



Communications and the Arts Legislation Amendment Act (No. 1) 1995

No. 32 of 1995

**An Act to amend various Acts relating to communications
and the arts**

[Assented to 12 April 1995]

The Parliament of Australia enacts:

Short title

1. This Act may be cited as the *Communications and the Arts Legislation Amendment Act (No. 1) 1995*.

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Commencement

2.(1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.

(2) Subject to subsection (3), items 67 and 68 of the Schedule commence on a day to be fixed by Proclamation.

(3) If an item in the Schedule does not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, the item commences on the first day after the end of that period.

Amendment of Acts

3.(1) Subject to subsection (2), the Acts specified in the Schedule are amended as set out in the Schedule.

(2) Subsection (1) does not apply to items 67 and 68 before the items commence under subsection 2(2).

SCHEDULE

Section 3

AMENDMENT OF ACTS

Australian Broadcasting Corporation Act 1983

1. Section 70:

Repeal the section.

Australian Film, Television and Radio School Act 1973

2. Paragraph 8(1)(b):

Omit the paragraph, substitute:

“(b) a staff member elected by the staff members in the manner prescribed;”.

3. Section 8:

Add at the end:

“(9) In this section:

‘staff member’ means a person who:

- (a) is employed on a full-time or part-time basis under section 34; and
- (b) has been so employed, or whose term of employment is, for at least 12 months.”.

4. Paragraphs 20(7)(a) and (b):

Omit “6”, substitute “5”.

5. Paragraph 51(f):

Omit “\$100”, substitute “1 penalty unit”.

Broadcasting Services Act 1992

6. Subsection 6(1) (definition of “Australian drama program”):

Omit “satellite”.

7. Subsection 6(1) (paragraph (a) of the definition of “Australian drama program”):

Omit the paragraph, substitute:

“(a) that:

- (i) has been made wholly or substantially in Australia or an external Territory; and
- (ii) has a significant Australian content; and
- (iii) in relation to which there is no declaration in force under subsection (3); or”.

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SCHEDULE—continued

- 8. Subsection 6(1) (definition of “Australian drama program”):**
Omit “but does not include a program in relation to which a declaration under subsection (3) is in force;”.
- 9. Subsection 6(1) (definition of “drama program”):**
Omit “satellite”.
- 10. Subsection 6(3):**
Omit “paragraph (a)”, substitute “subparagraphs (a)(i) and (ii)”.
- 11. Subsection 6(3):**
Omit “definition of ‘drama program’”, substitute “definition of ‘Australian drama program’”.
- 12. Section 62 (paragraph (a) of penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 13. Section 62 (paragraph (b) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 14. Section 63 (paragraph (a) of penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 15. Section 63 (paragraph (b) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 16. Section 64 (paragraph (a) of penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 17. Section 64 (paragraph (b) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 18. Section 65 (paragraph (a) of penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 19. Section 65 (paragraph (b) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 20. Subsection 66(1) (paragraph (e) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 21. Subsection 66(1) (paragraph (f) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.

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SCHEDULE—continued

- 22. Section 69 (paragraph (a) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 23. Section 69 (paragraph (b) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 24. Section 72 (paragraph (a) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 25. Section 72 (paragraph (b) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 26. Paragraph 111(a):**
Insert “or 8” after “Division 7”.
- 27. Paragraph 111(c):**
Omit “licence A or licence B”, substitute “a subscription television broadcasting licence”.
- 28. Subsection 112(7) (penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 29. Section 131 (penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 30. Subsection 132(1) (paragraph (a) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 31. Subsection 132(1) (paragraph (b) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 32. Subsection 132(2) (penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 33. Section 133 (penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 34. Section 134 (penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 35. Section 135 (penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 36. Subsection 138(1) (paragraph (a) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.

SCHEDULE—continued

- 37. Subsection 138(1) (paragraph (b) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 38. Subsection 138(1) (paragraph (c) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 39. Subsection 139(1) (penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 40. Subsection 139(2) (penalty):**
Omit “\$100,000”, substitute “1,000 penalty units”.
- 41. Subsection 139(3) (penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 42. Subsections 139(4) and (5) (penalties):**
Omit “\$5,000”, substitute “50 penalty units”.
- 43. Section 142 (paragraph (a) of penalty):**
Omit “\$2,000,000”, substitute “20,000 penalty units”.
- 44. Section 142 (paragraph (b) of penalty):**
Omit “\$200,000”, substitute “2,000 penalty units”.
- 45. Section 142 (paragraph (c) of penalty):**
Omit “\$50,000”, substitute “500 penalty units”.
- 46. Section 142 (paragraph (d) of penalty):**
Omit “\$5,000”, substitute “50 penalty units”.
- 47. Subsection 156(1):**
Insert “either for general purposes or” after “ABA”.
- 48. Paragraph 157(2A)(a):**
Omit “orginal”, substitute “original”.
- 49. Subsection 209(2):**
Omit “\$50,000”, substitute “500 penalty units”.
- 50. Subsection 217(2):**
Omit “\$25,000”, substitute “250 penalty units”.
- 51. Subsection 217(2):**
Omit “\$5,000”, substitute “50 penalty units”.

SCHEDULE—continued

Radiocommunications Act 1992

52. Section 5 (definition of “certificate”):

Omit the definition, substitute:

“ ‘certificate’ means:

- (i) a certificate of proficiency; or
- (ii) a compliance certificate; or
- (iii) a frequency assignment certificate referred to in subsection 100(4A); or
- (iv) any other kind of certificate that may be issued under this Act;”.

53. Paragraph 11(2)(b):

Omit “of” (first occurring).

54. Section 46 (subparagraph (a)(ii) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

55. Section 46 (paragraph (b) of penalty):

Omit “\$2,000”, substitute “20 penalty units”.

56. Section 47 (subparagraph (a)(ii) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

57. Section 47 (paragraph (b) of penalty):

Omit “\$2,000”, substitute “20 penalty units”.

58. Paragraph 82(1)(a):

Omit “subsection (2)”, substitute “subsection (3)”.

59. Subsection 86(1):

Omit “an assignment under section 85 must”, substitute:

“an assignment under section 85 of the whole, or any part of, a licence that involves:

- (a) a change in the licensee; or
- (b) the issue of a spectrum licence; or
- (c) the variation of the conditions of a spectrum licence; or
- (d) the cancellation of one or more existing spectrum licences;

must”.

60. Subsection 86(1):

After “requires” insert “(if any)”.

SCHEDULE—continued

61. Subsection 86(2):

After “assignment” insert “covered by subsection (1)”.

62. Subsection 89(2):

Omit “variation”, substitute “agreement”.

63. After subsection 100(4):

Insert:

“(4A) The SMA, in deciding whether to issue an apparatus licence, may have regard to a frequency assignment certificate issued by a person accredited under section 263 to issue such certificates for the purposes of this section, stating that the operation of a device under the licence:

- (a) on a specified frequency or frequencies, or on a specified frequency channel; and
- (b) at a specified constancy; and
- (c) at a specified location; and
- (d) subject to specified technical conditions;

will not cause an unacceptable level of interference to the operation of radiocommunications.

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

64. Subsection 100(5):

Omit the subsection, substitute:

“(5) In deciding whether to issue an apparatus licence, the SMA may also have regard to whether, in the 2 years before the application, the applicant has been the holder of an apparatus licence that has been cancelled.”.

65. Section 104:

Repeal the section, substitute:

“104.(1) Subject to subsections (2) and (3), the SMA may issue an apparatus licence that is inconsistent with the spectrum plan or any relevant frequency band plan only if:

- (a) the apparatus licence is granted for purposes which relate to an event of international, national or regional significance; or
- (b) the issue of the apparatus licence is otherwise in the public interest.

“(2) The licence must not be issued for more than 30 days.

“(3) The licence must not be renewed under section 130 more than once.”.

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66. Paragraph 106(2)(a):

Omit “subject to subsection (3),”.

67. Paragraph 107(1)(f):

Omit the paragraph, substitute:

“(f) such conditions (if any) as the SMA may determine, by written instrument, in relation to that particular type of apparatus licence;”.

68. Section 107:

Add at the end:

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

69. Subparagraph 108(2)(d)(ii):

Omit “harrassing”, substitute “harassing”.

70. Section 111:

Add at the end:

“(2) The notice given under subsection (1) must specify that:

- (a) the licensee may request a statement of reasons for the change; and
- (b) a request must be made within 28 days of receipt of the notice.

“(3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.

“(4) If the SMA receives a request in accordance with subsection (3), the SMA must give the person a statement of reasons within 28 days of receipt of that request.”.

71. Section 113 (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

72. Section 117 (penalty):

Omit “\$2,000”, substitute “20 penalty units”.

73. Subsection 118(1) (penalty):

Omit “\$2,000”, substitute “20 penalty units”.

74. Section 124:

Add at the end:

“(4) If:

- (a) a person has been issued with a certificate of proficiency; and
- (b) the SMA subsequently cancels the certificate;

SCHEDULE—continued

the person must not, without reasonable excuse, fail to return the certificate to the SMA, either by hand or by certified mail, within 7 days after receiving notification of the cancellation.

Penalty for contravention of this subsection: 20 penalty units.”.

75. Subsection 130(3):

Omit the subsection, substitute:

“(3) In deciding whether to renew the licence, the SMA:

(a) must have regard to the same matters to which it must have regard under subsections 100(4) and (6); and

(b) may have regard to the same matters to which it may have regard under subsection 100(5);

in deciding whether to issue such a licence.”.

76. Subsection 130(5):

Omit “, together with a statement of its reasons”.

77. Section 130:

Add at the end:

“(6) The notice given under subsection (5) must specify that:

(a) the licensee may request a statement of reasons for the decision; and

(b) a request must be made within 28 days of receipt of the notice.

“(7) A person receiving a notice under subsection (5) may request a statement of reasons for the decision within 28 days of receiving the notice.

“(8) If the SMA receives a request in accordance with subsection (7), it must give the person a statement of reasons within 28 days of receipt of the request.”.

78. After section 131:

Insert in Part 3.3:

“Division 8—Transfer of apparatus licences

Applications for transfer of apparatus licences

“131AA.(1) Subject to section 131AC, a licensee of an apparatus licence may, at any time before the licence is due to expire, apply in writing to the SMA for the licence to be transferred to another person.

“(2) The application must be in a form approved by the SMA and must be signed by both the licensee and the proposed transferee.

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SCHEDULE—continued

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

Transfer of apparatus licences

“131AB.(1) Subject to section 131AC, when an application is made, the SMA may transfer the licence into the name of the transferee.

“(2) In deciding whether to transfer the licence, the SMA:

- (a) must have regard to the same matters to which it must have regard under subsections 100(4) and (6); and
- (b) may have regard to the same matters to which it may have regard under subsection 100(5);

in deciding whether to issue such a licence.

“(3) The transferred licence:

- (a) subject to Division 6, continues in force until the end of the period for which the licence is in force when issued to the initial licensee; and
- (b) subject to section 111, continues on the same conditions as those which applied immediately before the transfer.

Apparatus licences not transferable in certain circumstances

“131AC.(1) The SMA may determine, by written instrument:

- (a) that particular types of apparatus licence are not transferable under this Division; and
- (b) that in specified circumstances an apparatus licence is not transferable under this Division.

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

79. Section 148:

Add at the end:

“; or (d) any transfer of the licence under section 131AB.”.

80. Paragraph 153(4)(c):

Omit the paragraph, substitute:

“(c) any other person who has given written notice to the SMA under subsection (6) in relation to the licence to which the correction relates.”.

81. Section 153:

Add at the end:

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SCHEDULE—continued

“(6) A person may give a written notice to the SMA stating that the person wishes to be notified about corrections to the Register in relation to specified licences.”.

82. Subsection 157(1) (paragraph (a) of penalty):

Omit “\$12,000”, substitute “120 penalty units”.

83. Subsection 157(1) (paragraph (b) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

84. Subsection 158(1) (paragraph (a) of penalty):

Omit “\$12,000”, substitute “120 penalty units”.

85. Subsection 158(1) (paragraph (b) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

86. Subsection 160(1) (paragraph (a) of penalty):

Omit “\$12,000”, substitute “120 penalty units”.

87. Subsection 160(1) (paragraph (b) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

88. Section 170 (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

89. After subsection 182(1):

Insert:

“(1A) The notice may require a manufacturer or importer of a device included in a class of devices specified in the notice:

- (a) to conduct quality assurance programs; or
- (b) to satisfy himself or herself that quality assurance programs have been conducted;

in respect of the device.

“(1B) The notice may require a manufacturer or importer of a device, after having regard to the results of the quality assurance program, to affix a label to each such device that indicates one or more of the following:

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

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

90. After subsection 182(4):

Insert:

“(4A) The notice may also specify requirements that must be met after a label has been affixed to a device, including a requirement that a manufacturer or importer retain for inspection, for the period specified in the notice, records of:

- (a) the quality assurance programs conducted in accordance with a notice under subsection (1) in respect of that device; and
- (b) any results of any tests conducted in relation to compliance with relevant standards, technical licence specifications or the class licence.”.

91. Section 186 (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

92. After section 187:

Insert:

Failure to retain records

“187A. If the SMA publishes a notice under subsection 182(1) that specifies requirements to be met after a label has been affixed, a manufacturer or importer must not, without reasonable excuse, fail to comply with requirements specified in the notice.

Penalty: 20 penalty units.”.

93. Subsection 189(1) (paragraph (b) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

94. Section 192 (paragraph (b) of penalty):

Omit “\$500,000”, substitute “5,000 penalty units”.

95. Subsection 193(1) (paragraph (b) of penalty):

Omit “\$500,000”, substitute “5,000 penalty units”.

96. Section 194 (paragraph (b) of penalty):

Omit “\$500,000”, substitute “5,000 penalty units”.

97. Subsection 195(1) (paragraph (b) of penalty):

Omit “\$150,000”, substitute “1,500 penalty units”.

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98. Section 198 (paragraph (b) of penalty):

Omit “\$500,000”, substitute “5,000 penalty units”.

99. Section 199:

After “not” insert “, without reasonable excuse,”.

100. Section 199 (paragraph (b) of penalty):

Omit “\$500,000”, substitute “5,000 penalty units”.

101. Section 214 (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

102. Subsection 227(1) (penalty):

Omit “\$30,000”, substitute “300 penalty units”.

103. Subsection 237(1):

Omit “Commonweath”, substitute “Commonwealth”.

104. Subsection 238(2):

Insert “to issue or cancel certificates of proficiency under Division 5 of Part 3.3 or” after “power”.

105. Subsection 238(3):

Omit the subsection, substitute:

“(3) The Spectrum Manager may delegate to the ABA the SMA’s power:

- (a) to issue, renew, suspend or cancel licences authorising operation of radiocommunications devices using a part of the spectrum designated under section 31; and
- (b) to impose one or more further conditions under paragraph 111(a) to which a licence so issued or renewed is subject; and
- (c) to revoke or vary any condition specified under paragraph 107(1)(g) or 109(1)(f); and
- (d) to revoke or vary any condition imposed under paragraph 108(2)(a), (b) or (c) or 111(a) to which a licence so issued or renewed is subject.”.

106. After subsection 263(2):

Insert:

“(2A) The instrument is given subject to such conditions relating to the issuing of certificates as the SMA determines under section 266A or specifies in the instrument.”.

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SCHEDULE—continued

107. After section 266:

Insert in Part 5.4:

SMA determination in relation to certificates

“266A.(1) The SMA may determine, by instrument in writing, the conditions that are to apply in relation to the issuing of a certificate under this Act.

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

108. Subsection 268(3) (penalty):

Omit “\$500”, substitute “5 penalty units”.

109. Subsection 278(4) (penalty):

Omit “\$2,000”, substitute “20 penalty units”.

110. Subsection 279(1):

Add at the end:

“; and (e) require a person who has been required to retain quality assurance program records by a notice under subsection 182(1) for a specified period to produce such records at any time during that period.”

111. Subsection 279(2) (penalty):

Omit “\$2,000”, substitute “20 penalty units”.

112. After paragraph 285(m):

Insert:

“(ma) refusal to transfer an apparatus licence under section 131AB;”.

113. Subparagraph 293(b)(i):

After “renewal” insert “, transfer”.

114. Subsection 300(4) (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

115. Subsections 301(1) and (3) (penalties):

Omit “\$2,000”, substitute “20 penalty units”.

116. Section 302 (penalty):

Omit “\$10,000”, substitute “100 penalty units”.

117. Paragraph 314(2)(d):

After “(c)” insert “, (ca)”.

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SCHEDULE—continued

118. Subsection 314(5):

Omit “\$1,000”, substitute “10 penalty units”.

119. After section 314:

Insert:

**SMA determinations etc. may provide for matters by
reference to any other instrument**

“314A.(1) An SMA determination or other instrument made under this Act may make provision for, or in relation to, a matter by applying, adopting or incorporating (with or without modifications) any matter contained in an instrument or other writing made by any person or body in Australia or elsewhere, as in force at a particular time or as in force from time to time.

“(2) Section 49A of the *Acts Interpretation Act 1901* does not apply in relation to instruments made under this Act.”.

120. Section 315 (penalty):

Omit “\$100”, substitute “1 penalty unit”.

121. After paragraph 315(c):

Insert:

“(ca) for an offence alleged to have been committed against section 46 or 47 that would not have been committed if the person alleged to have committed it had complied with the class licence at the time the offence was alleged to have been committed—an amount equal to the lesser of:

- (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
- (ii) if the offender is an individual—10 penalty units; or
- (iii) if the offender is a body corporate—50 penalty units; or
- (iv) the amount (if any) prescribed in relation to the class licence; or”.

Special Broadcasting Service Act 1991

122. Section 67:

Repeal the section.

Telecommunications Act 1991

123. Subsection 253(1) (penalty):

Omit “\$12,000”, substitute “120 penalty units”.

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SCHEDULE—continued

- 124. Sections 254 and 255 (penalties):**
Omit “\$12,000”, substitute “120 penalty units”.
- 125. Subsections 268(1), (2) and (3) (penalties):**
Omit “\$12,000”, substitute “120 penalty units”.
- 126. Subsection 401(2) (penalty):**
Omit “\$2,000”, substitute “20 penalty units”.
- 127. Subsection 402A(1) (penalty):**
Omit “\$3,000”, substitute “30 penalty units”.
- 128. Subsection 406(2):**
Omit “\$1,000”, substitute “10 penalty units”.
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*[Minister's second reading speech made in—
Senate on 7 December 1994
House of Representatives on 28 March 1995]*