such as to amount to taxation.

(3) If a transmitter licence is issued under a system so determined, the SMA must publish in the *Gazette*:

- (a) the successful applicant's name; and
- 10 (b) the amount that the applicant agreed to pay to the Commonwealth for issue of the licence.

Division 3—Conditions of apparatus licences

General conditions

107.(1) An apparatus licence is subject to the following conditions:

- 15 (a) a condition that the licensee, and any person authorised by the licensee to operate a radiocommunications device under the licence, must comply with this Act;
- (b) a condition that the licensee inform each person so authorised of the person's obligations to comply with this Act and the
- 20 conditions of the licence;
- (c) a condition that the licensee meet all obligations (if any) of the licensee to pay:
 - (i) charges fixed by determinations under section 293; and
 - (ii) amounts of apparatus licence tax;
- 25 (d) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it;
- (e) a condition that the operation of a radiocommunications device
- 30 under the licence must be in accordance with any technical licence specifications, as in force from time to time, referred to in the licence;
- (f) such conditions (if any) as are specified in the regulations;
- (g) such other conditions as are specified in the licence.

35 (2) Paragraphs (1)(a), (b), (c), (d) and (e) do not limit the kinds of conditions that may be specified under paragraph (1)(f) or (g) or imposed under paragraph 111(a).

Note: Inclusion of conditions under paragraph (1)(g) is a reviewable decision under Part 5.6.

(3) This section does not apply to transmitter licences issued under section 102.

Additional conditions for transmitter licences

108.(1) A transmitter licence is subject to the additional conditions set out in subsection (2) relating to the operation of any radiocommunications transmitter under the licence by the licensee, or by any person authorised by the licensee to operate a radiocommunications transmitter under the licence. 5

- (2) The licensee, and any person so authorised:
- (a) must not operate, or permit operation of, the transmitter for a purpose that is inconsistent with a purpose of a kind specified in the appropriate frequency band plan (if any) under subsection 32(4); and 10
 - (b) must not operate, or permit operation of, the transmitter except in accordance with any conditions specified in the licence that relate to:
 - (i) containment of interference, or of the likelihood of interference, to radiocommunications; or 15
 - (ii) transmission of an identification signal; and
 - (c) must not operate, or permit operation of, the transmitter except on a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence; and 20
 - (d) must not operate, or permit operation of, the transmitter:
 - (i) in a way that would be likely to cause reasonable persons, justifiably in all the circumstances, to be seriously alarmed or seriously affronted; or
 - (ii) for the purpose of harrasing a person; and 25
 - (e) if the licence is a licence in respect of which persons operating the transmitter are required under section 119 to be qualified operators in relation to the licence—must not operate the transmitter unless he or she is such a qualified operator; and
 - (f) must comply with subsection 269A(2) of the *Navigation Act 1912*; and 30
 - (g) must comply with any direction:
 - (i) that relates to operation of the transmitter; and
 - (ii) to which subsection (3) applies.
- (3) This subsection applies to a direction that: 35
- (a) is given, in a way not inconsistent with any relevant guidelines under section 112, either orally or in writing; and
 - (b) is given by:
 - (i) a member of the Australian Federal Police; or
 - (ii) a member of the police force of a State or Territory; or 40
 - (iii) an officer of the Defence Force; or
 - (iv) an officer of the Australian Coastal Surveillance Centre; or

(v) an officer who is included in a class of officers specified in the regulations, and who is an officer of an organisation specified in the regulations the sole or principal purpose of which is to deal with natural disasters; and

5 (c) is reasonably necessary for the purposes of:

(i) securing the safety of a vessel or aircraft that is in danger; or

(ii) dealing with an emergency involving a serious threat to the environment; or

10 (iii) dealing with an emergency involving risk of death of, or injury to, persons; or

(iv) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

15 (4) This section does not limit the kinds of conditions that may be specified under paragraph 107(1)(f) or (g) or imposed under paragraph 111(a).

(5) This section does not apply to transmitter licences issued under section 102.

Conditions of transmitter licences for certain broadcasting services

20 **109.(1)** A transmitter licence issued under section 102 is subject to the following conditions:

(a) a condition that the licensee must comply with this Act;

(b) a condition that the licensee meet all obligations (if any) of the licensee to pay:

25 (i) charges fixed by determinations under section 293; and

(ii) amounts of apparatus licence tax;

(c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;

30 (d) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in accordance with any relevant technical specifications determined by the ABA under subsection 26(1) of the *Broadcasting Services Act 1992*;

35 (e) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ABA under section 33 of the *Broadcasting Services Act 1992*;

(f) such other conditions as are specified in the licence.

40 (2) The conditions of the licence, including any further conditions imposed under paragraph 111(a), must not be inconsistent with the related licence as referred to in section 102.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

Conditions relating to interference by broadcasters

110. The conditions that may be specified in an apparatus licence under paragraph 109(1)(f) include, for example:

- (a) a condition requiring the licensee to place advertisements, in a specified way, asking members of the public to contact the licensee if they believe that operation of a transmitter to which the licence relates is causing interference to other radiocommunications; and 5
- (b) a condition that, if operation of the transmitter is causing interference to other radiocommunications, the licensee must (at the licensee's own expense) adjust, or fit devices to, receivers in order to eliminate or minimise the interference. 10

Changes to licence conditions

111. The SMA may, by notice in writing given to the licensee of an apparatus licence:

- (a) impose one or more further conditions to which the licence is subject; or
- (b) revoke or vary any condition imposed under paragraph (a); or
- (c) revoke or vary any condition specified under paragraph 107(1)(g) or 109(1)(f); or 20
- (d) if the licence is a transmitter licence, other than a licence issued under section 102—vary a condition of the kind referred to in paragraph 108(2)(a), (b) or (c).

Note: Decisions under this section are reviewable under Part 5.6.

Guidelines relating to conditions etc.

112.(1) The SMA may, by written instrument, make guidelines:

- (a) that it is to apply in exercising its powers under sections 107, 108 and 111; or
- (b) for the purposes of paragraph 108(3)(a).

(2) In exercising its powers under sections 107, 108 and 111, the SMA must comply with any relevant guidelines that are in force. 30

(3) Subject to subsection (4), a guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4) Despite paragraph 46A(1)(c) of that Act, a guideline is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*. 35

Contravention of conditions

113. A person must not, without reasonable excuse, knowingly or recklessly contravene a condition of an apparatus licence.

Penalty: \$10,000. 40

Division 4—Third party users

Licensees may authorise third party users

5 **114.(1)** Subject to subsections (2) and (3), a licensee of an apparatus licence may, by written instrument, authorise other persons to operate radiocommunications devices under the licence.

(2) The licensee must not authorise a person if to do so would be inconsistent with determinations of the SMA under section 115.

(3) The licensee must not authorise a person if:

- 10 (a) the person has been issued an apparatus licence that:
- (i) was or is of the same type as the licensee's licence; and
 - (ii) authorised operation of radiocommunications devices of the same kind as those to which the licensee's licence relates; and
- 15 (b) the person's licence:
- (i) is suspended; or
 - (ii) has been cancelled within the last 2 years.

(4) Authorising other persons does not prevent the licensee doing anything in accordance with the licence.

Determinations limiting authorisation of third party users

- 20 **115.(1)** The SMA may, by written instrument, determine:
- (a) categories of apparatus licences in respect of which licensees must not authorise other persons to operate radiocommunications devices; or
 - (b) classes of persons who must not be so authorised; or
 - 25 (c) circumstances in which persons must not be so authorised.

(2) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Revocation of authorisations

30 **116.(1)** If the SMA is satisfied that a person authorised under section 114 has contravened a condition of the licence to which the authorisation relates, the SMA may give the licensee a written notice directing the licensee to revoke the authorisation.

Note: Directions to revoke an authorisation are reviewable under Part 5.6.

(2) The notice must give the reasons for the direction.

35 (3) As soon as practicable and, in any event, within 7 days after service of the notice, the licensee must revoke the authorisation.

(4) The licensee must not further authorise the person under section 114 until the direction is:

- (a) revoked under subsection 289(1) of this Act or as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
- (b) set aside by a court or the AAT.

(5) If:

- (a) a person has been authorised under section 114 in relation to a particular licence; and 5
 - (b) at the time of the authorisation, the person was the licensee of another apparatus licence of the same type that authorised operation of radiocommunications devices of the same kind as those to which the first-mentioned licence relates; and 10
 - (c) the other licence is suspended or cancelled;
- the authorisation is taken to have been revoked on the day on which the other licence is suspended or cancelled.

Licensees must keep records of authorisations

117. A licensee of an apparatus licence who authorises a person under section 114 must: 15

- (a) cause a copy of the authorisation to be kept in Australia; and
- (b) retain the copy for at least one year after the authorisation ceases to be in force.

Penalty: \$2,000. 20

Licensees must notify authorised persons of certain matters

118.(1) As soon as practicable and, in any event, within 7 days after the licensee of an apparatus licence is given:

- (a) a notice under section 111 relating to changes in licence conditions; or 25
 - (b) a notice under subsection 116(1) requiring an authorisation under section 114 to be revoked; or
 - (c) a notice under subsection 126(1) suspending the licence; or
 - (d) a notice under subsection 128(1) cancelling the licence;
- the licensee must notify the effect of the notice to each person who is currently authorised under section 114 in relation to the licence. 30

Penalty: \$2,000.

- (2) Giving such a notice to the licensee does not render unlawful anything done by a person authorised by the licensee under section 114 before the person is notified under subsection (1) of this section. 35

Division 5—Qualified operators

SMA to determine the need for qualified operators

119. The SMA may determine, by written instrument, that persons operating transmitters under transmitter licences included in a class of transmitter licences specified in the instrument must be qualified operators. 40

Applications for certificates of proficiency

120.(1) A person who wishes to be a qualified operator in relation to one or more such classes of transmitter licences may apply to the SMA for a certificate of proficiency.

5 (2) The application must be in a form approved by the SMA.

Issuing certificates of proficiency

121.(1) Subject to section 122, the SMA may issue to the applicant a certificate of proficiency in writing certifying that the holder of the certificate is taken to be a qualified operator in relation to a specified class of transmitter licences.

(2) The classes of transmitter licences so specified are to be any or all of the classes of transmitter licences for which determinations under section 119 are in force.

15 (3) If the SMA refuses to issue a certificate of proficiency, it must give the applicant a written notice of the refusal together with a statement of its reasons.

Note: Refusals to issue certificates of proficiency are reviewable under Part 5.6.

Restrictions on issuing certificates of proficiency

122.(1) The SMA must not issue a certificate of proficiency unless:
20 (a) the SMA is satisfied that the applicant has reached the minimum age in relation to the class of certificates in which the certificate is included; and

(b) the SMA:
25 (i) is satisfied that the applicant has achieved satisfactory results in approved examinations or in examinations conducted under the regulations; or
(ii) is satisfied, upon reasonable grounds, that the applicant would probably achieve such results.

(2) In this section:
30 “**approved examination**” means an examination conducted by:

(a) the SMA; or
(b) a body or organisation approved by the SMA, by written instrument, for the purposes of this section; or
35 (c) an examination approved by the SMA, by written instrument, for the purposes of this section;

“**minimum age**”, in relation to a class of certificates, means the age that the SMA, by notice published in the *Gazette*, declares to be the minimum age for the purposes of this section in relation to that class.

Re-examination of qualified operators

40 123.(1) If, at any time:
(a) the SMA has reasonable grounds for believing that a qualified

operator will probably be unable to achieve satisfactory results in an examination of the kind referred to in paragraph 122(1)(b); the SMA may:

(b) give to the operator a written request that the operator submit himself or herself to an examination, or a further examination, of that kind. 5

(2) The request must set out:

(a) particulars of the examination in question; and

(b) the time and place of the examination; and

(c) the effect of subparagraph 124(3)(b)(iii). 10

Cancelling certificates of proficiency

124.(1) The SMA may, by written notice given to a qualified operator, cancel the operator's certificate of proficiency.

(2) The notice must give the reasons for the cancellation.

(3) In deciding whether to cancel the certificate, the SMA must have regard to: 15

(a) all matters that it considers relevant; and

(b) without limiting paragraph (a), the following matters:

(i) any matters to which the SMA must have regard in deciding whether to issue a certificate of proficiency; 20

(ii) whether the SMA is satisfied, that the operator has failed to achieve satisfactory results in an examination or further examination referred to in section 123;

(iii) whether the operator has refused or failed, without reasonable excuse, to comply with a request under section 123; 25

(iv) whether the operator has been convicted of an offence against section 302 or the regulations;

(v) whether the SMA is satisfied that the operator has contravened rules relating to the conduct or administration of an examination of the kind referred to in paragraph 122(1)(b). 30

Note: Cancellations of certificates of proficiency are reviewable under Part 5.6.

Division 6—Suspending and cancelling apparatus licences

Application of this Division

125.(1) Subject to subsection (2), this Division applies to an apparatus licence if the SMA is satisfied that the licensee, or a person authorised by the licensee to operate a radiocommunications device under the licence, has: 35

(a) contravened a condition of the licence, or in any other way contravened this Act; or

(b) operated a radiocommunications device under the licence, or purportedly under the licence:

5 (i) in contravention of any other law (whether written or unwritten) of the Commonwealth, a State or a Territory; or

(ii) in the course of contravening such a law.

10 (2) This Division does not apply to transmitter licences issued under section 102.

Suspending apparatus licences

126.(1) The SMA may, by written notice given to the licensee, suspend the apparatus licence.

Note: Suspensions of apparatus licences are reviewable under Part 5.6.

15 (2) The notice must give the reasons for suspending the licence.

(3) The SMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

Period of suspension

20 127.(1) Subject to subsection (2), the suspension of the apparatus licence, unless it is sooner revoked, ceases:

25 (a) if, within 28 days after the suspension, proceedings for an offence against this Act are instituted against the licensee, or against a person authorised by the licensee to operate a radiocommunications device under the licence, and he or she is convicted of the offence—on the expiration of 14 days after the date of the conviction; or

(b) if such proceedings are instituted within 28 days after the suspension and he or she is not convicted of the offence—on the completion of the proceedings; or

30 (c) in any other case—on the expiration of 28 days after the suspension.

(2) If:

(a) the notice of suspension specifies a day as the day on which the suspension of the apparatus licence ceases; and

35 (b) that day occurs before the day fixed under subsection (1);
the suspension of the licence, unless it is sooner revoked, ceases on the day so specified.

(3) In subsection (1):

“**proceedings**” does not include proceedings by way of appeal or review.

Cancelling apparatus licences

128.(1) The SMA may, by written notice given to the licensee, cancel the apparatus licence.

Note: Cancellations of apparatus licences are reviewable under Part 5.6.

- (2) The notice must give the reasons for cancelling the licence. 5

Division 7—Renewing apparatus licences

Applications for renewal of apparatus licences

129.(1) A licensee of an apparatus licence (other than a transmitter licence issued under section 102) may, at any time during the period of 6 months before the licence is due to expire, apply in writing to the SMA for the licence to be renewed. 10

- (2) The application must be in a form approved by the SMA.

(3) The SMA may approve different forms for renewal of different types of apparatus licence.

Renewing apparatus licences 15

130.(1) When an application is made, the SMA may renew the licence by issuing to the applicant a new apparatus licence.

(2) The conditions of the new apparatus licence need not be the same as those of the licence that it replaces.

(3) In deciding whether to renew the licence, the SMA must have regard to the same matters as the matters to which it must have regard under subsection 100(4) in deciding whether to issue such a licence. 20

(4) The new licence comes into force immediately after the expiration of the licence that it replaces.

- (5) If the SMA: 25

(a) refuses to renew the licence; or

(b) renews the licence but not on the same conditions;

the SMA must give the licensee a written notice stating that fact, together with a statement of its reasons.

Note: Refusals to renew apparatus licences, and changes to licence conditions on renewal, are reviewable under Part 5.6. 30

Application of other provisions

131. Section 101, subsections 103(2) and (3) and sections 104 and 105 apply to renewing an apparatus licence in the same way that they apply to issuing an apparatus licence. 35

PART 3.4—CLASS LICENCES

Division 1—General

SMA may issue class licences

5 **132.(1)** The SMA may, by notice published in the *Gazette*, issue class licences.

(2) A class licence authorises any person:

- (a) to operate a radiocommunications device of a specified kind;
or
- 10 (b) to operate a radiocommunications device for a specified purpose;
or
- (c) to operate a radiocommunications device of a specified kind for a specified purpose.

15 (3) Operation of a radiocommunications device is not authorised by a class licence if it is not in accordance with the conditions of the licence.

(4) A class licence comes into force:

- (a) on the day specified for the purpose in the notice published under subsection (1); or
- 20 (b) if no such day is specified in the notice—on the day on which the notice is published.

Conditions of class licences

133.(1) The SMA may include in a class licence such conditions as it thinks fit.

25 (2) The conditions may, for example, include all or any of the following:

- (a) a condition specifying the frequencies at which operation of radiocommunications devices is authorised under the licence;
- (b) a condition specifying other technical requirements about operation of radiocommunications devices under the licence;
- 30 (c) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence;
- (d) a condition specifying the periods during which operation of radiocommunications devices is authorised under the licence;
- 35 (e) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it.

(3) The notice published in the *Gazette* must include all the conditions of the licence.

Varying class licences

134. Subject to section 136, the SMA may, by notice published in the *Gazette*, vary a class licence by:

- (a) including one or more further conditions; or
- (b) revoking or varying any conditions of the licence. 5

Revoking class licences

135. Subject to section 136, the SMA may, by notice published in the *Gazette*, revoke a class licence.

Consultation on variations and revocations

136.(1) Before varying a class licence, the SMA must cause to be published in the *Gazette* a written notice that: 10

- (a) states that it proposes to vary the licence; and
- (b) states the subject matter of the proposed variation; and
- (c) specifies a place at which copies of the licence and of the proposed variation can be bought; and 15
- (d) invites interested persons to make representations about the proposed variation by a specified date that is at least one month after the date of publication of the notice; and
- (e) specifies an address or addresses to which representations may be sent. 20

(2) Before revoking a class licence, the SMA must cause to be published in the *Gazette* a written notice that:

- (a) states that it proposes to revoke the licence; and
- (b) specifies a place at which copies of the licence may be bought; and 25
- (c) invites interested persons to make representations about the proposed revocation by a specified date that is at least one month after the date of publication of the notice; and
- (d) specifies an address or addresses to which representations may be sent. 30

(3) A person may, not later than the date specified in a notice under subsection (1) or (2), make representations to the SMA about the proposed variation or revocation.

(4) The SMA must, before varying or revoking the licence, give due consideration to any representations so made. 35

(5) Failure to comply strictly with subsection (1) or (2) does not affect the validity of the notice, or the validity of the variation or revocation of the class licence, if the requirements of that subsection are substantially complied with.

(6) This section does not apply to variation or revocation of a class licence if the SMA is satisfied that the variation or revocation is a matter of urgency.

Compliance with plans

5 137. The SMA must not issue a class licence that is inconsistent with the spectrum plan or any relevant frequency band plan.

Parts of the spectrum allocated for spectrum licences

10 138. The SMA must not issue a class licence that authorises the operation of radiocommunications devices at frequencies that are within a part of the spectrum that is designated under section 36 to be allocated by issuing spectrum licences.

Disallowance of class licences

139. A class licence is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

15 ***Division 2—Requests for advice***

Requests for advice on operation of radiocommunications devices

20 140.(1) A person who operates, or is proposing to operate, a radiocommunications device may give to the SMA a written request for advice on whether operation of the device is authorised under the class licence specified in the request.

(2) The request may be limited to advice on operation of the device in the circumstances specified in the request.

(3) The circumstances so specified may include the way in which the device is operated.

25 (4) The request must be in a form approved by the SMA.

SMA to advise on the operation of radiocommunications devices

30 141.(1) The SMA is to give, to a person who requests advice under section 140, written advice on whether it thinks the operation of the radiocommunications device, as specified in the request, is authorised under the class licence in question.

(2) The advice may state that operation of the device is authorised under the class licence only if, or unless, the device is operated in the circumstances specified in the advice.

35 (3) The circumstances so specified may include the way in which the device is operated.

The effect of the SMA's advice

142.(1) If:

- (a) the advice states that the operation of the device is authorised under the class licence; and

(b) the device is operated only in accordance with the advice; neither the SMA nor any other authority of the Commonwealth may take any action against the person to whom the advice was given, during the period of 5 years commencing on the day the advice was given, on the basis that operation of the device is not so authorised. 5

(2) This Division does not imply that operation of a radiocommunications device is not authorised under a class licence unless it is in accordance with advice given under this Division.

PART 3.5—REGISTRATION OF LICENCES

The Register of Radiocommunications Licences 10

143.(1) There is to be a register known as the Register of Radiocommunications Licences.

(2) The Register is to be established and kept by the SMA.

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

(4) The Register may consist of 2 or more registers, each of which contains so much of the information that is required to be entered in the Register as the SMA determines. 15

Contents of the Register—spectrum licences

144.(1) The Register is to contain the following information for each spectrum licence: 20

(a) the licensee's name and postal address;

(b) the date of issue and date of expiry of the licence;

(c) such details as the SMA determines, in writing, about the conditions of spectrum licences;

(d) such details as the SMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under spectrum licences; 25

(e) such details as the SMA determines, in writing, about radiocommunications devices that are operated under spectrum licences. 30

(2) The SMA may include in the Register such other details about spectrum licences as it thinks necessary or convenient for the purposes of this Act.

Refusal to register radiocommunications transmitters for operation under spectrum licences 35

145.(1) The SMA may:

(a) refuse to include in the Register under paragraph 144(1)(e) details of a radiocommunications transmitter that is proposed to be operated under a spectrum licence;

if the SMA is satisfied that:

- 5 (b) operation of the transmitter could cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence.

Note: Operation of a radiocommunications transmitter without registration of its details may breach a licence condition under section 69.

- 10 (2) If the SMA refuses an application to include in the Register details of such a transmitter, it must give the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to include in the Register such details are reviewable decisions under Part 5.6.

- 15 (3) The SMA may require that, before such details are included in the Register, there be presented to the SMA a certificate, issued by a person accredited under section 263 to issue certificates for the purposes of this section, stating that operation of the device under the licence will not cause an unacceptable level of interference to the operation of other radiocommunications devices under that or any other spectrum licence, or any other licence.

- 20 (4) The SMA may determine, by written instrument, what are unacceptable levels of interference for the purposes of this section.

Updating the Register to take variations etc. of spectrum licences into account

- 25 **146.(1)** Subject to subsection (2), the SMA must, as soon as practicable, make the changes to the information in the Register about a spectrum licence that the SMA considers are necessary or convenient for taking into account:

- (a) any variation of the licence under section 72, 73, 87, 90 or 92; or
or
30 (b) any suspension of the licence under section 75; or
(c) any cancellation of the licence under section 77 or 87, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence; or
(d) any assignment of the licence under section 85; or
(e) any resumption of the licence under section 89 or 91.

- 35 (2) The SMA need not make such changes in order to take into account an assignment of the licence under section 85, or a variation of the licence under section 87 that relates to the assignment, unless:

- (a) the SMA has been given the information required under section 86; and
40 (b) the SMA has been paid the appropriate charge fixed by determination made under section 293.

Contents of the Register—apparatus licences

147.(1) The Register is to contain the following information for each apparatus licence:

- (a) the licensee's name and postal address;
- (b) the date of issue and date of expiry of the licence; 5
- (c) such details as the SMA determines, in writing, about the conditions of apparatus licences;
- (d) such details as the SMA determines, in writing, about authorisations by licensees for other persons to operate radiocommunications devices under spectrum licences; 10
- (e) such details as the SMA determines, in writing, about radiocommunications devices that are operated under apparatus licences.

(2) The SMA may include in the Register such other details about apparatus licences as it thinks necessary or convenient for the purposes of this Act. 15

Updating the Register to take variations etc. of apparatus licences into account

148. The SMA must, as soon as practicable, make the changes to the information in the Register about an apparatus licence that the SMA considers are necessary or convenient in order to take into account: 20

- (a) any variation of the licence under section 111; or
- (b) any suspension of the licence under section 126; or
- (c) any cancellation of the licence under section 128, or any cancellation of the licence that, under section 307, is taken to have occurred on acceptance of a surrender of the licence. 25

Contents of the Register—class licences

149.(1) The Register is to contain, for each class licence, such details as the SMA determines, in writing, about class licences. 30

(2) The SMA may include in the Register such other details about class licences as it thinks necessary or convenient for the purposes of this Act.

Updating the Register to take variations etc. of class licences into account 35

150. The SMA must, as soon as practicable, make the changes to the information in the Register about a class licence that the SMA considers are necessary or convenient in order to take into account:

- (a) any variation of the licence under section 134; or
- (b) any revocation of the licence under section 135. 40

Inspection of the Register

151.(1) Subject to section 152, the SMA must ensure that the Register is available for inspection by any person during the hours that the SMA is open for business.

- 5 (2) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, so far as the Register is so kept, by giving members of the public access to a computer terminal that they can use to inspect the Register, either on a screen or in the form of a computer print-out.

10 **Parts of the Register may be kept confidential**

152. Section 151 does not apply in relation to a part of the Register if the SMA is satisfied that it would not be in the national interest (for example, for defence or security reasons) for information in that part of the Register to be available to the public.

15 **Correction of the Register**

153.(1) The SMA may, at any time, correct information in the Register.

(2) The correction may be made:

- (a) in any case—on the SMA's own initiative; or
20 (b) if the information is about a spectrum licence or an apparatus licence—on the application of the licensee or a person authorised by the licensee to operate radiocommunications devices under the licence.

25 (3) An application under paragraph (2)(b) must be in a form approved by the SMA.

(4) On making a correction, the SMA must give written notice of the correction to:

- (a) the licensee; and
30 (b) if an application was made under paragraph (2)(b) by a person (other than the licensee) for the information to be corrected—that person; and
(c) any other person whose interests are likely to be affected by the correction.

35 (5) On refusing an application for a correction, the SMA must give to the applicant written notice of the refusal, together with a statement of its reasons.

Note: Refusals to correct the Register are reviewable decisions under Part 5.6.

CHAPTER 4—GENERAL REGULATORY PROVISIONS

Outline of this Chapter

154.(1) This Chapter imposes requirements that relate both to radiocommunications and to radio emissions in general.

(2) Part 4.1 is about standards applicable to, and other technical regulation of, equipment that uses, or is affected by, radio emissions. 5

(3) Part 4.2 contains offence provisions relating to radio emissions, in particular offences aimed at containing various kinds of interference with radiocommunications.

(4) Part 4.3 establishes a conciliation process for the settlement of interference disputes. 10

(5) Part 4.4 enables certain restrictions to be imposed by restrictive orders made during declared periods of emergency.

PART 4.1—STANDARDS AND OTHER TECHNICAL REGULATION 15

Division 1—Preliminary

The object of this Part

155.(1) The object of this Part is to establish an efficient, flexible and responsive system for technical regulation of equipment that uses, or is affected by, radio emissions. 20

(2) The system is intended to:

(a) benefit users of the equipment by promoting the electromagnetic compatibility of equipment; and

(b) contain interference within acceptable limits; and

(c) establish standards for the equipment and for services provided using the equipment; and 25

(d) control sale or supply of non-standard devices; and

(e) enable efficient management of compliance and enforcement, including, in particular, industry self-certification for compliance with standards. 30

Outline of this Part

156. In order to achieve this object:

(a) Division 2 imposes prohibitions relating to non-standard devices, subject to exceptions in Divisions 4 and 5;

(b) Division 3 enables the SMA to make standards for devices (including the radio emissions made by devices); 35

(c) Division 4 enables the SMA to issue permits that exempt non-standard transmitters from Division 2;

- (d) Division 5 sets out the other ways in which non-standard devices can be exempt from Division 2;
- (e) Division 6 enables technical licence specifications to be made for apparatus licences;
- 5 (f) Division 7 enables the SMA to require that devices be labelled to indicate whether they comply with standards, technical licence specifications or class licences;
- (g) Division 8 enables devices to be prohibited because of their effect on radiocommunications.

10 **Division 2—Non-standard devices**

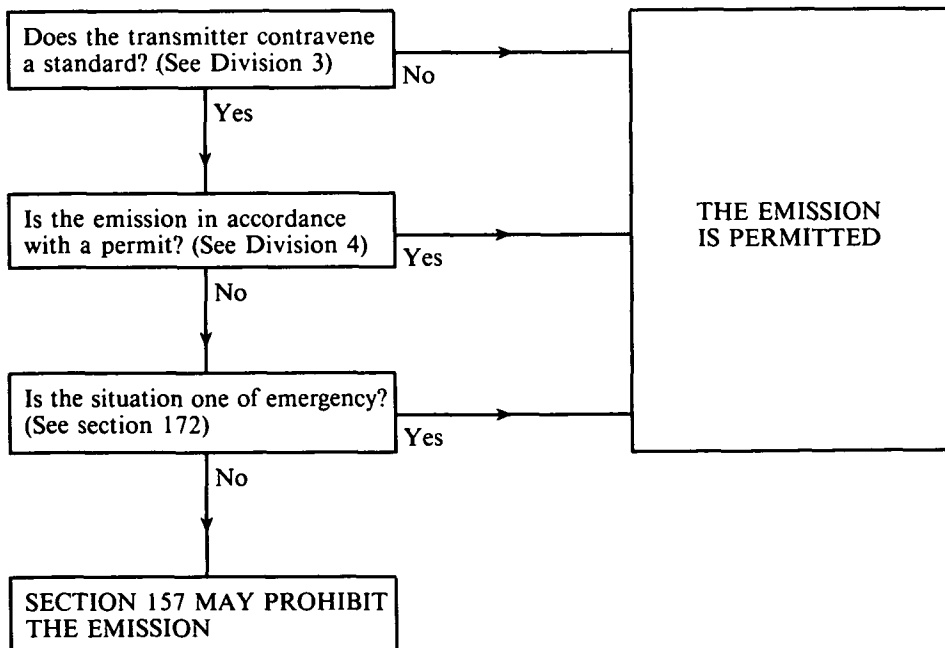
Emissions from non-standard transmitters

157.(1) Subject to Divisions 4 and 5, a person must not, without reasonable excuse, cause a radio emission to be made by a transmitter that the person knows is a non-standard transmitter.

15 **Penalty:**

- (a) if the offender is an individual—\$12,000; or
- (b) otherwise—\$150,000.

(2) The following diagram shows the way this Part (other than Division 8) applies to radio emissions.



Note: Chapter 3 imposes additional requirements on operation of radiocommunications devices.

Possession of non-standard transmitters

158.(1) Subject to Divisions 4 and 5, a person must not, without reasonable excuse, have in his or her possession for the purpose of operation a transmitter that the person knows is a non-standard transmitter.

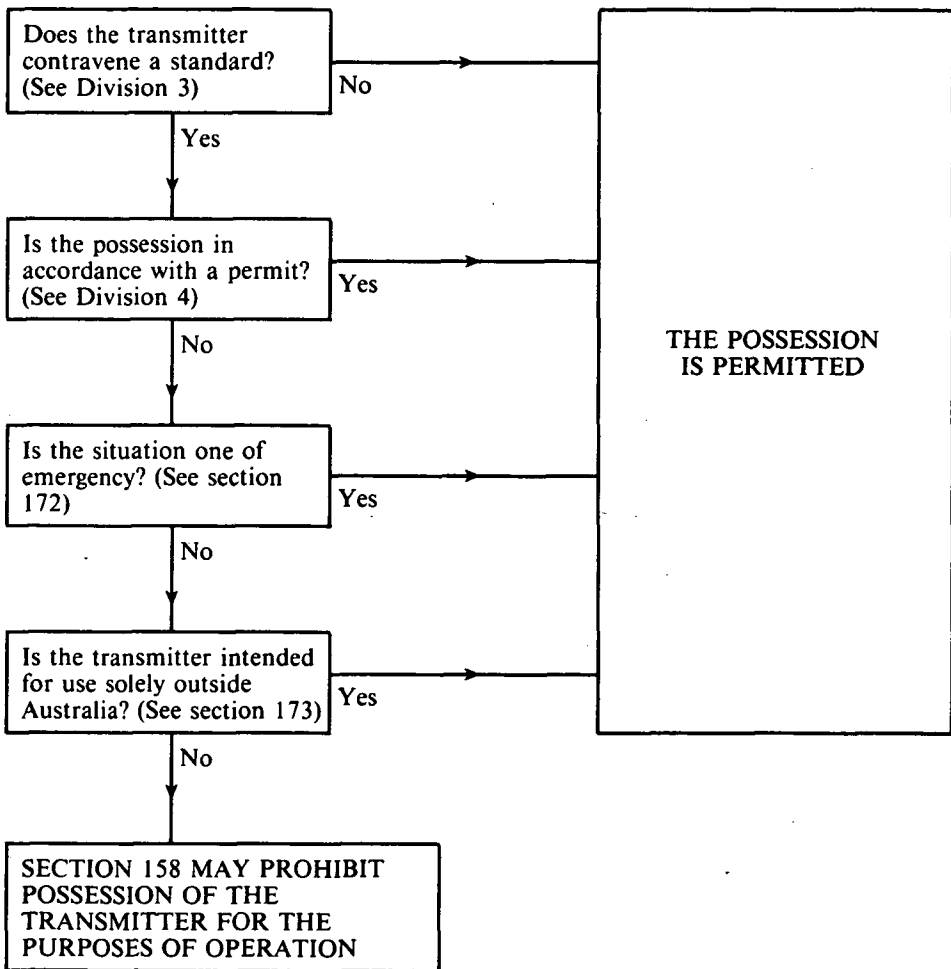
5

Penalty:

- (a) if the offender is an individual—\$12,000; or
- (b) otherwise—\$150,000.

(2) The following diagram shows the way this Part (other than Division 8) applies to possession of transmitters.

10



Note: Chapter 3 imposes additional requirements on possession of radiocommunications devices.

Additional provisions about possession of transmitters

5 **159.(1)** Without limiting section 158, a person is taken, for the purposes of that section, to have a transmitter in his or her possession for the purpose of operation if it is in his or her possession, otherwise than for the purpose of supply to another person, and can be operated by merely doing one or more of the following:

- 10 (a) connecting the transmitter to an electric power supply by means of an electric plug or other electric connection;
- (b) connecting a microphone to the transmitter by inserting a microphone plug into the transmitter;
- (c) switching on the transmitter;
- (d) switching on any other equipment relevant to the transmitter's operation;
- 15 (e) adjusting settings by manipulating the transmitter's external switches, dials or other controls;
- (f) connecting the transmitter to an antenna.

(2) Subsection (1) only applies in the absence of any evidence to the contrary.

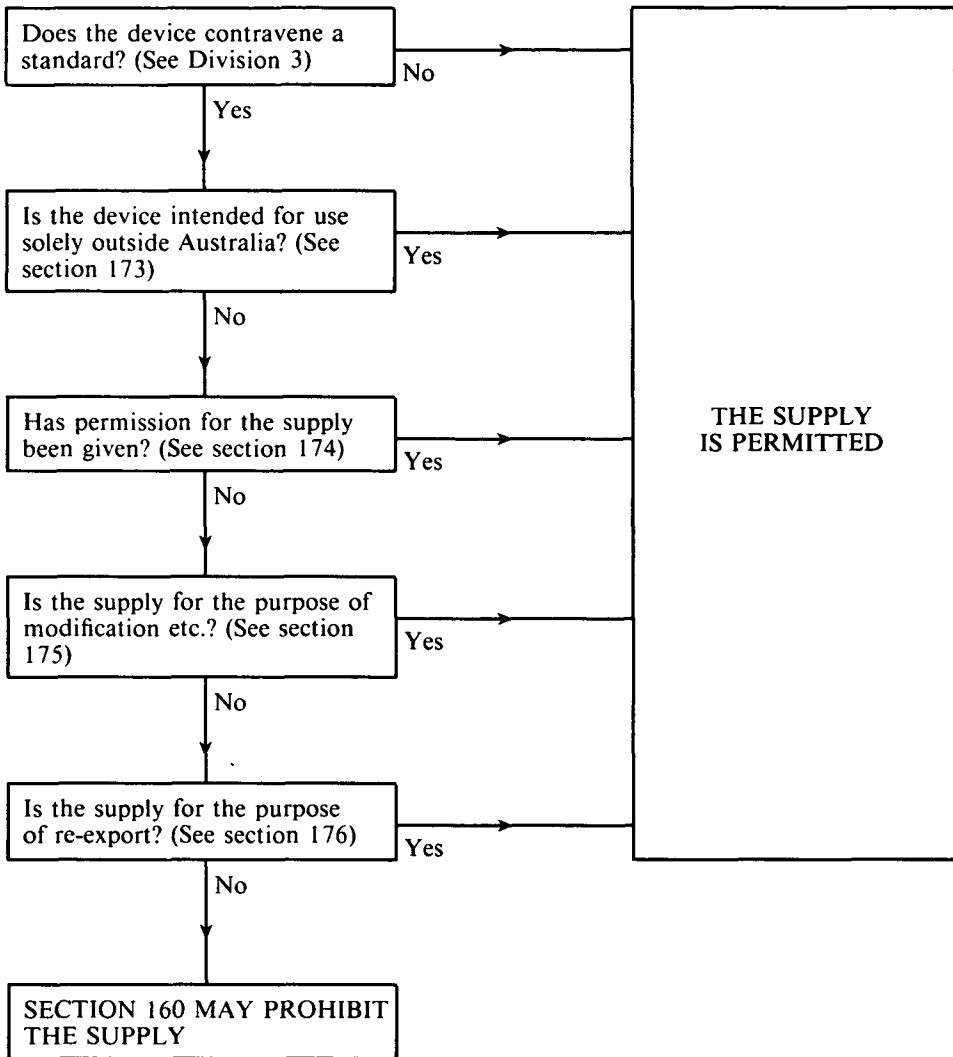
20 (3) A reference in this section to a person having a transmitter in his or her possession includes a reference to the person having it under control in any place whatever, whether for the use or benefit of that person or another person, and although another person has the actual possession or custody of it.

Supply of non-standard devices

25 **160.(1)** Subject to Division 5, a person must not, without reasonable excuse, supply a device that the person knows is a non-standard device.
Penalty:

- (a) if the offender is an individual—\$12,000; or
- (b) otherwise—\$150,000.

(2) The following diagram shows how this Part (other than Division 8) applies to supply of devices.



Imputed knowledge

161. For the purposes of establishing a contravention of section 157, 158 or 160, if, having regard to:

5

(a) a person's abilities, experience, qualifications and other attributes; and

(b) all the circumstances surrounding the alleged contravention;

the person ought reasonably to have known that the transmitter or device in question was a non-standard transmitter or non-standard device, the person is taken to have known that it was a non-standard transmitter or non-standard device.

10

Division 3—Standards

The SMA's power to make standards

162.(1) The SMA may, by written instrument, make standards for:

- (a) the performance of specified devices; or
- 5 (b) the maximum permitted level of radio emissions from devices (other than radiocommunications from radiocommunications devices in accordance with Chapter 3) within specified parts of the spectrum.

(2) A standard:

- 10 (a) may be of general application or may be limited as provided in the standard; and
- (b) without limiting paragraph (a), may apply:
 - (i) with respect to one or more specified areas; or
 - 15 (ii) with respect to one or more specified parts of the spectrum.

(3) Standards are to consist only of such requirements as are necessary or convenient for:

- (a) containing interference to radiocommunications; or
- (b) containing interference to any uses or functions of devices; or
- 20 (c) establishing for the operation of radiocommunications devices an adequate level of immunity from electromagnetic disturbance caused by the use of devices (including other radiocommunications devices); or
- 25 (d) establishing for the uses or functions of devices an adequate level of immunity from electromagnetic disturbances caused by the operation of radiocommunications transmitters.

Procedures for making standards

163.(1) Before making a standard, the SMA must, so far as is practicable, try to ensure that:

- 30 (a) interested persons have had adequate opportunity to make representations about the proposed standard; and
- (b) due consideration has been given to any representations so made.

(2) The SMA may make an arrangement with a body to which this subsection applies under which the body:

- 35 (a) prepares a draft of a standard; and
- (b) publishes the draft standard; and
- (c) undertakes a process of public consultation on the draft standard.

(3) Subsection (2) applies to:

- 40 (a) the Standards Association of Australia; and

- (b) a Department of State of the Commonwealth; and
- (c) an authority established under a law of the Commonwealth; and
- (d) a body or association specified in the regulations.

Date of effect of standards 5

164. A standard takes effect:

- (a) if the instrument making the standard specifies a day for the purpose—on that day; or
- (b) otherwise—on the day on which a copy of the instrument was published in the *Gazette*.

10

Disallowance etc. of standards

165.(1) Subject to subsection (2), a standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(2) Despite paragraph 46A(1)(c) of that Act, a standard is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

15

Division 4—Permits for non-standard transmitters

The effect of permits

166. A person does not:

- (a) contravene section 157 by causing a non-standard transmitter to make a radio emission; or
- (b) contravene section 158 by having in his or her possession a non-standard transmitter;

20

if causing the emission or possessing the transmitter is in accordance with a permit.

25

The SMA may issue permits

167.(1) A person may apply to the SMA, in a form approved by the SMA, for a permit.

(2) The SMA may, in writing, issue to the person a permit authorising the person and, if the permit so specifies, his or her agents:

30

- (a) to have in his, her or their possession specified non-standard transmitters; and
- (b) if, and only if, the permit so specifies—to cause such transmitters to make radio emissions.

35

(3) In deciding whether to issue a permit, the SMA must have regard to:

- (a) all matters that it considers relevant; and
- (b) without limiting paragraph (a), whether the purpose for which the permit is sought is a purpose related to:

40

- (i) education or research; or
- (ii) testing of transmitters; or
- (iii) demonstration of transmitters likely to be used for commercial purposes; or
- 5 (iv) demonstration of transmitters likely to be used in connection with the defence of Australia.

(4) If the SMA refuses to issue the permit, it must give the person a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to issue permits are reviewable under Part 5.6.

10 **Conditions of permits**

168.(1) A permit is subject to the following conditions:

- (a) a condition that a person to whom the permit relates must comply with this Act; and
 - (b) any other conditions specified in the permit.
- 15 (2) The SMA may, by written notice given to the person to whom the permit was issued:
- (a) impose one or more further conditions to which the permit was issued; or
 - (b) vary or revoke any conditions:
 - 20 (i) imposed under paragraph (a); or
 - (ii) specified under paragraph (1)(b).

Note: Decisions about permit conditions are reviewable under Part 5.6.

Duration of permits

169.(1) A permit comes into force on the day on which it is issued.

- 25 (2) A permit that authorises radio emission:
- (a) must specify a day of expiration; and
 - (b) subject to section 171, remains in force until the end of that day.
- (3) Subject to section 171, a permit that does not authorise radio emission remains in force:
- 30 (a) if it specifies a day of expiration—until the end of that day; or
 - (b) otherwise—indefinitely.
- (4) A day of expiration specified under paragraph (2)(a) or (3)(a) must be:
- 35 (a) if a period longer than 12 months is specified in the regulations in relation to all permits or in relation to a class of permits in which the permit is included—a day within that longer period; or
 - (b) otherwise:
 - 40 (i) if the permit was issued in a month other than

December—a day within 12 months after the permit was granted; or

- (ii) if the permit was issued in December of a particular year—a day not later than 31 December in the next year.

Contraventions of permit conditions 5

170. A person to whom a permit relates must not, without reasonable excuse, knowingly contravene a condition of the permit.

Penalty: \$10,000.

Cancelling permits

171.(1) The SMA may, by written notice given to the holder of a permit, cancel the permit. 10

(2) The notice must give the reasons for cancelling the permit.

(3) In deciding whether to cancel a permit, the SMA:

(a) must have regard to all matters that it considers relevant; and

(b) without limiting paragraph (a), may have regard to: 15

(i) any matter to which the SMA must, under subsection 167(3), have regard in deciding whether to issue a permit; and

(ii) whether or not the holder of the permit or an agent of the holder has been convicted of an offence under section 170 or 302. 20

Note: Cancellations of permits are reviewable under Part 5.6.

Division 5—Other exemptions from Division 2

Emergency transmissions etc.

172. A person does not contravene section 157 or 158 by causing a radio transmission to be made by a non-standard transmitter, or having a non-standard transmitter in his or her possession, in the reasonable belief that the emission or possession was necessary for the purpose of: 25

(a) securing the safety of a vessel or aircraft that was in danger; or

(b) dealing with an emergency involving a serious threat to the environment; or 30

(c) dealing with an emergency involving risk of death of, or injury to, persons; or

(d) dealing with an emergency involving risk of substantial loss of, or damage to, property. 35

Possession or supply for use solely outside Australia

173.(1) A person does not:

(a) contravene section 158 by having a non-standard transmitter in his or her possession; or

(b) contravene section 160 by supplying a non-standard device; if the device is intended to be used solely outside Australia.

(2) If there is applied to a device:

- (a) a statement that the device is for export only; or
- 5 (b) a statement indicating, by use of words authorised for the purposes of this subsection by the regulations, that the device is intended to be used solely outside Australia;

it is presumed for the purposes of this section, unless the contrary is established, that the device is intended to be so used.

10 (3) For the purposes of subsection (2), a statement is taken to be applied to a device if:

- (a) the statement is impressed on, worked into, or annexed or affixed to, the device; or
- 15 (b) the statement is applied to a covering (including a box, case, frame or wrapper), label or thing in or with which the device is supplied.

Supply with permission

174.(1) A person does not contravene section 160 by supplying a non-standard device in accordance with the SMA's written permission.

20 (2) If the SMA decides to refuse to give such permission to a person who has applied to the SMA for it in a form approved by the SMA, the SMA must give to the person a written notice setting out its decision.

Note: Refusals to give permission are reviewable under Part 5.6.

25 Supply for modification etc.

175. A person does not contravene section 160 by supplying a non-standard device for the purposes of modifying or altering it so that it would comply with all standards applicable to it at the time of the alteration or modification.

30 Supply for re-export

176. A person does not contravene section 160 by supplying a non-standard device if:

- (a) the device was imported; and
- (b) the person supplied it for the purposes of re-export.

35 Burden of proof

177.(1) In proceedings for an offence against section 157 or 158, the burden of proving any of the matters referred to in section 172 lies on the defendant.

(2) In proceedings for an offence against section 158 or 160, the burden of proving the absence of any of the matters referred to in section 173, 174, 175 or 176 lies on the prosecution.

Reasonable excuse

178. Nothing in this Division limits the scope of the expression “reasonable excuse” in subsection 157(1), 158(1) or 160(1). 5

Division 6—Technical licence specifications

The SMA’s power to determine technical licence specifications

179.(1) The SMA may, by written instrument, determine technical licence specifications for operation of radiocommunications devices of specified kinds under apparatus licences and spectrum licences. 10

(2) A technical licence specification is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Procedures for making technical licence specifications

180.(1) Before making a technical licence specification, the SMA must, so far as practicable, try to ensure that: 15

- (a) interested persons have had adequate opportunity to make representations about the proposed technical licence specification; and
- (b) due consideration has been given to any representations so made. 20

(2) The SMA may make an arrangement with a body to which this subsection applies under which the body:

- (a) prepares a draft of a technical licence specification; and
- (b) publishes the draft technical licence specification; and 25
- (c) undertakes a process of public consultation on the draft technical licence specification.

(3) Subsection (2) applies to:

- (a) the Standards Association of Australia; and
- (b) a Department of State of the Commonwealth; and 30
- (c) an authority established under a law of the Commonwealth; and
- (d) a body or association specified in the regulations.

Date of effect of technical licence specifications

181. A technical licence specification takes effect: 35

- (a) if the instrument making the technical licence specification specifies a day for the purpose—on that day; or
- (b) otherwise—on the day on which a copy of the instrument was published in the *Gazette*.

Division 7—Labelling of devices

Requirements to affix labels etc.

5 **182.(1)** The SMA may, by notice published in the *Gazette*, require any person who manufactures or imports a device included in a specified class of devices to affix to each such device a label that indicates one or more of the following:

(a) whether the device meets the requirements of the standards specified in the notice;

10 (b) if the device is a radiocommunications device the operation of which could be authorised by a spectrum licence or an apparatus licence of a type determined under section 98—whether the device complies with the technical licence specifications specified in the notice;

15 (c) if the device is a radiocommunications device—whether the device complies with the class licence specified in the notice.

(2) The label must be in the form specified by the SMA in the notice.

20 **(3)** The notice may state that the requirement does not apply to an imported device if there is affixed a label of a specified kind that indicates that the device complies with requirements of laws of another country.

25 **(4)** The notice may specify requirements that must be met before a label can be affixed, including a requirement that a manufacturer or importer must have been issued with a compliance certificate for the class of devices before the manufacturer or importer affixes the label to any devices included in the class.

(5) A notice is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

30 **(6)** Despite paragraph 46A(1)(c) of that Act, a notice is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

Recognised testing authorities

35 **183.(1)** The SMA may, by written instrument, determine that a person or body is to be regarded as a recognised testing authority for the purposes of this Act.

(2) The SMA must keep, in such form and manner as it determines, a register of all recognised testing authorities.

(3) The SMA must ensure that the register is available for inspection by any person during the hours that the SMA is open for business.

Compliance certificates

184.(1) The SMA or a recognised testing authority may, on application by a person, issue to the person a compliance certificate certifying that a class of devices complies with a specified standard, technical licence specification or class licence. 5

(2) The SMA or recognised test authority must not issue the certificate if:

(a) it is not satisfied, having tested a sample of devices included in the class, that a device in the sample complies with a standard that applies to it; or 10

(b) the applicant has refused or failed, without reasonable excuse, to comply with a request to submit the sample of devices to the SMA or approved testing authority for testing.

(3) If the SMA or approved testing authority refuses to issue the certificate, it must give the applicant a written notice of the refusal. 15

Effect of compliance certificates

185. The fact that a person has been issued with a compliance certificate does not authorise, or constitute a reasonable excuse for, the person to sell or supply a non-standard device.

Sale etc. of devices without labels 20

186. If a person:

(a) has manufactured or imported a device; and

(b) knows that he or she is required under section 182 to affix to it a label in a particular form;

the person must not, without reasonable excuse, sell or supply the device unless a label in that form has been affixed to the device. 25

Penalty: \$10,000.

Affixing labels without compliance certificates

187. If a person knows that he or she is required under subsection 182(4) to be issued with a compliance certificate for a class of devices before affixing a particular label to a device included in the class, the person must not, without reasonable excuse, affix: 30

(a) the label; or

(b) a label that purports to be such a label;

before he or she is issued with the compliance certificate. 35

Penalty: \$10,000.

Imputed knowledge

188. For the purposes of establishing a contravention of section 186 or 187, if, having regard to:

(a) a person's abilities, experience, qualifications and other attributes; and 40

(b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that he or she was subject to the requirement in question, the person is taken to have known that he or she was subject to the requirement.

5 **Division 8—Prohibited devices**

Operation etc. of prohibited devices

189.(1) A person must not, without reasonable excuse:

- (a) operate or supply a device that the person knows is a device in respect of which a declaration is in force under section 190; or
10 (b) have a device that the person knows, or ought reasonably to know, is such a device in his or her possession for the purpose of operating or supplying the device.

Penalty:

- (a) if the offender is an individual—imprisonment for 2 years; or
15 (b) otherwise—\$150,000.

(2) For the purposes of establishing a contravention of subsection (1), if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
20 (b) all the circumstances surrounding the alleged contravention; the person ought reasonably to have known that the device in question was a device in respect of which a declaration under section 190 was in force, the person is taken to have known that it was such a device.

Declaration of prohibited devices

25 **190.(1)** Subject to section 191, the SMA may, by notice published in one or more newspapers circulating generally in the capital city of each State and Territory, declare that operation or supply, or possession for the purpose of operation or supply, of a specified device is prohibited for the reasons set out in the notice.

30 **(2)** The device must be a device that:

- (a) is designed to have an adverse effect on radiocommunications;
or
(b) would be likely substantially to:
(i) interfere with radiocommunications; or
35 (ii) disrupt or disturb radiocommunications in any other way.

(3) Subject to subsection (4), a declaration is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

(4) Despite paragraph 46A(1)(c) of that Act, a declaration is taken to be a statutory rule within the meaning of the *Statutory Rules Publication Act 1903*.

Consultation on proposed declarations

191.(1) Before making the declaration, the SMA must, by notice published in the *Gazette*: 5

- (a) describe the device; and
- (b) specify the reasons why the SMA proposes to make the declaration; and
- (c) invite interested persons to make representations about the proposed declaration within such period, being not less than one month after the date of publication of the notice, as is specified in the notice; and 10
- (d) specify one or more addresses to which such representations may be sent. 15

(2) A person may, before the end of the period specified in the notice, make such representations to the SMA.

(3) The SMA must give due consideration to any representations so made.

(4) This section does not apply if the SMA is satisfied that making the declaration is a matter of urgency. 20

PART 4.2— OFFENCES RELATING TO RADIO EMISSION

Interference likely to prejudice safe operation of aircraft or vessels

192. Subject to section 196, a person must not use a transmitter in a way likely to interfere with radiocommunications if the person knows that such interference is likely to prejudice the safe operation of an aircraft or vessel. 25

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or
- (b) otherwise—\$500,000. 30

Interference in relation to certain radiocommunications

193.(1) Subject to section 196, a person must not, without the SMA's written permission, use a transmitter in a way that the person knows is likely to interfere substantially with radiocommunications carried on by or on behalf of: 35

- (a) an organisation specified in the regulations that is:
 - (i) a fire-fighting, civil defence or rescue organisation; or
 - (ii) an organisation providing ambulance services; or
 - (iii) any other organisation the sole or principal purpose of

which is to secure the safety of persons during an emergency; or

(b) the Royal Flying Doctor Service; or

(c) the Australian Federal Police or the police force of a State or Territory.

Penalty:

(a) if the offender is an individual—imprisonment for 5 years; or

(b) otherwise—\$500,000.

(2) If the SMA refuses to give permission to a person who applied for it, the SMA must give the person a written notice of the refusal, together with a statement of its reasons.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

Interference likely to endanger safety or cause loss or damage

194. Subject to section 196, a person must not do any act or thing that the person knows is likely to:

(a) interfere substantially with radiocommunications; or

(b) otherwise substantially disrupt or disturb radiocommunications;

if the interference, disruption or disturbance is likely to endanger the safety of another person or to cause another person to suffer or incur substantial loss or damage.

Penalty:

(a) if the offender is an individual—imprisonment for 5 years; or

(b) otherwise—\$500,000.

Transmission from foreign vessel or aircraft

195.(1) Subject to section 196 and subsection (2), a person must not, outside Australia and without the SMA's written permission, use a transmitter that is on board a foreign vessel or foreign aircraft:

(a) for the purposes of transmitting to the general public in Australia radio programs or television programs; or

(b) in a manner that the person knows is likely to interfere substantially with radiocommunications:

(i) within Australia; or

(ii) between a place in Australia and a place outside Australia.

Penalty:

(a) if the offender is an individual—imprisonment for 2 years; or

(b) otherwise—\$150,000.

(2) This section does not apply to use of a transmitter:

(a) in accordance with an agreement, treaty or convention that:

(i) is entered into between Australia and any other country or countries; and

(ii) is specified in the regulations; or

(b) under the direction of a person exercising powers under the law of the Commonwealth or of a State or Territory.

(3) If the SMA refuses to give permission to a person who applied for it, the SMA must give the person a written notice of the refusal.

Note: Refusals to give permission are reviewable decisions under Part 5.6.

5

Emergency transmissions etc.

196.(1) A person does not contravene section 192, 193, 194 or 195 by doing anything that the person reasonably believes was necessary for the purpose of:

- (a) securing the safety of a vessel or aircraft that was in danger; or 10
- (b) dealing with an emergency involving a serious threat to the environment; or
- (c) dealing with an emergency involving risk of death of, or injury to, persons; or
- (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property. 15

(2) In proceedings for an offence against section 192, 193, 194 or 195, the burden of proving any of the matters referred to in subsection (1) lies on the defendant.

Knowingly etc. causing interference 20

197. A person must not knowingly or recklessly do any act or thing likely to:

- (a) interfere substantially with radiocommunications; or
- (b) otherwise substantially disrupt or disturb radiocommunications.

Penalty: Imprisonment for 1 year. 25

Transmission of false information

198. A person must not, in a transmission made by a transmitter operated by the person, make a statement, or convey information, with intention of inducing a false belief that:

- (a) the person or any other person is dying, has died, is being injured or has been injured; or 30
- (b) property is being, or has been, destroyed or damaged; or
- (c) there is a risk of the occurrence of an event referred to in paragraph (a) or (b); or
- (d) there has been, is or is to be a plan, proposal, attempt, conspiracy, threat to do, or omit to do, an act, being an act or omission that is likely to result in the occurrence of an event referred to in paragraph (a) or (b). 35

Penalty:

- (a) if the offender is an individual—imprisonment for 5 years; or 40
- (b) otherwise—\$500,000.

Transmission likely to cause explosion

199. A person must not use a transmitter in a manner that the person knows is likely to cause an explosion.

Penalty:

- 5 (a) if the offender is an individual—imprisonment for 5 years; or
(b) otherwise—\$500,000.

Imputed knowledge

10 **200.** For the purposes of establishing a contravention of section 192, 193 or 194, paragraph 195(1)(b) or section 199, if, having regard to:

- (a) a person's abilities, experience, qualifications and other attributes; and
(b) all the circumstances surrounding the alleged contravention;
15 the person ought reasonably to have known that using the transmitter in question, or doing the act or thing in question, was a contravention of that provision, the person is taken to have known that using the transmitter, or doing the act or thing, was such a contravention.

Operation of laws of States or Territories

20 **201.** This Part is not intended to exclude or limit the concurrent operation of:

- (a) the law of a State or Territory; or
(b) regulations, Ordinances or other instruments of a legislative character made under an Act other than this Act.

PART 4.3—SETTLEMENT OF INTERFERENCE DISPUTES

25 *Division 1—Conciliators*

Appointment of a conciliator

202.(1) The SMA may appoint a person to be a conciliator.

(2) A conciliator may be appointed on either a full-time or a part-time basis.

30 (3) A conciliator holds office for such period as is specified in his or her instrument of appointment.

(4) A conciliator's appointment may be expressed to have effect either generally or as otherwise provided by his or her instrument of appointment.

35 **Terms and conditions etc.**

203.(1) The SMA may:

- (a) subject to section 204, determine the terms and conditions of appointment of a person holding office as a conciliator; and

(b) terminate such an appointment at any time.

(2) A conciliator may resign by writing signed by the conciliator and delivered to the SMA.

Remuneration and allowances

204.(1) A conciliator who is not appointed or employed under the *Public Service Act 1922* is to be paid such remuneration as is determined by the Remuneration Tribunal. 5

(2) If a determination of the Remuneration Tribunal in relation to conciliators is not in operation, a conciliator is to be paid such remuneration as is prescribed. 10

(3) A conciliator is to be paid such allowances as are prescribed.

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Division 2—Referral of matters to conciliators

Referral of complaints to conciliators 15

205.(1) If a complaint in writing is made to the SMA to the effect that:

(a) a person has engaged, is engaging or proposes to engage in conduct (including any act and any refusal or omission to act) that has caused, is causing or is likely to cause: 20

(i) interference or risk of interference to radiocommunications; or

(ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications; and

(b) the interests of the complainant have been, are or are likely to be affected by the conduct; 25

the SMA may refer the matter to a conciliator.

(2) If the SMA decides not to refer a complaint to a conciliator, the SMA must give to the complainant a written notice informing the complainant of the decision and the reasons for the decision. 30

(3) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.

Referral of other matters to conciliators

206.(1) If it appears to the SMA that, even though a complaint has not been made under subsection 205(1): 35

(a) a person has engaged, is engaging or is proposing to engage in disputed conduct; and

(b) the interests of another person have been, are or are likely to be affected by the conduct;

the SMA may refer the matter to a conciliator.

(2) A reference in this section to being engaged in disputed conduct includes a reference to being involved in, or contributing to, that conduct.

5 Consideration of whether to refer a matter

207.(1) In considering whether to refer a matter to a conciliator, the SMA must have regard to all matters it thinks relevant.

(2) Without limiting subsection (1), the SMA must have regard to:

(a) whether, in the SMA's opinion:

10

(i) the matter is trivial; or

(ii) the person whose interests allegedly have been, are being or are likely to be affected does not wish the matter to be referred to a conciliator; and

15

(b) if the matter arises from a complaint to the SMA—whether, in the SMA's opinion:

(i) the complaint is frivolous or vexatious or was not made in good faith; or

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(ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct in question; or

(iii) there is some other remedy that is reasonably available to the complainant; or

(iv) the complainant has made reasonable efforts to negotiate a resolution of the matter.

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Division 3—The conciliation process

Conciliator may effect settlement in relation to disputed conduct

208. Subject to section 209, a conciliator to whom a matter is referred under Division 2 must:

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(a) inquire into the disputed conduct to which the matter relates; and

(b) try to effect a settlement of the matter; and

(c) if the conciliator cannot effect a settlement—as soon as practicable, give to the SMA a written report setting out:

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(i) the conciliator's recommendations for resolving the matter; and

(ii) the reasons for those recommendations.

Conciliator may decide not to make inquiry

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209.(1) A conciliator may decide not to inquire into disputed conduct to which the matter relates, or, if the conciliator has commenced to inquire into the conduct, decide not to continue the inquiry, if:

- (a) the conciliator believes that:
 - (i) the matter is trivial; or
 - (ii) the person whose interests allegedly have been, are being, or are likely to be affected does not wish the inquiry to be made or continued (as the case may be); or 5
 - (b) if the inquiry arises from a complaint to the SMA—the conciliator believes that:
 - (i) the complaint is frivolous or vexatious or was not made in good faith; or
 - (ii) the interests of the complainant have not been, are not being or are not likely to be affected by the conduct; or 10
 - (iii) there is some other remedy that is reasonably available to the complainant; or
 - (iv) the complainant has made reasonable efforts to negotiate a resolution of the matter. 15
- (2) If a conciliator decides not to inquire into, or not to continue to inquire into, conduct in respect of which a complaint was made, the conciliator must:
- (a) give the complainant written notice of the decision and the reasons for the decision; and 20
 - (b) give to the SMA a written report on the matter that includes the information referred to in paragraph (a).
- (3) A report under paragraph (2)(b) must be given as soon as practicable after it is prepared.
- Compulsory conference** 25
- 210.(1)** For the purposes of conducting an inquiry into, or trying to effect a settlement of, a matter under section 208, a conciliator may direct a person referred to in subsection (2) to attend, at a time and place specified in the notice, a conference presided over by the conciliator. 30
- (2) A direction may be given to:
- (a) if the matter arose as a result of a complaint under subsection 205(1)—the complainant; or
 - (b) the person whose disputed conduct led to the inquiry; or
 - (c) any other person whose presence at the conference the conciliator thinks is reasonably likely to be conducive to settling the matter. 35
- (3) A direction is to be given by written notice given to the person concerned.
- (4) The person is entitled to be paid by the Commonwealth any allowances for the expenses of a person's attendance that are determined by the SMA and published in the *Gazette*. 40

(5) The person must not, without reasonable excuse:

(a) fail to attend as required by the direction; or

(b) fail to attend and report himself or herself from day to day unless excused, or released from further attendance, by the conciliator.

Penalty: \$5,000.

(6) Evidence of anything said or of the production of any document at a conference under this section is not admissible:

(a) in any court (whether or not exercising federal jurisdiction); or

(b) in proceedings before a person authorised by a law of the Commonwealth or of a State or Territory, or by consent of parties, to hear evidence;

except in a prosecution for an offence against section 302.

Protection from civil actions

211.(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith to a conciliator in connection with an inquiry into disputed conduct.

(2) A reference in subsection (1) to making a statement includes a reference to giving a document or information.

Division 4—Directions

SMA may issue directions

212.(1) If the SMA:

(a) receives a conciliator's report in relation to a matter under paragraph 208(c); and

(b) is satisfied that, in order to prevent the disputed conduct to which the matter relates from causing:

(i) interference, or risk of interference, to radiocommunications; or

(ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications;

a person to whom this section applies must take specified action, or refrain from taking specified action;

the SMA may issue a written direction to the person to take that action within a specified period, or to refrain from taking that action, as the case may be.

(2) In issuing a direction the SMA must have regard to the conciliator's report.

(3) This section applies to any of the following persons:

(a) a person who has engaged, is engaging or proposes to engage in the disputed conduct in question;

(b) if the matter in question arose as a result of a complaint under subsection 205(1)—the complainant.

(4) A reference in this section to being engaged in conduct includes a reference to being involved in, or contributing to, that conduct.

(5) If the SMA issues a direction to a person, it must give the person notice of the reasons for that direction. 5

Note: A decision to issue a direction is reviewable under Part 5.6.

Complainants to be kept informed

213. If:

(a) the SMA receives a conciliator's report in relation to a matter under paragraph 208(c); and 10

(b) the matter arose as a result of a complaint under subsection 205(1);

the SMA must, by written notice, inform the complainant of:

(c) any direction issued under section 212 in relation to the matter (other than a direction issued to the complainant); or 15

(d) any decision not to issue a direction under section 212 in relation to the matter, together with the reasons for the decision.

Contravention of a direction

214. A person must not knowingly or recklessly contravene a direction issued under section 212. 20

Penalty: \$10,000.

Commonwealth not liable for costs

215. The Commonwealth is not liable for any loss, damage or injury suffered by a person as a result of complying with a direction under section 212. 25

Division 5—Miscellaneous

Offences relating to settlement of interference disputes

216. It is an offence for a person to:

(a) refuse to employ another person; or 30

(b) dismiss or threaten to dismiss another person from his or her employment; or

(c) prejudice, or threaten to prejudice another person in his or her employment; or

(d) intimidate or coerce or impose any pecuniary or other penalty on, another person; 35

because that other person:

(e) has made, or proposes to make, a complaint of the kind referred to a conciliator under section 205; or

(f) has given, or proposes to give, information or documents to a third person exercising any power or performing any function under this Part; or

5 (g) has attended, or proposes to attend, a conference held under section 210.

Penalty: Imprisonment for 6 months.

Operation of State and Territory laws

10 217. This Part is not intended to affect the operation of a law of a State or Territory if the law is capable of operating concurrently with this Part.

Report by SMA

218. The SMA must include in each annual report prepared under section 242 for a financial year a report on the operation of this Part during that year.

15 **PART 4.4—RESTRICTED USE ZONES**

Division 1—Declarations of emergency

Declaration of period of emergency

20 219.(1) Subject to section 220, the Governor-General may, by Proclamation, declare that a period specified in the Proclamation will be a period of emergency.

(2) The period must not be expressed to commence on a day earlier than the day on which the Proclamation is published in the *Gazette*.

(3) The period may not exceed 3 months.

Circumstances in which Proclamation may be made

25 220. The Governor-General may not make a Proclamation under section 219 unless satisfied that it is necessary in the public interest to do so due to an emergency involving:

- 30 (a) prejudice to the security or defence of Australia; or
(b) a serious threat to the environment; or
(c) risk of death of, or injury to, persons; or
(d) risk of substantial loss of, or substantial damage to, property.

Termination of period of emergency

35 221.(1) If, at any time during a period of emergency, the Governor-General becomes satisfied that it is no longer necessary in the public interest that the period of emergency should continue, the Governor-General must, by a new Proclamation, revoke the Proclamation that declared the period of emergency.

(2) The revocation terminates the period of emergency.

Division 2—Restrictive orders

Restrictive orders

222.(1) During a period of emergency, the Minister may, in writing, make a restrictive order that prohibits or regulates:

(a) the use, within a specified area, of radiocommunications transmitters; or 5

(b) the operation of transmitters within a specified area if such use is, in the Minister's view, likely to interfere with radiocommunications.

(2) The Minister: 10

(a) must not make the order unless guidelines are in force under section 230; and

(b) in making the order, must comply with the guidelines in force under section 230.

(3) The order comes into force: 15

(a) on the day it is published under subsection 223(1); or

(b) if a later day (being a day during a period of emergency) is specified in the order—on that later day.

Publication of restrictive orders

223.(1) A copy of the order must be published in the *Gazette*. 20

(2) As soon as practicable after making the order, the Minister:

(a) must cause a copy of the order to be published in one or more newspapers circulating generally in the capital city of the State or Territory in which the order has effect; and

(b) may, if the Minister thinks fit, cause particulars of the order to be published by radio or television broadcast. 25

(3) A failure to comply with paragraph (2)(a) does not affect the order's validity.

Application of orders to broadcasting

224. A restrictive order does not apply to: 30

(a) a broadcasting station; or

(b) a fixed transmitter the use or operation of which is essential to the operation of a broadcasting station;

unless the order is expressed so to apply.

Revocation of orders 35

225. A restrictive order is taken to be revoked:

(a) at the end of the period of emergency during which it came into force; or

(b) if the order has an extended operation under section 226—at

the end of the last period of emergency during which the order continues to be in force.

Orders may have extended operation

5 **226.** If, during a period of emergency, a Proclamation under subsection 219(1) declares that an emergency will exist during a later period commencing immediately after the end of the first-mentioned period, any restrictive order in force immediately before the end of the first-mentioned period (including an order in force by virtue of previous applications of this subsection) continues in force unless it is:

- 10 (a) revoked as provided for by subsection 33(3) of the *Acts Interpretation Act 1901*; or
- (b) disallowed under section 48 of that Act as applied by section 229 of this Act; or
- (c) set aside by a court.

15 **Contravention of orders**

227.(1) A person must not, without reasonable excuse, contravene a restrictive order.

Penalty: \$30,000.

20 **(2)** A person does not contravene subsection (1) if the person contravenes a restrictive order in the reasonable belief that the act or omission constituting the contravention is necessary for the purposes of:

- 25 (a) securing the safety of a vessel or aircraft that was in danger; or
- (b) dealing with an emergency involving a serious threat to the environment; or
- (c) dealing with an emergency involving risk of death of, or injury to, persons; or
- (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.

30 **(3)** In proceedings for an offence against subsection (1), the burden of proving any of the matters referred to in subsection (2) lies on the defendant.

(4) Nothing in subsection (2) limits the scope of the expression “reasonable excuse” in subsection (1).

35 **Orders to prevail over inconsistent laws**

228.(1) Subject to subsection (2), a restrictive order has effect despite any law of the Commonwealth (excluding this Act but including regulations made under this Act), or any law of a State or Territory, that is inconsistent with the order.

(2) This Part does not affect the operation of a law of a State or Territory so far as the law is capable of operating concurrently with this Part.

Disallowance of restrictive orders

229. A restrictive order is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. 5

Division 3—Guidelines for making restrictive orders

Minister may make guidelines

230.(1) At any time (whether or not during a period of emergency) the Minister may, by instrument in writing: 10

- (a) make guidelines with respect to the exercise of the Minister's powers under section 222 to make restrictive orders; or
- (b) vary or revoke guidelines made by the Minister under this subsection (including guidelines varied by virtue of one or more previous applications of this subsection). 15

(2) A guideline is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

CHAPTER 5—ADMINISTRATION AND ENFORCEMENT

Outline of this Chapter

231.(1) This Chapter provides for various matters dealing with the administration and enforcement of this Act. 20

(2) Part 5.1 establishes the Spectrum Management Agency, sets out its functions and describes how it operates (dealing in particular with the office of Spectrum Manager).

(3) Part 5.2 provides for the SMA to hold public inquiries into management of the radiofrequency spectrum and other aspects of radiocommunication. 25

(4) Part 5.3 allows the SMA to make advisory guidelines about any aspect of radiocommunication or radio emission.

(5) Part 5.4 provides for persons to be accredited to issue certificates under this Act. 30

(6) Part 5.5 provides for inspectors to be appointed and confers investigative powers on them.

(7) Part 5.6 enables specified decisions under this Act to be reconsidered by the SMA and reviewed by the AAT. 35

(8) Part 5.7 provides for the SMA to determine charges for things done by the SMA, including spectrum access charges for spectrum licences.

PART 5.1—THE SPECTRUM MANAGEMENT AGENCY

Division 1—Establishment, functions and powers of Spectrum Management Agency

Establishment

5 **232.** The Spectrum Management Agency is established.

Functions

233. The functions of the SMA are:

- (a) to prepare spectrum plans, frequency band plans, marketing plans and conversion plans under Chapter 2; and
- 10 (b) to administer the spectrum licensing system set out in Part 3.2; and
- (c) to administer the apparatus licensing system set out in Part 3.3; and
- (d) to administer the class licensing system set out in Part 3.4; and
- 15 (e) to administer the system of standards and other technical regulation set out in Part 4.1; and
- (f) to settle interference disputes under Part 4.3; and
- (g) to conduct public inquiries under Part 5.2; and
- (h) to make advisory guidelines under Part 5.3; and
- 20 (i) to administer the accreditation system set out in Part 5.4; and
- (j) to determine charges under Part 5.7; and
- (k) to manage Australia's input into setting international standards for radiocommunications; and
- 25 (l) such other functions as are conferred on the SMA by this or any other Act.

General powers

234.(1) The SMA has power to do all things necessary or convenient to be done for, or in connection with, the performance of its functions.

30 **(2)** Subsection (1) does not affect the scope of any other powers conferred on the SMA by this or any other Act.

Minister may give directions to the SMA

235.(1) The Minister may give written directions to the SMA in relation to the performance of its functions and the exercise of its powers.

35 **(2)** A direction under subsection (1) must be published in the *Gazette*.

(3) The SMA must perform its functions and exercise its powers in a manner consistent with any directions given by the Minister.

40 **(4)** The Minister must not give a direction under subsection (1) requiring the SMA to:

- (a) issue a licence, certificate or permit to; or
 - (b) make any other kind of decision in relation to;
- a particular person.

Minister may notify the SMA of general policies of Commonwealth Government

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236.(1) The Minister may notify the SMA, in writing, of general policies of the Commonwealth Government that are to apply in relation to the SMA.

(2) The SMA must ensure that the policies are carried out.

(3) The SMA must include in its annual report for a financial year copies of any notifications under subsection (1) received by the SMA during that year.

10

The SMA acts on behalf of Commonwealth

237.(1) An act that the SMA does:

- (a) in performing a function or exercising a power under this Act; or
- (b) purportedly in performing such a function or exercising such a power;

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is, for all purposes, an act done on behalf of the Commonwealth.

(2) In this section:

20

“act” includes an omission.

Delegation

238.(1) The Spectrum Manager may delegate any of the SMA’s powers to a member of the staff of the SMA.

(2) The Spectrum Manager may delegate to an authority of the Commonwealth the SMA’s power to make standards or technical licence specifications under Part 4.1.

25

(3) The Spectrum Manager may delegate to the ABA:

- (a) the SMA’s power to issue licences authorising operation of radiocommunications devices using a part of the spectrum designated under section 31, and to include conditions in such licences; and
- (b) the SMA’s power to issue certificates of proficiency relating to the operation of such radiocommunications devices.

30

(4) If:

35

- (a) a power of the SMA is delegated to an authority of the Commonwealth under subsection (2) or (3); and
- (b) the authority is established under an Act that permits the authority’s powers under that Act to be delegated to another person or body;

40

the power of the SMA in question may be further delegated under that Act as if it were one of the authority's powers under that Act.

Division 2—Constitution etc. of the Spectrum Management Agency

Subdivision A—General

5 Constitution of the SMA

239. The SMA consists of:

- (a) the Spectrum Manager; and
- (b) the staff referred to in section 253.

Committees

10 **240.(1)** The SMA may, by writing, establish committees to assist it in performing any of its functions.

(2) A committee consists of such persons as the SMA from time to time appoints to the committee.

(3) The SMA may give a committee written directions as to:

- 15 (a) the way in which the committee is to carry out its functions; and
- (b) procedures to be followed in relation to meetings.

Corporate plans

20 **241.(1)** The SMA must, in each financial year after the 1992-93 financial year, give a written corporate plan to the Minister.

(2) The corporate plan must include:

- (a) a financial plan for the following financial year; and
- (b) a statement of the objectives of the SMA for the following 3 financial years; and
- 25 (c) a statement of the strategies and policies proposed to achieve those objectives.

(3) The SMA may revise the corporate plan at any time after giving it to the Minister.

30 (4) If the SMA revises the corporate plan, it must give the revised plan to the Minister as soon as is practicable.

Annual report

242.(1) The SMA must, as soon as practicable after the end of each financial year, prepare and give to the Minister a report of the SMA's operations during the financial year.

35 (2) The Minister must cause a copy of each such report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister received the report.

Subdivision B—The Spectrum Manager

Appointment of Spectrum Manager

243.(1) The Spectrum Manager is to be appointed by the Governor-General.

(2) The appointment is to be on a full-time basis. 5

Duties etc. of the Spectrum Manager

244.(1) The Spectrum Manager is to control the operations of the SMA.

(2) Anything done in the name of, or on behalf of, the SMA by the Spectrum Manager is taken to have been done by the SMA. 10

Term of appointment

245.(1) The Spectrum Manager is to be appointed for the period, not exceeding 5 years, specified in the instrument of appointment.

(2) The Spectrum Manager is eligible for re-appointment.

Remuneration and allowances 15

246.(1) The Spectrum Manager is to be paid such remuneration as is determined by the Remuneration Tribunal.

(2) If no determination of that remuneration is in operation, the Spectrum Manager is to be paid such remuneration as is prescribed.

(3) The Spectrum Manager is to be paid such allowances as are prescribed. 20

(4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Outside employment

247. The Spectrum Manager must not engage in any paid employment outside the duties of his or her office without the Minister's written approval. 25

Leave of absence

248.(1) Subject to section 87E of the *Public Service Act 1922*, the Spectrum Manager has such recreational leave entitlements as are determined by the Remuneration Tribunal. 30

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

Resignation 35

249. The Spectrum Manager may resign by writing signed and delivered to the Minister.

Termination of appointment

250.(1) The Governor-General may terminate the appointment of the Spectrum Manager for misbehaviour or physical or mental incapacity.

5 (2) If:

(a) the Spectrum Manager becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of remuneration for their benefit; or

10 (b) engages, except with the Minister's approval, in paid employment outside the duties of his or her office; or

(c) is absent from duty, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months;

15 the Governor-General may terminate the Spectrum Manager's appointment.

Terms and conditions of appointment etc.

251. The Spectrum Manager holds office on such terms and conditions (in respect of matters not provided by this Act) as are determined by the Minister.

20 **Acting appointments**

252.(1) The Minister may appoint a person to act as the Spectrum Manager:

25 (a) during a vacancy in the office of Spectrum Manager (whether or not an appointment has previously been made to the office); or

(b) during any period, or during all periods, when the Spectrum Manager is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office.

30 (2) Anything done by a person purporting to act under an appointment under this section is not invalid merely because:

(a) the occasion for the appointment had not arisen; or

(b) there was a defect or irregularity in, or in connection with, the appointment; or

(c) the appointment had ceased to have effect; or

35 (d) the occasion for the person to act had not arisen or had ceased.

Subdivision C—The staff

Staff of the SMA

253.(1) The staff required for the purposes of the SMA are to be persons appointed or employed under the *Public Service Act 1922*.

40 (2) The Spectrum Manager 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 SMA's staff.

(3) The SMA may make an arrangement with an authority of the Commonwealth:

- (a) for the services of officers or employees of the authority to be made available for the purposes of the SMA; or
- (b) for the services of officers or employees of the SMA to be made available for the purposes of the authority. 5

Control of staff of the SMA

254. If a member of staff of the SMA performs a function or exercises a power under this Act, the member of staff is, in the performance of that function or the exercise of that power, subject to the directions of the Spectrum Manager. 10

PART 5.2—PUBLIC INQUIRIES

SMA may hold inquiry

255.(1) The SMA may hold a public inquiry about any matter relating to: 15

- (a) management of the radiofrequency spectrum; or
- (b) any other aspect of radio emissions.

(2) The SMA must not hold a public inquiry about a matter relating to the operation, or proposed operation, of a broadcasting station unless the matter is about: 20

- (a) interference, or risk of interference, to radiocommunications (other than transmission or reception of radio or television programs delivered by a broadcasting service) that is attributable to operation of a broadcasting station; or
- (b) interference, or risk of interference, that: 25
 - (i) is to transmission or reception of radio or television programs delivered by a broadcasting service; and
 - (ii) is not attributable to operation of a broadcasting station.

SMA to hold inquiry when directed

256.(1) The SMA must hold a public inquiry about a particular matter relating to: 30

- (a) management of the radiofrequency spectrum; or
- (b) any other aspect of radio emissions;

if the Minister directs the SMA in writing to hold a public inquiry about that matter. 35

(2) The Minister must not direct the SMA to hold a public inquiry that it could not hold under section 255.

Informing the public about an inquiry

257.(1) If the SMA holds a public inquiry, it must publish, in whatever ways it thinks appropriate, notice of:

- 5 (a) the fact that it is holding the inquiry; and
- (b) the period during which the inquiry is to be held; and
- (c) the nature of the matter to which the inquiry relates; and
- (d) the period within which and the form in which members of the public may make submissions to the SMA about that matter; and
- 10 (e) the address or addresses to which submissions may be sent.

(2) The SMA may also include in the notice a statement of the matters that the SMA would like submissions to deal with.

(3) The SMA need not publish at the same time or in the same way notice of all the matters referred to in subsection (1).

15 **Discussion paper**

258.(1) The SMA may cause to be prepared a discussion paper that:

- (a) identifies the issues that the SMA thinks are relevant to the matter to which a public inquiry relates; and
- 20 (b) sets out such background material about, and discussion of, those issues as the SMA thinks is appropriate.

(2) The SMA must ensure that copies of the discussion paper are available for purchase, for a reasonable price, at an office of the SMA in the capital city of each State and Territory.

Written submissions

25 259. The SMA must provide a reasonable opportunity for any member of the public to make a written submission to the SMA about the matter to which a public inquiry relates.

Protection from civil actions

30 260.(1) Civil proceedings do not lie against a person in respect of loss, damage or injury of any kind suffered by another person because a statement was made in good faith, in connection with a written submission or a public hearing, to the SMA in connection with a public inquiry under this Division.

35 (2) A reference in subsection (1) to making of a statement includes a reference to the giving of a document or information.

Public hearings

261.(1) The SMA may hold public hearings for the purposes of a public inquiry.

(2) Public hearings may be held, for example:

- (a) in order to receive submissions about the matter to which the inquiry relates; or
- (b) in order to provide a forum for public discussion of issues relevant to that matter.
- (3) At a public hearing, the SMA may be represented by one or more persons determined in writing by the Spectrum Manager for the purposes of that hearing. 5
- (4) The SMA may regulate the conduct of proceedings at a public hearing as it thinks appropriate.

PART 5.3—ADVISORY GUIDELINES 10

SMA may make advisory guidelines

- 262.(1) The SMA may make written advisory guidelines about any aspect of radiocommunication or radio emissions.
- (2) Advisory guidelines, for example, may be made about:
 - (a) any matter in respect of which standards or technical licence specifications may be made under Part 4.1; or 15
 - (b) the use, construction, design or performance of any thing; or
 - (c) interference with radiocommunications; or
 - (d) frequency allocation and coordination.
- (3) The SMA must: 20
 - (a) give a copy of each advisory guideline it makes to the Minister; and
 - (b) publish each such advisory guideline in the way it thinks fit.

PART 5.4—ACCREDITATION

SMA may accredit persons 25

- 263.(1) The SMA may, by written instrument, give to a person an accreditation of a particular kind if:
 - (a) the person applies, in the form approved by the SMA, to the SMA for an accreditation of that kind; and
 - (b) the SMA has been paid the appropriate charge determined under section 293. 30
- (2) The instrument must state the kind of certificates that a person who is given an accreditation of that kind is permitted to issue under this Act.
- (3) In deciding whether to give to a person an accreditation, the SMA must apply the principles determined under section 266. 35
- (4) An accreditation takes effect on the day specified in the instrument.

Note: A decision not to give an accreditation is reviewable under Part 5.6.

Withdrawal of accreditation

264. The SMA may, by notice in writing to a person, withdraw an accreditation given to the person if the SMA is satisfied that:

- 5 (a) the accreditation is no longer in accordance with the principles determined under section 266, as in force at the time the notice is given (whether or not the principles have been varied since the accreditation was given); or
- 10 (b) the person has been incorrectly issuing certificates under this Act; or
- (c) the person's application for accreditation included false or misleading information.

Note: A decision to withdraw an accreditation is reviewable under Part 5.6.

Procedure for withdrawing accreditation

15 265.(1) Before withdrawing a person's accreditation, the SMA must give the person written notice:

- (a) stating that the SMA is considering withdrawing the accreditation; and
- 20 (b) inviting the person to make representations to the SMA about the matter on or before the day specified in the notice.

(2) The day specified under paragraph (1)(b) must be at least 14 days after the day on which the notice is given.

(3) The SMA must give due consideration to any representations made by or on behalf of the person on or before that day.

25 **Accreditation principles**

266.(1) The SMA may, by written instrument, determine principles that:

- (a) govern the accreditation process; and
- (b) specify the matters for which the SMA may accredit persons.
- 30 (2) Without limiting the matters with which the principles may deal, the principles must provide for:
 - (a) the form of applications under section 263; and
 - (b) procedures that must be followed in relation to deciding whether to accredit, or withdraw the accreditation of, persons; and
 - 35 (c) the kinds of accreditation; and
 - (d) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.
- (3) The principles take effect on the day specified in the instrument.

(4) Principles are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 5.5—ENFORCEMENT

Division 1—Inspectors

Inspectors

5

267.(1) Subject to subsection (2), a person is an inspector for the purposes of this Act if the person is:

- (a) a Commonwealth officer or a State officer appointed by the SMA, by written instrument, to be an inspector; or
- (b) an officer included in a class of officers appointed by the SMA, by written instrument published in the *Gazette*, to be inspectors for the purposes of this Act; or
- (c) a member (other than a special member) of the Australian Federal Police or of the police force of a Territory.

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(2) An instrument under paragraph (1)(a) or (b) may specify provisions of this Act in relation to which appointments made by the instrument are to apply, and any such limitation has effect accordingly.

15

Identity cards

268.(1) The SMA may cause an identity card to be issued to an inspector, other than a member of a police force, in a form approved by the SMA by written instrument.

20

(2) A person who ceases to be an inspector must, as soon as is practicable, return his or her identity card to the SMA.

(3) A person must not, without reasonable excuse, contravene subsection (2).

25

Penalty: \$500.

Division 2—Search warrants

Magistrate may issue warrant

269.(1) If:

- (a) an information on oath is laid before a magistrate alleging that an inspector suspects on reasonable grounds that there may be on any land, or on or in any premises, vessel, aircraft or vehicle:
 - (i) anything in respect of which an offence against this Act has been committed; or
 - (ii) anything that may afford evidence about the commission of an offence against this Act; or
 - (iii) anything that was used, or is intended to be used, for the purpose of committing an offence against this Act; and

30

35

(b) the information sets out those grounds;

the magistrate may issue a search warrant authorising an inspector named in the warrant, with such assistance, and by such force, as is necessary and reasonable, to enter the land, premises, vessel, aircraft
5 or vehicle and exercise the powers referred to in paragraphs 272(2)(b), (c) and (d) in respect of the thing.

(2) The magistrate is not to issue the warrant unless:

(a) the informant or some other person has given to the magistrate, either orally or by affidavit, such further information (if any) as
10 the magistrate requires concerning the grounds on which the issue of the warrant is being sought; and

(b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.

(3) There must be stated in the warrant:

(a) the purpose for which the warrant is issued, and the nature of the offence in relation to which the entry and search are authorised; and
15

(b) whether entry is authorised to be made at any time of the day or night or during specified hours of the day or night; and

(c) a description of the kind of things to be seized; and
20

(d) a day, not later than 7 days after the day of issue of the warrant, upon which the warrant ceases to have effect.

Warrants may be issued by telephone or other electronic means

25 **270.(1)** If, because of circumstances of urgency, an inspector thinks it necessary to do so, the inspector may apply to a magistrate for a warrant under subsection 269(1) by telephone, telex, fax or other electronic means under this section.

(2) Before applying, the inspector must prepare an information of a kind referred to in subsection 269(1) that sets out the grounds on which the issue of the warrant is being sought, but may, if it is
30 necessary to do so, make the application before the information has been sworn.

(3) If the magistrate to whom an application under subsection (1) is made is satisfied:

(a) after having considered the terms of the information prepared under subsection (2); and
35

(b) after having received such further information (if any) as the magistrate requires concerning the grounds on which the issue of the warrant is being sought;

40 that there are reasonable grounds for issuing the warrant, the magistrate must complete and sign such a search warrant as the magistrate would issue under section 269 if the application had been made under that section.

- (4)** If the magistrate signs a warrant under subsection (3):
- (a) the magistrate must:
 - (i) inform the inspector of the terms of the warrant; and
 - (ii) inform the inspector of the day on which and the time at which the warrant was signed; and 5
 - (iii) inform the inspector of the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
 - (iv) record on the warrant the reasons for issuing the warrant; and 10
 - (b) the inspector must:
 - (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
 - (ii) write on it the magistrate's name and the day on which and the time at which the warrant was signed. 15
- (5)** The inspector must, not later than the day after the date of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:
- (a) the form of warrant completed by the inspector; and
 - (b) the information duly sworn in connection with the warrant. 20
- (6)** On receiving the documents referred to in subsection (5), the magistrate must:
- (a) attach to them the warrant signed by the magistrate; and
 - (b) deal with the documents in the way in which the magistrate would have dealt with the information if the application for the warrant had been made under section 269. 25
- (7)** A form of warrant duly completed by an inspector under subsection (4), if it is in accordance with the terms of the warrant signed by the magistrate, is authority for any entry, search, seizure or other exercise of a power that the warrant so signed authorises. 30
- (8)** If:
- (a) it is material in any proceedings for a court to be satisfied that an entry, search, seizure or other exercise of power was authorised in accordance with this section; and
 - (b) the warrant signed by a magistrate under this section authorising the entry, search, seizure or other exercise of power is not produced in evidence; 35
- the court is to assume, unless the contrary is proved, that the entry, search, seizure or other exercise of power was not authorised by such a warrant. 40

Division 3—Searches and seizures

References to connection with an offence

271. For the purposes of this Division, a thing is connected with a particular offence if it is:

- 5 (a) a thing with respect to which the offence has been committed;
or
- (b) a thing that will afford evidence of the commission of the offence; or
- 10 (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

General offence related searches and seizures

272.(1) This section applies if an inspector suspects on reasonable grounds that there is on any land, or on or in any premises, vessel, aircraft or vehicle anything connected with a particular offence against
15 this Act.

(2) The inspector may, with the consent of the owner or occupier of the land, premises, vessel, aircraft or vehicle, or in accordance with a warrant issued under Division 2:

- (a) enter the land, premises, vessel, aircraft or vehicle; and
- 20 (b) search the land, premises, vessel, aircraft or vehicle; and
- (c) break open and search a cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the inspector suspects on reasonable grounds there to be anything of a kind referred to in subsection (1); and
- 25 (d) examine and seize anything that the inspector suspects on reasonable grounds to be connected with the offence.

(3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(b), (c) or (d), stop
30 and detain the vessel, aircraft or vehicle.

Evidence about the commission of other offences

273. If:

- 35 (a) in the course of searching, in accordance with a warrant, for a particular thing in relation to a particular offence, an inspector finds a thing that the inspector believes on reasonable grounds to be:
 - (i) a thing that is connected with the offence, although not the thing specified in the warrant; or
 - 40 (ii) a thing that is connected with another offence against this Act; and
- (b) the inspector believes, on reasonable grounds, that it is necessary to seize that thing in order to prevent its concealment, loss or

destruction, or its use in committing, continuing or repeating the offence or the other offence;

the warrant is taken to authorise the inspector to seize that thing.

Production of identity card etc.

274.(1) An inspector (other than a member of a police force who is in uniform) who proposes to enter land or premises under subsection 272(2) must: 5

- (a) in the case of a member of a police force—produce, for inspection by the owner or occupier of the land or premises, written evidence of the fact that the inspector is a member of a police force; or 10
- (b) in any other case—produce the inspector’s identity card for inspection by the owner or occupier;

and, if the inspector fails to do so, he or she is not authorised to enter the land or premises. 15

(2) If the entry is in accordance with a warrant issued under Division 2, the inspector is taken not to have complied with subsection (1) unless he or she also produces the warrant for inspection by the owner or occupier.

Emergency searches and seizures 20

275.(1) Subject to subsection (4), if an inspector has reasonable grounds to believe:

- (a) that a person is carrying anything that is connected with an offence against this Act; and
- (b) that the exercise of powers under this section is necessary to prevent the concealment, loss or destruction of the thing; 25

the inspector may:

- (c) search the person, the person’s clothing and any property in the person’s immediate control; and
- (d) seize any such thing found in the course of the search. 30

(2) Subject to subsection (4), if an inspector has reasonable grounds to believe:

- (a) that there is on any land or on or in any premises, vessel, aircraft or vehicle anything that is connected with an offence against this Act; and 35
- (b) that the exercise of powers under this section is necessary to prevent the concealment, loss or destruction of the article or thing;

the inspector may, with such assistance as the inspector thinks fit, and if necessary by force: 40

- (c) enter the land, premises, vessel, aircraft or vehicle; and
- (d) search for the thing; and

(e) seize any such thing found in the course of the search.

5 (3) If an inspector may enter a vessel, aircraft or vehicle under subsection (2), the inspector may, for that purpose and for the purpose of exercising a power referred to in paragraph (2)(d) or (e), stop and detain the vessel, aircraft or vehicle.

(4) An inspector must not exercise powers under subsection (1) or (2) unless the power is exercised in circumstances of such seriousness and urgency as to require and justify the immediate exercise of those powers without the authority of a warrant issued under Division 2.

10 **Retention of thing seized**

276.(1) If an inspector seizes a thing under this Division, the inspector or the SMA may retain it until:

- (a) the end of the period of 60 days after the seizure; or
- 15 (b) if proceedings for an offence against this Act in respect of which the thing may afford evidence are instituted within that period—the proceedings (including any appeal to a court in relation to those proceedings) are completed.

20 (2) The SMA may, by written instrument, authorise a thing seized under this Division to be released to the owner, or to the person from whom it was seized, either:

- (a) unconditionally; or
- (b) on such conditions as the SMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 280.

25 ***Division 4—Powers of inspectors***

Power of inspectors to enter premises and adjust transmitters in emergencies

277.(1) If an inspector has reasonable grounds to believe that:

- 30 (a) a transmitter is being used on any land, or on or in any premises, vessel, aircraft or vehicle, in contravention of Part 4.2; and
- (b) the land, premises, vessel, aircraft or vehicle is or are unoccupied; and
- 35 (c) the use of the transmitter is interfering with radiocommunications that are essential to the safety of human life or is causing substantial loss or damage;

the inspector may:

- 40 (d) enter the land, premises, vessel, aircraft or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry without the authority of an order of a court or of a warrant issued under this Act; and
- (e) subject to subsection (2), take such action as the inspector

considers necessary to cause the transmitter to cease operating or to operate in such a way as not to interfere with radiocommunications as mentioned in paragraph (c).

(2) In exercising a power conferred by paragraph (1)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the interference with radiocommunications as mentioned in paragraph (1)(c). 5

(3) If an inspector has, under a power conferred by this section, entered any land, premises, vessel, aircraft or vehicle, and taken any action in respect of a transmitter, the inspector must, as soon as practicable, take all reasonable steps to notify the owner of the transmitter that the action has been taken. 10

Powers of inspectors to require operation of transmitters

278.(1) Subject to subsection (2), if an inspector has reasonable grounds to believe that a transmitter has been, is being or may be operated so as to cause interference to radiocommunications, the inspector may, for the purpose of investigating the interference or risk of interference, direct a person to operate the transmitter. 15

(2) An inspector must not direct that a transmitter be operated if that operation is likely to endanger the safety of a person or cause damage to property. 20

(3) The operation of a transmitter in accordance with a direction does not give rise to an offence under this Act.

(4) A person must not, without reasonable excuse, refuse to comply with a direction. 25
Penalty: \$2,000.

General powers of inspectors

279.(1) An inspector may:

(a) require a person whom he or she suspects on reasonable grounds of having done an act in respect of which the person is required to hold a licence, authority under section 114, certificate or permit to produce the licence, authority, certificate or permit or evidence of its existence and contents; and 30

(b) require the holder of a licence whom he or she suspects on reasonable grounds of having given an authority under section 114 to produce a copy of that authority; and 35

(c) require a person whom he or she suspects on reasonable grounds of having recorded particulars relating to the supply of a receiver or transmitter in a document under section 301 to produce that document; and 40

(d) require a person to produce evidence of having affixed a label

to a transmitter in accordance with an obligation imposed on the person under section 300.

(2) A person must not, without reasonable excuse, fail to comply with a requirement under this section.

5 Penalty: \$2,000.

Division 5—Forfeiture

Court may order forfeiture

10 280. If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used or otherwise involved in the commission of the offence.

Forfeited goods may be sold

281. A thing forfeited under section 280:

- 15 (a) may be sold or otherwise disposed of in accordance with the directions of the SMA; and
(b) pending such directions, must be kept in such custody as the SMA directs.

Division 6—Miscellaneous

Act not to affect performance of duties by inspectors

20 282. Nothing in Chapter 3 or Part 4.1 or 4.2 prohibits the doing of any act or thing by an inspector in the performance of his or her duties under this Act.

Inspectors not authorised to enter or search certain land or premises used for defence purposes

25 283. Nothing in Division 2 or 3 authorises an inspector to enter or to search:

- (a) land or premises that are:
 (i) occupied or used for the purposes of defence; and
 (ii) specified in the regulations or included in a class of land or premises specified in the regulations; or
30 (b) a vessel, aircraft or vehicle that is in the possession or control of the Defence Force or a part of the Defence Force;

unless:

- 35 (c) permission to do so has been given by the person for the time being in charge of those premises or that land, vessel, aircraft or vehicle; or
40 (d) if it is not reasonably practicable to obtain permission of the kind mentioned in paragraph (c), the entry and search is supervised by a member of the Defence Force, or an officer of the Department of Defence, authorised to have access to those premises or that land, vessel, aircraft or vehicle.

Offences that are going to be committed

284. If:

- (a) there are reasonable grounds for suspecting that an offence against this Act is going to be committed; and
- (b) the commission of that offence would pose a threat to the safety of human life or cause substantial loss or damage;

this Part applies in relation to the offence as if there were reasonable grounds for suspecting that it had been committed.

PART 5.6—REVIEW OF DECISIONS

Decisions that may be subject to reconsideration by the SMA 10

285. An application may be made to the SMA for reconsideration of any of the following decisions:

- (a) variation of a spectrum licence under section 73 or 87 or paragraph 92(2)(b);
- (b) suspension of a spectrum licence under section 75; 15
- (c) cancellation of a spectrum licence under section 77 or 87;
- (d) change in the core conditions of a spectrum licence on its re-issue under section 82;
- (e) refusal to issue an apparatus licence under section 100;
- (f) inclusion of conditions in an apparatus licence under paragraph 107(1)(g) or 109(1)(f); 20
- (g) a decision under section 111 concerning the conditions of an apparatus licence;
- (h) directions under subsection 116(1) to revoke an authorisation under section 114; 25
- (i) refusal to issue a certificate of proficiency under section 121;
- (j) cancellation of a certificate of proficiency under section 124;
- (k) suspension of an apparatus licence under section 126;
- (l) cancellation of an apparatus licence under section 128;
- (m) refusal to renew an apparatus licence, or renewal of an apparatus licence with different conditions, under section 130; 30
- (n) refusal to include in the Register under section 145 details of a radiocommunications transmitter;
- (o) refusal to correct the Register under section 153;
- (p) refusal to issue a permit under section 167; 35
- (q) a decision under section 168 about the conditions of a permit;
- (r) cancellation of a permit under section 171;
- (s) refusal to give permission under section 174 to supply a non-standard device;
- (t) refusal to give permission under subsection 193(1) or 195(1) to use a transmitter; 40

- (u) directions under section 212 in relation to the settlement of an interference dispute;
- (v) refusal to give to a person an accreditation under section 263;
- (w) withdrawal of a person's accreditation under section 264;
- 5 (x) making of a pre-acquisition declaration under Part 1 of the Schedule.

Deadlines for reaching certain decisions

286.(1) If this Act provides for a person to make an application to the SMA for such a decision, the SMA must make the decision:

- 10 (a) within 90 days after receiving the application; or
- (b) if the SMA has, within those 90 days, given the applicant a written request for further information about the application—within 90 days after receiving that further information.

15 (2) The SMA is taken, for the purposes of this Part, to have made a decision to refuse the application if it has not informed the applicant of its decision before the end of the relevant period of 90 days.

Statements to accompany notification of decisions

287.(1) If the SMA makes a decision of a kind referred to in section 285 and gives written notice of the decision to a person whose interests it affects, the notice must include:

- 20 (a) a statement to the effect that a person affected by the decision may, if he or she is dissatisfied with the decision, seek a reconsideration of the decision by the SMA under subsection 288(1); and
- 25 (b) a statement to the effect that, if a person who has applied for a reconsideration is dissatisfied with the SMA's decision on the reconsideration, application may, subject to the *Administrative Appeals Tribunal Act 1975* be made to the AAT for review of the decision on that reconsideration.

30 (2) Failure to comply with this section does not affect the validity of a decision.

Applications for reconsideration of decisions

35 288.(1) A person affected by a decision of a kind referred to in section 285 who is dissatisfied with the decision may apply to the SMA for the SMA to reconsider the decision.

(2) The application must:

- (a) be in a form approved by the SMA; and
- (b) set out the reasons for the application.

(3) The application must be made within:

- 40 (a) 28 days after the applicant is informed of the decision; or
- (b) if, either before or after the expiration of that period of 28

days, the SMA extends the period within which the application may be made—the extended period for making the application.

(4) An approved form of an application may provide for verification by statutory declaration of statements in applications.

Reconsideration by the SMA

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289.(1) Upon receiving such an application the SMA must:

- (a) reconsider the decision; and
- (b) affirm, vary or revoke the decision.

(2) The SMA's decision on reconsideration of a decision has effect as if it had been made under the application under which the original decision was made.

10

(3) The SMA must give to the applicant a notice stating its decision on the reconsideration together with a statement of its reasons for its decision.

Deadlines for reconsiderations

15

290.(1) The SMA must make its decision on reconsideration of a decision within 90 days after receiving an application for reconsideration.

(2) The SMA is taken, for the purposes of this Part, to have made a decision affirming the original decision if it has not informed the applicant of its decision on the reconsideration before the end of the period of 90 days.

20

Statements to accompany notification of decisions on reconsideration

291.(1) A notice under subsection 289(3) notifying the applicant that a decision has been affirmed or varied must include:

25

- (a) a statement to the effect that a person affected by the decision so affirmed or varied may, subject to the *Administrative Appeals Tribunal Act 1975*, if he or she is dissatisfied with the decision so affirmed or varied, apply to the AAT for review of the decision; and
- (b) a statement to the effect that the person may request a statement under section 28 of that Act in relation to the decision so affirmed or varied.

30

(2) Failure to comply with this section does not affect the validity of a decision.

35

Review by the AAT

292. Applications may be made to the AAT to review a decision of a kind referred to in section 285 if the SMA has affirmed or varied the decision under section 289.

PART 5.7—CHARGES

Charges relating to the SMA's costs

293. The SMA may, in writing, make determinations fixing charges for recovering its costs relating to:

- 5 (a) services and facilities provided by the SMA; and
- (b) any matter specified in the regulations in relation to which expenses are incurred by the SMA under this Act, including, but without being limited to:
 - 10 (i) applications for the issue, renewal or variation of a licence, permit, certificate or permission under this Act; and
 - (ii) giving advice under section 141; and
 - (iii) a change made to information in the Register, and inspection of the Register; and
 - 15 (iv) conciliation of interference disputes under Part 4.3; and
 - (v) giving an accreditation under section 263;

and specifying the persons by whom, and the times when, the charges are payable.

Spectrum access charges

20 294.(1) The SMA may, by written instrument, make determinations:

- (a) fixing spectrum access charges payable by licensees for issuing spectrum licenses; and
- (b) specifying the times when spectrum access charges are payable.

25 (2) The Minister may give written directions to the SMA about the matters dealt with in determinations.

(3) Directions may, for example, require that:

- 30 (a) the level of spectrum access charges payable in respect of one or more specified classes of public or community services is to be a specified portion only of the level of spectrum access charges otherwise payable; or
- (b) spectrum access charges are not to be payable in respect of a specified class of public or community services; or
- (c) persons are to be permitted to pay in instalments, as specified in the direction, the spectrum access charges payable in respect of a specified class of public or community services.

(4) The SMA must ensure that its determinations comply with any directions in force under this section.

40 (5) A direction is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Publication of determinations

295. Determinations are to be made public in the way the SMA thinks appropriate.

Collection of charges on behalf of the SMA

296. The SMA may enter into arrangements with persons or other bodies under which those persons or other bodies may, on the SMA's behalf, receive from persons payments of charges under this Part. 5

Limits on charges

297. The amount or rate of a charge fixed by a determination must not be such as to amount to taxation. 10

Recovery of charges

298. A charge fixed by a determination may be recovered as a debt due to the Commonwealth.

CHAPTER 6—MISCELLANEOUS

International agreements etc. 15

299.(1) A person or body exercising a power conferred under this Act (other than Part 4.4 or 5.5) must have regard to:

(a) any agreement, treaty or convention, between Australia and another country or countries, that makes provision in relation to radio emission; and 20

(b) any instrument or writing specified in the regulations.

(2) Nothing in subsection (1) limits the kinds of matters to which the person or body may have regard in exercising those powers.

(3) Regulations made for the purposes of paragraph (1)(b) may prescribe a specified instrument or writing: 25

(a) as in force or existence at the time when the regulations come into effect; or

(b) as amended or altered from time to time.

Labelling of radiocommunications transmitters for purposes of identification 30

300.(1) The SMA may, by determination in writing, require any person who operates a radiocommunications transmitter under a licence to affix to that transmitter a label setting out the information specified in the determination.

(2) Without limiting the generality of subsection (1), the determination may specify the following information: 35

(a) details about the licence under which the radiocommunications transmitter is being operated;

(b) the name and address of the licensee.

(3) The label must be in the form specified by the determination.

(4) A person required by a determination to affix a label to a radiocommunications transmitter must comply with the determination.

5 Penalty: \$10,000.

(5) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Supply of radiocommunications devices to unlicensed persons

10 **301.(1)** Subject to subsection (2), a person (the “**supplier**”) who carries on the business of supplying radiocommunications devices to persons intending to operate them must not, without reasonable excuse, supply another person with an eligible radiocommunications device in the course of carrying on that business unless:

15 (a) the other person presents to the supplier a licence, or a duplicate of the licence, that authorises the other person to operate the device; and

(b) the supplier causes such particulars relating to supply of the device as are specified in the regulations to be recorded in a document kept for the purposes of this Act.

20 Penalty: \$2,000.

(2) It is a defence if the supplier believed on reasonable grounds that a document that the other person presented to the supplier was a licence that authorised the other person to operate the radiocommunications device.

25 (3) The supplier must retain the document in which particulars of the supply were recorded under subsection (1) for at least 2 years after the supply.

Penalty: \$2,000.

(4) In subsection (1):

30 “**eligible radiocommunications device**” means a radiocommunications device included in a class of radiocommunications devices specified in the regulations.

False statements

35 **302.** A person must not, for the purposes of or in connection with this Act, knowingly or recklessly:

(a) make, or authorise the making of, a statement that is false or misleading in a material particular; or

(b) omit, or authorise the omission of, any matter or thing without which an application is misleading in a material respect.

40 Penalty: \$10,000.

Compilation etc. of information

303. The SMA may:

- (a) conduct research into; and
 - (b) compile, and publish in any way it thinks fit, information about; 5
- any of the following:
- (c) allocation and use of the spectrum;
 - (d) market demand for, and prices paid for allocation of, parts of the spectrum;
 - (e) charges fixed by the SMA, including any discounts or exemptions in respect of public or community services; 10
 - (f) social, economic and environmental effects of radio transmission;
 - (g) supply, manufacture and operation of devices;
 - (h) standards and technical licence specifications;
 - (i) any other matter relating to radiocommunications or radio emissions. 15

Applications etc. in electronic form

304.(1) The SMA may:

- (a) receive an application under this Act from a person in an electronic form; and 20
- (b) give a person an instrument under this Act in an electronic form;

if it is practicable and convenient, for both the SMA and the person, for the SMA to do so.

(2) This section does not enable the SMA to require applications to be made in an electronic form. 25

Evidentiary certificates

305.(1) A Commonwealth officer who holds such qualifications as are specified in the regulations may issue a certificate, signed by the officer, setting out such facts as he or she considers relevant with respect to: 30

- (a) his or her qualifications; and
- (b) an examination he or she has made of a device.

(2) A certificate purporting to be issued under subsection (1) and to be duly signed is, in proceedings under or arising out of this Act or the *Customs Act 1901*, *prima facie* evidence of the facts stated in it. 35

(3) The SMA may issue a certificate, signed by a person authorised by the SMA for the purposes of this subsection, stating that at a specified time, or during a specified period, a specified person was, or was not, the holder of a specified kind of radiocommunications instrument. 40

(4) A certificate purporting to be issued under subsection (3) and to be duly signed is, in proceedings under or arising out of this Act, *prima facie* evidence of the facts stated in it.

(5) In this section:

- 5 “**radiocommunications instrument**” means a licence, certificate or permit issued under this Act, and includes a permission issued under section 174.

Conduct by directors, servants and agents

10 **306.(1)** If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
15 (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in
20 also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to avoid the conduct.

(3) If, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate
25 in relation to particular conduct, it is sufficient to show:

- (a) that the conduct was engaged in by a servant or agent of the person within the scope of his or her actual or apparent authority; and
(b) that the servant or agent had the state of mind.

30 (4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in
35 also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid the conduct.

(5) If:

- (a) a person other than a body corporate is convicted of an offence; and
40 (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;

the person is not liable to be punished by imprisonment for that offence.

(6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:

- (a) the knowledge, intention, opinion, belief or purpose of the person; and
- (b) the person's reasons for the intention, opinion, belief or purpose. 5

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

(8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct. 10

Surrender of licences, certificates and permits

307. If the holder of a licence, certificate or permit surrenders it, it is taken, for the purposes of this Act, to have been cancelled upon acceptance of the surrender by the SMA. 15

No compensation for suspensions and cancellations

308. A person is not entitled to compensation from the Commonwealth solely because of:

- (a) suspension or cancellation of, or variation of the conditions of, a licence, certificate or permit; or 20
- (b) withdrawal of an accreditation under section 264.

Officers and employees of governments and authorities

309. The Governor-General may make arrangements with the Governor of a State or the Administrator of a Territory for performance of functions and exercise of powers under this Act by officers or employees of that State or Territory or of an authority of that State or Territory. 25

Operation of this Act in relation to the Broadcasting Services Act

310.(1) Regulations under this Act have effect despite any regulation made under the *Broadcasting Services Act 1992*. 30

(2) This Act is not intended to limit or exclude the operation of any regulation made under the *Broadcasting Services Act 1992* so far as the regulation can operate concurrently with this Act.

Act not to affect performance of functions by States or certain Territories 35

311.(1) The SMA must not exercise its powers under Chapter 3 in a way that prevents exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island.

(2) A restrictive order has no effect so far as it would, but for this subsection, prevent exercise of the powers, or performance of the functions, of government of a State, the Australian Capital Territory, the Northern Territory or Norfolk Island.

5 **Application of the Trade Practices Act**

312. Nothing in Part 3.2 is to be taken as specifically authorising or approving any act or thing for the purposes of subsection 51(1) of the *Trade Practices Act 1974*.

Legislation of the Australian Antarctic Territory

10 313. This Act does not affect the Governor-General's power under section 11 of the *Australian Antarctic Territory Act 1954* to make Ordinances prohibiting or regulating use of radiocommunications devices the operation of which is authorised under class licences.

Regulations

15 314.(1) The Governor-General may make regulations prescribing all matters:

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

20 (2) Without limiting subsection (1), the regulations may make provision in relation to:

- (a) prohibiting or regulating any act or thing likely to cause interference, or risk of interference, to radiocommunications; or
- 25 (b) prohibiting or regulating making of radio emissions from a place within a specified area; or
- (c) prohibiting or regulating making of radio emissions in a way likely to cause an explosion; or
- 30 (d) enabling a person who is alleged to have committed an offence of a kind referred to in paragraph 315(a), (b) or (c) to pay to the Commonwealth, as an alternative to prosecution, a penalty of an amount worked out in accordance with section 315; or
- (e) prescribing the forms of warrants for the purposes of section 269; or
- 35 (f) functions and powers to be conferred, and duties to be imposed, upon inspectors; or
- (g) refund of charges on surrender of certificates or licences; or
- (h) issue and return of duplicates of licences, certificates and permits, and of licences granted under the regulations; or
- 40 (i) any matter incidental to or connected with any of the foregoing.

(3) The power to make regulations in relation to a matter is not limited merely by the fact that:

- (a) this Act makes provision in relation to the matter; or
- (b) this Act expressly allows such provision to be made:
 - (i) by standards, advisory guidelines or orders; or
 - (ii) by specifying conditions to which licences or permits are subject.

5

(4) Paragraph (2)(c) is not intended to limit or exclude concurrent operation of a law of a State or Territory.

(5) The regulations may provide, in respect of an offence against the regulations, for imposition of a fine not exceeding \$1,000.

(6) The limitation imposed by subsection (5) on the penalties that the regulations may prescribe does not prevent the regulations from requiring a person to make a statutory declaration.

10

Penalties payable in lieu of prosecution

315. The amount of penalty payable to the Commonwealth under regulations made for the purposes of paragraph 314(2)(d) in respect of an offence is the greater of \$100 and:

15

(a) for an offence alleged to have been committed against section 117, 118, 186, 187, 197, 278 or 279, subsection 301(3) or the regulations (other than an offence against the regulations to which paragraph (b) refers)—an amount equal to one-fifth of the maximum fine that a court could impose on the person alleged to have committed the offence as a penalty for that offence; or

20

(b) for an offence alleged to have been committed against section 113 or 170 or the regulations (being an offence against the regulations that relate to an apparatus licence or a permit)—an amount equal to the lesser of:

25

(i) one-fifth of the maximum fine that a court could impose on the person alleged to have committed the offence as a penalty for that offence; or

30

(ii) twice the amount of tax that was paid or is payable in respect of holding for 12 months the licence or permit to which the offence alleged to have been committed relates; or

(c) for an offence alleged to have been committed against section 46 or 47, being an offence that would not have been committed if the person alleged to have committed it had been the licensee of an apparatus licence at the time the offence was alleged to have been committed—an amount equal to the lesser of:

35

(i) one-fifth of the maximum fine that a court could impose

40

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on the person alleged to have committed the offence as a penalty for that offence; or

- (ii) twice the amount of tax that the person would have been liable to pay in respect of holding, for the 12 months starting at that time, such a licence.

5

SCHEDULE

Sections 91 and 93

**RESUMING SPECTRUM LICENCES BY
COMPULSORY PROCESS**

PART 1

RESUMPTION PROCEDURES

Pre-acquisition declarations

1.(1) The SMA must cause to be published in the *Gazette* a pre-acquisition declaration for the spectrum licence, or the part of the spectrum licence, that it wishes to resume.

(2) The pre-acquisition declaration must contain:

- (a)** a description of the licence, or the part of the licence, to be resumed; and
- (b)** a statement of the SMA's reasons for the resumption.

Service on licensees and third party users

2.(1) Within 14 days after publication in the *Gazette*, the SMA must serve the declaration on the licensee by registered post sent to the address of the place of residence or business of the licensee last known to the SMA.

(2) The licensee must, within 7 days after being so served, give a written notice of the proposed resumption to:

- (a)** if the whole of the licence is to be resumed—each person (if any) authorised by the licensee to operate a radiocommunications device under the licence; or
- (b)** if a part of the licence is to be resumed—each person (if any) so authorised whose interests would be affected by resumption of that part of the licence.

(3) Failure to comply with the requirements of this clause does not affect the validity of the pre-acquisition declaration.

Note: A pre-acquisition declaration is reviewable under Part 5.6.

Resumption notices

3.(1) If the pre-acquisition declaration is in force at the end of the review period, the SMA must cause to be published in the *Gazette* a notice that the licence, or the part of the licence, is resumed.

(2) The review period commences when the pre-acquisition declaration is made and ends:

- (a)** if the period for applying under Part 5.6 for reconsideration of the pre-acquisition declaration has expired without such an

SCHEDULE—continued

application being made—at the end of the period for applying for reconsideration; or

- (b) if the pre-acquisition declaration was reconsidered under Part 5.6 and the period for applying under that Part for review by the AAT of the reconsideration has expired without such an application being made—at the end of the period for applying for review by the AAT; or
- (c) if review by the AAT was applied for within that period—when the review, and any appeals or other proceedings arising from the review, have been finally disposed of.

Date of effect of resumptions

4. The resumption takes effect:

- (a) if the resumption notice specifies a day for the purpose—on that day; or
- (b) otherwise—14 days after the day on which the resumption notice was published.

Notification of licensees

5. Within 14 days after the resumption notice was published, the SMA must give to the licensee a written notice that:

- (a) sets out a copy of the resumption notice; and
- (b) sets out particulars of:
 - (i) the licensee's right to claim compensation for the resumption; and
 - (ii) how a claim is to be made; and
- (c) includes the form, approved by the SMA, on which such a claim is to be made.

PART 2

COMPENSATION

The basis on which compensation is payable

1.(1) If a spectrum licence or a part of a spectrum licence is resumed under section 91, the compensation payable to the licensee under section 93 is compensation for:

- (a) the market value of the licence, or the part of the licence, on the day before the day on which the pre-acquisition declaration was published; and
- (b) any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the resumption.

SCHEDULE—continued

(2) The market value of the licence, or the part of the licence, at a particular time is the amount that would have been paid for it if it had been sold at that time by a willing but not anxious seller to a willing but not anxious buyer.

(3) If the market value is assessed upon the basis that the licence, or the part of the licence, had potential to be used for a purpose other than the purpose for which it was used at the relevant time, compensation is not payable in respect of any loss or damage that would necessarily have been suffered, or expense that would necessarily have been incurred, in realising that potential.

(4) If:

- (a) a pre-acquisition declaration is published for resumption of a spectrum licence or a part of a spectrum licence; and
- (b) the pre-acquisition declaration is revoked before the resumption takes place;

the compensation payable to the licensee under section 186 and this Part is compensation for any loss, injury or damage suffered, or expense reasonably incurred, as a direct, natural and reasonable consequence of the publication of the pre-acquisition declaration.

Amounts of compensation payable

2.(1) The amount of compensation payable to the licensee is:

- (a) the amount of compensation agreed by the SMA under paragraph 4(a); or
- (b) the amount of compensation specified in an offer of the SMA that is accepted by the licensee under subclause 6(1); or
- (c) the amount of compensation determined by the AAT under clause 7; or
- (d) the amount of compensation determined by the Federal Court under clause 8; or
- (e) the amount of compensation determined by an independent valuer under clause 9;

whichever is applicable.

(2) Once the amount of compensation is fixed under one of the paragraphs in subclause (1), the other paragraphs are no longer capable of application in fixing the amount of compensation.

Claims for compensation

3. The licensee may claim compensation by giving to the SMA a written claim in a form approved by the SMA.

SCHEDULE—continued

Consideration of claims by the SMA

4. The SMA must consider the claim and, by written notice given to the licensee:

- (a) agree to pay the amount of compensation specified in the claim; or
- (b) offer to pay an amount of compensation different to the amount specified in the claim; or
- (c) reject the claim.

Deadline for consideration of claims

5.(1) The SMA must give the notice to the licensee within 42 days, or such longer period as is agreed between the SMA and the licensee, after receiving the claim.

(2) The SMA is taken to have rejected the claim if it has not informed the licensee of its decision on the claim before the end of the period within which the notice must be given.

Consideration of offers by licensees

6.(1) If the SMA offers under paragraph 4(b) to pay an amount of compensation to the licensee, the licensee may, in writing, accept the offer at any time during the period of 42 days, or such longer period as is agreed between the SMA and the licensee, after the offer was made.

- (2) The licensee is taken to have rejected the offer if:
 - (a) during the period during which the licensee may accept the offer, the licensee informs the SMA, in writing, that the offer is rejected; or
 - (b) the period ends and the licensee has not accepted the offer.

Determination of compensation by the AAT

7.(1) Subject to subclause (5), if:

- (a) under paragraph 4(c), the SMA has rejected the claim; or
- (b) under subclause 5(2), the SMA is taken to have rejected the claim; or
- (c) under subclause 6(2), the licensee is taken to have rejected an offer by the SMA;

the licensee may apply to the AAT to review the SMA's decision to reject the claim, or make the offer, as the case requires.

(2) Subject to subclauses (3) and (4), the *Administrative Appeals Tribunal Act 1975* applies to the application.

(3) Section 29 of that Act applies to the application as if the prescribed time for lodging the application with the AAT were the

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period of 90 days beginning on the day on which the SMA rejected the claim, or the SMA's offer was taken to be rejected, as the case requires.

(4) The AAT must make a decision on the application determining the amount of compensation.

(5) An application cannot be made to the AAT if an application has already been made under clause 8 to the Federal Court to determine the amount of compensation.

Determination of compensation by the Federal Court

8.(1) Subject to subsection (3), if:

- (a) under paragraph 4(c), the SMA has rejected the claim; or
- (b) under subclause 5(2), the SMA is taken to have rejected the claim; or
- (c) under subclause 6(2), the licensee is taken to have rejected an offer by the SMA;

the licensee may apply to the Federal Court to determine the amount of compensation to which the licensee is entitled.

(2) On the application, the Federal Court must determine the amount of compensation.

(3) An application cannot be made to the Federal Court if an application has already been made under clause 7 to the AAT to review the SMA's decision to reject the claim or to make the offer, as the case requires.

Determination of compensation by independent valuers

9.(1) Subject to subclause (4), the SMA and the licensee may agree on appointment of an independent valuer to determine the amount of compensation.

(2) Clauses 3 to 8 no longer apply once an independent valuer is appointed under the agreement.

(3) The independent valuer must determine the amount of compensation.

(4) Agreement on appointment of an independent valuer has no effect if an application related to the amount of compensation has already been made to the AAT under clause 7 or to the Federal Court under clause 8.

*[Minister's second reading speech made in—
Senate on 12 November 1992
House of Representatives on 26 November 1992]*