



Australian Communications and Media Authority Act 2005

No. 44, 2005

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About this compilation

This compilation

This is a compilation of the *Australian Communications and Media Authority Act 2005* that shows the text of the law as amended and in force on 17 October 2017 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	1
3 Definitions.....	2
4 When does an inquiry, investigation or hearing end?.....	5
5 When is there a vacancy?	6
Part 2—ACMA’s establishment, functions, powers and liabilities	7
Division 1—Establishment	7
6 Establishment	7
Division 2—Functions	8
7 ACMA’s functions	8
8 ACMA’s telecommunications functions.....	8
9 ACMA’s spectrum management functions.....	9
10 ACMA’s broadcasting, content and datacasting functions	10
11 ACMA’s additional functions.....	12
Division 3—Powers	14
12 ACMA’s powers.....	14
Division 4—Requirements relating to these functions and powers	15
14 Minister may give directions to ACMA	15
15 ACMA not otherwise subject to direction	15
16 Consistency with CER Trade in Services Protocol.....	15
17 ACMA to consult ACCC in relation to management of electronic addressing	16
Part 3—ACMA’s membership	17
Division 2—Membership	17
Subdivision A—Members	17
19 Membership.....	17
20 Appointment of members	17
21 Period of appointment for members	17
22 Acting Chair	18
23 Acting appointments—members other than the Chair.....	19

Subdivision B—Associate members	20
24 Appointment of associate members	20
25 Period of appointment for associate members	20
26 Acting appointments—associate members	22
27 Associate members to be treated as members for certain purposes in other Acts	22
Division 3—Terms and conditions for members and associate members	23
28 Remuneration	23
29 Disclosure of interests	23
31 Outside employment.....	24
32 Leave of absence	24
33 Resignation.....	24
34 Termination of appointment.....	24
35 Other terms and conditions.....	26
Part 4—Decision-making and delegation by ACMA	27
Division 1—Meetings	27
36 Times and places of meetings.....	27
37 Notice of meetings.....	27
38 Presiding at meetings.....	27
39 Quorum.....	28
40 Participation etc. by associate members at meetings	28
41 Voting at meetings etc.	28
42 Conduct of meetings.....	29
43 Minutes.....	29
Division 2—Decisions without meetings	30
44 Decisions without meetings.....	30
45 Record of decisions	30
Division 3—Divisions	31
46 Divisions.....	31
47 Meetings of a Division	32
48 Division can make decisions without meetings	33
49 Minutes etc.	34
Division 4—Delegations	35
50 Delegations by ACMA to a Division.....	35
51 Delegations by ACMA to others	35
52 Delegations by a Division.....	36

53	Limit on powers delegable to persons other than Divisions	37
Part 5—ACMA’s staff etc.		38
54	Staff.....	38
55	Arrangements with authorities of the Commonwealth	38
Part 6—Corporate planning and reporting by ACMA		39
56	Corporate plans.....	39
57	Annual reports.....	39
Part 7—Advisory committees and the Consumer Consultative Forum		42
58	Advisory committees.....	42
59	Consumer Consultative Forum.....	42
Part 7A—Disclosure of information		44
59A	Disclosure to Ministers.....	44
59B	Disclosure to public servants for advising their Ministers	44
59C	Disclosure to Royal Commissions.....	45
59D	Disclosure to certain authorities	45
59E	Disclosure with consent.....	47
59F	Disclosure of publicly available information.....	47
59G	Disclosure of summaries and statistics	47
59H	Disclosure authorised by regulations.....	47
59J	This Part does not limit disclosure by ACMA official	48
59K	Relationship with Part 13 of the <i>Telecommunications Act 1997</i>	48
59L	Delegation of Chair’s powers under this Part.....	48
Part 8—Other matters		49
60	Charges relating to ACMA’s expenses.....	49
61	Charges are payable to the Commonwealth.....	50
62	ACMA’s expenses include related Commonwealth expenses	50
62A	Proceedings in the name of the ACMA	50
62B	Decisions relating to the Commonwealth etc.	51
63	Chair not subject to direction by ACMA on certain matters.....	51
64	Definitions determination.....	51
65	Determinations may define expressions by reference to other instruments	51
66	Person not to use protected name or protected symbol.....	52

67	ACMA to maintain Register of policy notifications and Ministerial directions.....	54
68	Regulations.....	55
Endnotes		56
Endnote 1—About the endnotes		56
Endnote 2—Abbreviation key		58
Endnote 3—Legislation history		59
Endnote 4—Amendment history		63

An Act to establish the Australian Communications and Media Authority, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Australian Communications and Media Authority Act 2005*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 April 2005
2. Sections 3 to 68	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence before 1 July 2005, they commence on that day.	1 July 2005

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

Section 3

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Definitions

In this Act, unless the contrary intention appears:

ACMA means the Australian Communications and Media Authority.

ACMA official means:

- (a) a member; or
- (b) an associate member; or
- (c) a member of the ACMA staff; or
- (d) a person whose services are made available to the ACMA under subsection 55(1).

ACMA staff means the staff described in section 54.

additional functions, in relation to the ACMA, has the meaning given by section 11.

appointer means:

- (a) for a member—the Governor-General; or
- (b) for an associate member—the Minister.

associate member means an associate member of the ACMA.

authorised disclosure information means:

- (a) information that was given in confidence to the ACMA in connection with the performance of any of the ACMA's functions or the exercise of any of its powers; or
- (b) information that was obtained by the ACMA as a result of the exercise of any of its powers under:
 - (i) Part 2, 5, 7 or 13 of the *Broadcasting Services Act 1992*; or
 - (ia) Part 3, 4 or 5 of the *Interactive Gambling Act 2001*; or

- (ii) Chapter 3, 5 or 6 of the *Radiocommunications Act 1992*;
or
 - (iii) Part 3, 6, 21, 26 or 27 of the *Telecommunications Act 1997*; or
 - (iv) Schedule 3A to the *Telecommunications Act 1997*; or
 - (v) Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (c) information that was obtained by the ACMA as a result of the exercise of powers under a provision that:
- (i) allows the ACMA or an ACMA official to require a person to give information or to produce a document;
and
 - (ii) is a provision of an Act or a legislative instrument; and
 - (iii) is not a provision described in paragraph (b); or
- (d) information that was given in confidence to the ACMA by a government authority of a foreign country.

broadcasting, content and datacasting functions, in relation to the ACMA, has the meaning given by section 10.

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

carrier has the same meaning as in the *Telecommunications Act 1997*.

Chair means the Chair of the ACMA.

contract includes a deed.

Deputy Chair means the Deputy Chair of the ACMA.

Division means a Division as described in section 46.

ends, in relation to a hearing, inquiry or investigation, has the meaning given by section 4.

foreign country includes a region, where:

Section 3

- (a) the region is a colony, territory or protectorate of a foreign country; or
- (b) the region is part of a foreign country; or
- (c) the region is under the protection of a foreign country; or
- (d) a foreign country exercises jurisdiction or control over the region; or
- (e) a foreign country is responsible for the region's international relations.

gambling service has the same meaning as in the *Interactive Gambling Act 2001*.

hearing means a hearing held, or proposed to be held, by the ACMA under Part 13 of the *Broadcasting Services Act 1992*.

inquiry means an inquiry held, or proposed to be held, by the ACMA under:

- (a) Part 25 of the *Telecommunications Act 1997*; or
- (b) Part 5.2 of the *Radiocommunications Act 1992*.

investigation means an investigation conducted, or proposed to be conducted, by the ACMA under:

- (a) Part 26 of the *Telecommunications Act 1997*; or
- (b) Part 11 or 13 of the *Broadcasting Services Act 1992*; or
- (c) Part 5 of Schedule 6 to the *Broadcasting Services Act 1992*.

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

member means a member of the ACMA, and does not include an associate member.

prohibited interactive gambling service has the same meaning as in the *Interactive Gambling Act 2001*.

radiocommunications means:

- (a) radiocommunications (within the meaning of the *Radiocommunications Act 1992*); or

- (b) a transmission or radio emission covered by subsection 20(1) or section 21 or 22 of that Act.

radiocommunications community includes:

- (a) users of radiocommunications; and
(b) persons who sell, hire, manufacture or import:
(i) radiocommunications transmitters (within the meaning of the *Radiocommunications Act 1992*); or
(ii) radiocommunications receivers (within the meaning of that Act).

regulated interactive gambling service has the same meaning as in the *Interactive Gambling Act 2001*.

spectrum management functions, in relation to the ACMA, has the meaning given by section 9.

telecommunications means the carriage of communications (as defined in the in the *Telecommunications Act 1997*) by means of guided and/or unguided electromagnetic energy.

telecommunications functions, in relation to the ACMA, has the meaning given by section 8.

vacancy, in relation to the office of a member, has a meaning affected by section 5.

4 When does an inquiry, investigation or hearing end?

- (1) This section defines when an inquiry, investigation or hearing **ends** for the purposes of this Act.
- (2) An investigation under Part 26 of the *Telecommunications Act 1997*, or an inquiry or hearing, ends at the end of the day on which the ACMA completes the preparation of a report about the investigation, inquiry or hearing under whichever of the following provisions is applicable:
(a) section 495 or 516 of the *Telecommunications Act 1997*;
(b) section 261D of the *Radiocommunications Act 1992*;

Section 5

- (c) section 199 of the *Broadcasting Services Act 1992*.
- (3) An investigation under any of the following provisions of the *Broadcasting Services Act 1992* ends (subject to subsection (4) of this section) at the end of the day the ACMA completes the investigation:
- (a) Part 11 or 13;
 - (b) clause 38 of Schedule 6.
- (4) If the ACMA decides to prepare a report under section 178 of the *Broadcasting Services Act 1992* about an investigation under Part 13 of that Act, the investigation ends at the end of the day the ACMA completes the report.

5 When is there a vacancy?

For the purposes of a reference in:

- (a) this Act to a vacancy in the office of a member; or
- (b) the *Acts Interpretation Act 1901* to a vacancy in the membership of a body;

there are taken to be 7 offices of members in addition to the Chair and Deputy Chair.

Part 2—ACMA's establishment, functions, powers and liabilities

Division 1—Establishment

6 Establishment

- (1) The Australian Communications and Media Authority is established by this section.

Note: The ACMA does not have a legal identity separate from the Commonwealth.

- (2) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
- (a) the ACMA is a listed entity; and
 - (b) the Chair is the accountable authority of the ACMA; and
 - (c) the ACMA officials are officials of the ACMA; and
 - (d) the purposes of the ACMA include the functions of the ACMA referred to in Division 2 of Part 2.

Division 2—Functions

7 ACMA's functions

The ACMA has the functions described in this Division.

8 ACMA's telecommunications functions

- (1) The ACMA's *telecommunications functions* are as follows:
 - (a) to regulate telecommunications in accordance with the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999*;
 - (b) to advise and assist the telecommunications industry;
 - (c) to report to and advise the Minister in relation to the telecommunications industry;
 - (d) to report to and advise the Minister in relation to matters affecting consumers, or proposed consumers, of carriage services;
 - (e) to manage Australia's input into the setting of international standards for telecommunications (except so far as Standards Australia is responsible for managing that input);
 - (f) to monitor, and report to the Minister on, all significant matters relating to the licensing of carriers under the *Telecommunications Act 1997*;
 - (g) to make available to the public information about matters relating to the telecommunications industry;
 - (h) to conduct public educational programs about matters relating to the telecommunications industry;
 - (i) to give advice to the public about matters relating to the telecommunications industry;
 - (j) such other functions as are conferred on the ACMA by or under:
 - (i) the *Spam Act 2003*; or
 - (ia) the *Do Not Call Register Act 2006*; or
 - (ii) the *Telecommunications Act 1997*; or

- (iii) the *Telecommunications (Carrier Licence Charges) Act 1997*; or
 - (iv) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
 - (iva) Chapter 4 or 5 of the *Telecommunications (Interception and Access) Act 1979*; or
 - (v) the *Telecommunications (Numbering Charges) Act 1997*; or
 - (vi) Part XIC of the *Competition and Consumer Act 2010*;
 - (k) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (j), to the extent it is so specified;
 - (l) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) An expression used in this section that is also used in the *Telecommunications Act 1997* has the same meaning in this section as it has in that Act.

9 ACMA's spectrum management functions

The ACMA's *spectrum management functions* are as follows:

- (a) to manage the radiofrequency spectrum in accordance with the *Radiocommunications Act 1992*;
- (b) to advise and assist the radiocommunications community;
- (c) to report to and advise the Minister in relation to the radiocommunications community;
- (d) to manage Australia's input into the setting of international standards for radiocommunications (except so far as Standards Australia is responsible for managing that input);
- (e) to make available to the public information about matters relating to the radiocommunications community;
- (f) to conduct public educational programs about matters relating to the radiocommunications community;
- (g) to give advice to the public about matters relating to the radiocommunications community;

Section 10

- (h) such other functions as are conferred on the ACMA by or under:
 - (i) the *Radiocommunications Act 1992* (other than a provision of that Act covered by paragraph 10(1)(p)); or
 - (ii) the *Radiocommunications (Receiver Licence Tax) Act 1983*; or
 - (iii) the *Radiocommunications (Spectrum Licence Tax) Act 1997*; or
 - (iv) the *Radiocommunications Taxes Collection Act 1983*; or
 - (v) the *Radiocommunications (Transmitter Licence Tax) Act 1983*; or
 - (vi) Part 14AA of the *Broadcasting Services Act 1992*;
- (i) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (h), to the extent it is so specified;
- (j) to do anything incidental to or conducive to the performance of any of the above functions.

10 ACMA's broadcasting, content and datacasting functions

- (1) The ACMA's ***broadcasting, content and datacasting functions*** are as follows:
 - (a) to regulate broadcasting services and datacasting services in accordance with the *Broadcasting Services Act 1992*;
 - (b) to plan the availability of segments of the broadcasting services bands on an area basis;
 - (c) to allocate, renew, suspend and cancel licences and to take other enforcement action under the *Broadcasting Services Act 1992*;
 - (d) to conduct investigations or hearings relating to the allocating of licences for community radio and community television services;
 - (e) to conduct investigations as directed by the Minister under section 171 of the *Broadcasting Services Act 1992*;

- (f) to design and administer price-based systems for the allocation of commercial television broadcasting licences and commercial radio broadcasting licences;
- (g) to collect any fees payable in respect of licences;
- (h) to conduct or commission research into community attitudes on issues relating to programs and datacasting content;
- (i) to assist broadcasting service providers and datacasting service providers to develop codes of practice that, as far as possible, are in accordance with community standards;
- (j) to monitor compliance with those codes of practice;
- (k) to develop program standards relating to broadcasting in Australia;
- (l) to monitor compliance with those standards;
- (m) to monitor and investigate complaints concerning broadcasting services (including national broadcasting services) and datacasting services;
- (n) to inform itself and advise the Minister on technological advances and service trends in the broadcasting industry, internet industry and datacasting industry;
- (o) such other functions as are conferred on the ACMA by or under:
 - (i) the *Australian Broadcasting Corporation Act 1983*; or
 - (ii) the *Broadcasting Services Act 1992* (other than Part 14AA or Schedule 5 or 7); or
 - (iii) the *Interactive Gambling Act 2001*; or
 - (v) the *Special Broadcasting Service Act 1991*;
- (p) such other functions as are conferred on the ACMA by or under the following provisions of the *Radiocommunications Act 1992*:
 - (i) paragraph 102B(b), 109A(1)(g) or (ga), or 131ACA(b);
 - (ii) subsection 106(6A), 109A(1A) or (1B), 114(3C) or (3E), or 128C(1);
 - (iii) section 128D;

Section 11

- (q) to report to, and advise, the Minister in relation to the broadcasting industry, internet industry and datacasting industry;
 - (r) to monitor, and to report to the Minister on, the operation of each Act specified in paragraph (o) or (p), to the extent it is so specified;
 - (s) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) An expression used in this section that is also used in the *Broadcasting Services Act 1992* has the same meaning in this section as it has in that Act.

11 ACMA's additional functions

- (1) The ACMA's *additional functions* are as follows:
- (a) if a written instruction issued by the Minister to do so is in force—to prepare to provide for the management of electronic addressing:
 - (i) of a kind specified in the instruction; and
 - (ii) relating to a kind of listed carriage service specified in the instruction;
 - (b) if an instruction under paragraph (a) and a written instruction issued by the Minister to do so are in force—to provide for the management of electronic addressing:
 - (i) of a kind specified in the instruction under this paragraph and covered by the instruction under paragraph (a); and
 - (ii) relating to a kind of listed carriage service specified in the instruction under this paragraph and covered by the instruction under paragraph (a);
 - (c) to provide services, or facilities, on behalf of the Commonwealth under a contract made by the Commonwealth, where:
 - (i) the services or facilities relate to radiocommunications or telecommunications; or

- (ii) the provision of the services or facilities utilises the ACMA's spare capacity; or
 - (iii) the provision of the services or facilities maintains or improves the specialised technical skills of the ACMA's staff in relation to radiocommunications or telecommunications;
 - (d) such functions as are conferred on the ACMA by or under:
 - (i) this Act (other than section 8, 9 or 10); or
 - (ii) any other law (other than a law to the extent to which it confers functions described in section 8, 9 or 10);
 - (e) to do anything incidental to or conducive to the performance of any of the above functions.
- (2) Paragraph (1)(c) does not authorise the ACMA to perform a function if the performance of the function would impede the ACMA's capacity to perform its other functions.

Division 3—Powers

12 ACMA's powers

The ACMA has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

Note: The Chair may enter into contracts and other arrangements on behalf of the Commonwealth. See section 23 of the *Public Governance, Performance and Accountability Act 2013*.

Division 4—Requirements relating to these functions and powers

14 Minister may give directions to ACMA

- (1) The Minister may give written directions to the ACMA in relation to the performance of its functions and the exercise of its powers.
- (2) However, such a direction can only be of a general nature if it relates to:
 - (a) the ACMA's broadcasting, content and datacasting functions;
or
 - (b) the ACMA's powers relating to those functions.
- (3) A direction under subsection (1) must be published in the *Gazette*.
- (4) The ACMA must perform its functions, and exercise its powers, in a manner consistent with any directions given by the Minister under subsection (1).
- (5) This section does not affect the Minister's powers under the *Broadcasting Services Act 1992* to give directions to the ACMA.

15 ACMA not otherwise subject to direction

Except as otherwise provided by or under this or any other Act, the ACMA is not subject to direction by or on behalf of the Commonwealth.

16 Consistency with CER Trade in Services Protocol

The ACMA must perform its broadcasting, content and datacasting functions, and exercise its powers relating to those functions, in a manner consistent with Australia's obligations under the CER Trade in Services Protocol (as defined in the *Broadcasting Services Act 1992*).

Section 17

17 ACMA to consult ACCC in relation to management of electronic addressing

The ACMA must consult the Australian Competition and Consumer Commission before carrying out an act:

- (a) for the purpose of performing its functions under paragraph 11(1)(a) or (b); and
- (b) that would, in the ACMA's opinion, have a significant effect on competition or consumer protection.

Part 3—ACMA's membership

Division 2—Membership

Subdivision A—Members

19 Membership

The ACMA consists of the following members:

- (a) a Chair;
- (b) a Deputy Chair;
- (c) at least 1, and not more than 7, other members.

20 Appointment of members

- (1) Each member is to be appointed by the Governor-General by written instrument.
- (2) The Chair and the Deputy Chair must be appointed as full-time members.
- (3) A member, other than the Chair or the Deputy Chair, may be appointed as a full-time member or as a part-time member.
- (4) A part-time member may be assigned by the Minister, acting on the ACMA's advice, on a full-time basis to an inquiry, investigation or hearing. Such an assignment must be in writing.
- (5) For the purposes of this Act (except for subsection 31(2) and paragraph 34(5)(b)), a part-time member so assigned is taken to be a full-time member while the assignment is in force.

21 Period of appointment for members

Period of current appointment

- (1) A member holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

Section 22

Total appointments must not exceed 10 years

- (2) A person can be appointed as a member more than once. However, a later appointment must not result in the sum of the person's periods of appointment exceeding 10 years.

Extension to complete inquiry, investigation or hearing

- (3) Despite subsections (1) and (2), if a member is conducting, or is part of the panel conducting, an inquiry, investigation or hearing for the ACMA, the Minister may, by writing, extend the member's appointment until the end of the inquiry, investigation or hearing.

For 10 year rule, count associate membership and ABA and ACA membership and associate membership

- (4) For the purposes of subsection (2), a **period of appointment** includes (in addition to any periods when the person was a member of the ACMA):
- (a) a period when the person was an associate member of the ACMA; or
 - (b) a period before the commencement of section 6 when the person was a member, or associate member, of the Australian Broadcasting Authority that was established by the *Broadcasting Services Act 1992*; or
 - (c) a period:
 - (i) starting on or after 1 July 1997; and
 - (ii) ending before the commencement of section 6; when the person was a member, or associate member, of the body corporate that was continued in existence by section 14 of the *Australian Communications Authority Act 1997*.

22 Acting Chair

The Deputy Chair is to act as the Chair:

- (a) during a vacancy in the office of Chair (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Chair:

- (i) is absent from duty or from Australia; or
- (ii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to persons acting as the Chair, see section 33A of the *Acts Interpretation Act 1901*.

23 Acting appointments—members other than the Chair

- (1) The Minister may appoint a member to act as the Deputy Chair:
 - (a) during a vacancy in the office of Deputy Chair (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when the Deputy Chair:
 - (i) is acting as the Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (2) The Minister may appoint a person to act as a member (other than as Chair or Deputy Chair):
 - (a) during a vacancy in the office of a member (whether or not an appointment has previously been made to the office); or
 - (b) during any period, or during all periods, when a member:
 - (i) is acting as the Deputy Chair; or
 - (ii) is absent from duty or from Australia; or
 - (iii) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Subdivision B—Associate members

24 Appointment of associate members

- (1) The Minister may appoint as many associate members of the ACMA as he or she thinks fit.
- (2) Each associate member is to be appointed by the Minister by written instrument.
- (3) An associate member may be appointed as a full-time associate member or as a part-time associate member.
- (4) An associate member's instrument of appointment must contain a statement to the effect that the associate member's appointment relates to 1 or more specified matters, being:
 - (a) an inquiry, investigation or hearing; or
 - (b) any other matter that relates to the performance of the ACMA's functions or the exercise of the ACMA's powers.

25 Period of appointment for associate members

Period specified in instrument of appointment

- (1) An associate member holds office for the period specified in his or her instrument of appointment. The period must not exceed 5 years.

Total periods of appointment must not exceed 10 years

- (2) A person can be appointed as an associate member more than once. However, a later appointment must not result in the sum of the person's periods of appointment exceeding 10 years.

Reduction if specified inquiry, investigation or hearing ends earlier

- (3) Despite subsection (1), if:

- (a) an associate member's instrument of appointment specifies that the appointment relates to a specified inquiry, investigation or hearing; and
 - (b) the inquiry, investigation or hearing ends before the end of the period described in subsection (1);
- the associate member holds office until the end of the inquiry, investigation or hearing.

Extension to complete inquiry, investigation or hearing

- (4) Despite subsections (1) and (2), if an associate member is conducting, or is part of the panel conducting, an inquiry, investigation or hearing for the ACMA, the Minister may, by writing, extend the associate member's appointment until the end of the inquiry, investigation or hearing.

For 10 year rule, count membership and ABA and ACA membership and associate membership

- (5) For the purposes of subsection (2), a **period of appointment** includes (in addition to any periods when the person was an associate member of the ACMA):
 - (a) a period when the person was a member of the ACMA; or
 - (b) a period before the commencement of section 6 when the person was a member, or associate member, of the Australian Broadcasting Authority that was established by the *Broadcasting Services Act 1992*; or
 - (c) a period:
 - (i) starting on or after 1 July 1997; and
 - (ii) ending before the commencement of section 6;when the person was a member, or associate member, of the body corporate that was continued in existence by section 14 of the *Australian Communications Authority Act 1997*.

Section 26

26 Acting appointments—associate members

The Minister may appoint a person to act as an associate member during any period, or during all periods, when an associate member:

- (a) is acting as a member; or
- (b) is absent from duty or from Australia; or
- (c) is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

27 Associate members to be treated as members for certain purposes in other Acts

- (1) For the purposes of a reference in an Act other than this Act to a member of the ACMA, an associate member is taken to be a member for all purposes in connection with any inquiry, investigation, hearing or other matter specified in his or her instrument of appointment.
- (2) Subsection (1) is subject to a contrary intention in the other Act.

Division 3—Terms and conditions for members and associate members

28 Remuneration

- (1) A member or associate member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member or associate member is to be paid the remuneration that is prescribed in the regulations.
- (2) A member or associate member is to be paid the allowances that are prescribed in the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

29 Disclosure of interests

- (1) A disclosure by a member or associate member under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Minister.
- (2) Subsection (1) applies in addition to any rules made for the purposes of that section.
- (3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the member or associate member is taken not to have complied with section 29 of that Act if he or she does not comply with subsection (1) of this section.
- (4) The Chair must inform the Minister if the members of the ACMA agree, in accordance with any rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*, to a member or associate member doing

Part 3 ACMA's membership

Division 3 Terms and conditions for members and associate members

Section 31

something that, apart from that agreement, the member or associate member would be prevented by those rules from doing.

31 Outside employment

- (1) The Chair must not engage in paid employment outside the duties of the Chair's office without the Minister's approval.
- (2) The other full-time members and the full-time associate members must not engage in paid employment outside the duties of their offices without the Chair's approval.

32 Leave of absence

- (1) A full-time member or full-time associate member has the recreation leave entitlements that are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Chair leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines.
- (3) The Chair may grant another full-time member or a full-time associate member leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Chair determines.
- (4) The Chair may grant leave of absence to any part-time member, or part-time associate member, on the terms and conditions that the Chair determines.

33 Resignation

A member or associate member may resign his or her appointment by giving the appointer a written resignation.

34 Termination of appointment

- (1) The appointer must terminate the appointment of a member or associate member if the Minister is of the opinion that the
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performance of the member or associate member has been unsatisfactory for a significant period of time.

- (2) The Governor-General must terminate the appointment of all of the members and associate members if the Minister is of the opinion that the ACMA's performance has been unsatisfactory for a significant period of time.
- (3) The appointer may terminate the appointment of a member or associate member for misbehaviour or physical or mental incapacity.
- (4) The appointer may terminate the appointment of a member or associate member if:
 - (a) the member or associate member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
 - (b) the member or associate member fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section.
- (5) The appointer may terminate the appointment of a full-time member or full-time associate member if:
 - (a) the member or associate member is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 consecutive months; or
 - (b) the member or associate member engages, without the approval required by section 31, in paid employment outside the duties of his or her office.

Part 3 ACMA's membership

Division 3 Terms and conditions for members and associate members

Section 35

- (6) The appointer may terminate the appointment of a part-time member if the member is absent, except on leave of absence, from 3 consecutive meetings of the ACMA.
- (7) The appointer may terminate the appointment of a part-time associate member if the associate member is absent from 3 consecutive meetings of the ACMA except on leave of absence. However, the only meetings that are to be taken into account for this purpose are meetings:
 - (a) that the associate member was entitled to attend (see section 40); and
 - (b) about which reasonable efforts were made to inform the associate member (see paragraph 37(b)).
- (8) If the Minister is of the opinion that the members have failed to comply with section 56 or 57, the Governor-General may terminate the appointment of all members or particular members.

35 Other terms and conditions

A member or associate member holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined by the appointer.

Part 4—Decision-making and delegation by ACMA

Division 1—Meetings

36 Times and places of meetings

- (1) The ACMA is to hold such meetings as are necessary for the efficient performance of its functions.
- (2) Meetings are to be held at such times and places as the ACMA decides. This subsection has effect subject to subsections (3) and (4).
- (3) The Chair may call a meeting at any time.
- (4) The Chair must call a meeting if requested to do so in writing by:
 - (a) the Minister; or
 - (b) at least 2 other members.

37 Notice of meetings

Reasonable efforts must be made to inform the following people about proposed meetings of the ACMA:

- (a) the members;
- (b) if the agenda for the proposed meeting mentions a matter connected with an inquiry, investigation, hearing or other matter specified in 1 or more associate members' instruments of appointment—that associate member, or each of those associate members.

38 Presiding at meetings

- (1) The Chair presides at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting, the Deputy Chair presides.

Section 39

- (3) If neither the Chair nor the Deputy Chair is present at a meeting, the members present must appoint 1 of themselves to preside.

39 Quorum

- (1) At a meeting of the ACMA, a quorum is constituted by a majority of the members.
- (2) However, if:
- (a) rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* prevent a member from participating in the deliberations, or decisions, of the ACMA with respect to a particular matter; and
 - (b) when the member leaves the meeting concerned there is no longer a quorum present;
- the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

40 Participation etc. by associate members at meetings

- (1) An associate member is entitled to attend, and participate in discussions at, a meeting of the ACMA while the meeting is considering a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.
- (2) Subsection (1) has effect subject to rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*.

41 Voting at meetings etc.

- (1) At a meeting of the ACMA, a question is decided by a majority of the votes of the following people present and voting:
- (a) the members; and

- (b) if the question relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the instruments of appointment of 1 or more associate members—that associate member, or each of those associate members.
- (2) The person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.

42 Conduct of meetings

The ACMA may, subject to this Division, regulate proceedings at its meetings as it considers appropriate.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

43 Minutes

The ACMA must keep minutes of its meetings.

Division 2—Decisions without meetings

44 Decisions without meetings

- (1) A decision is taken to have been made at a meeting of the ACMA if:
 - (a) without meeting, a majority of the members indicate agreement with the proposed decision in accordance with the method determined by the ACMA under subsection (2); and
 - (b) all the members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.
- (2) Subsection (1) applies only if the ACMA:
 - (a) has determined that it applies; and
 - (b) has determined the method by which members are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to a member who is prevented by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* from deliberating on the proposed decision.
- (4) For the purposes of a particular proposed decision, this section applies to an associate member as if the associate member were a member, if that proposed decision relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.

45 Record of decisions

The ACMA must keep a record of decisions made in accordance with section 44.

Division 3—Divisions**46 Divisions**

- (1) The ACMA may establish 1 or more Divisions. If the ACMA establishes a Division, the ACMA must:
- (a) determine the kinds of matters the Division can deal with; and
 - (b) ensure such a determination is in force at all times while the Division continues to exist.

Note: A Division cannot perform any of the ACMA's functions, or exercise any of the ACMA's powers, other than those delegated to the Division under section 50.

- (2) The ACMA may:
- (a) dissolve a Division; or
 - (b) revoke, vary or substitute a determination under subsection (1).
- (3) A Division must consist of at least 3 members as chosen from time to time by the ACMA. If the Chair is not chosen, the Chair may elect at any time to be in the Division.
- (4) A Division can also include 1 or more associate members as chosen from time to time by the ACMA if, for that associate member, or for each of those associate members, the kinds of matters the Division can deal with include a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.
- (5) A member or associate member can be in more than 1 Division.
- (6) Subject to the Chair's right of election under subsection (3), the ACMA may remove a member or associate member from a Division.
- (7) A Division can decide a matter:
- (a) at a meeting of the Division (see section 47); or

Section 47

- (b) in accordance with section 48.

47 Meetings of a Division

- (1) Subject to subsection (2), the following provisions apply in relation to meetings of a Division:
- (a) a member in the Division may call a meeting by giving notice of the meeting to the other members in the Division;
 - (b) a quorum at a meeting is a majority of the members for the time being in the Division;
 - (c) if:
 - (i) rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* prevent a member in the Division from participating in the deliberations, or decisions, of the Division with respect to a particular matter; and
 - (ii) when the member leaves the meeting concerned there is no longer a quorum present;the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter;
 - (d) the members present at a meeting must appoint 1 of themselves to preside at the meeting;
 - (e) a question at a meeting is decided by a majority of the following people in the Division present and voting:
 - (i) the members in the Division; and
 - (ii) if the question relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the instruments of appointment of 1 or more associate members in the Division—that associate member, or each of those associate members;
 - (f) the person presiding at a meeting has a deliberative vote and, if necessary, also a casting vote.
- (2) Subject to subsection (3), a Division may determine its own rules relating to meetings, including (for example) rules about the following:
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- (a) calling of meetings;
- (b) notice of meetings;
- (c) presiding at meetings;
- (d) how decisions are made at meetings, including quorum requirements and voting entitlements and procedures.

The rules that the Division determines displace the rules that would otherwise apply under subsection (1), to the extent of any inconsistency.

- (3) A Division cannot:
 - (a) determine rules that purport to exclude the operation of, or that are inconsistent with, rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*, or any provision of this Act (other than subsection (1) of this section); or
 - (b) determine rules under which an associate member would be allowed to vote on a question that does not relate to a matter connected with an inquiry, investigation, hearing or other matter specified in the instrument of appointment of the associate member.

Note: Section 33B of the *Acts Interpretation Act 1901* provides for participation in meetings by telephone etc.

48 Division can make decisions without meetings

- (1) A decision is taken to have been made at a meeting of a Division if:
 - (a) without meeting, a majority of the members in the Division indicate agreement with the proposed decision in accordance with the method determined by the Division under subsection (2); and
 - (b) all the members in the Division were informed of the proposed decision, or reasonable efforts were made to inform all those members of the proposed decision.
- (2) Subsection (1) applies only if the Division:
 - (a) has determined that it applies; and

Section 49

- (b) has determined the method by which the members in the Division are to indicate agreement with proposed decisions.
- (3) Paragraph (1)(a) does not apply to a member who is prevented by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* from deliberating on the proposed decision.
- (4) For the purposes of a particular proposed decision, this section applies to an associate member in the Division as if the associate member were a member in the Division, if that proposed decision relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment.

49 Minutes etc.

A Division must:

- (a) keep minutes of its meetings; and
- (b) keep a record of decisions made in accordance with section 48.

Division 4—Delegations

50 Delegations by ACMA to a Division

- (1) The ACMA may, by writing, delegate to a Division any or all of the ACMA's functions and powers so far as they relate to the kinds of matters the Division can deal with.
- (2) A certificate:
 - (a) stating any matter with respect to the performance of a delegated function or exercise of a delegated power; and
 - (b) signed by:
 - (i) a member in the Division; or
 - (ii) an associate member who participated, or could have participated, in the making of the Division's decision to perform the delegated function or exercise the delegated power;is prima facie evidence of the matter.
- (3) A document purporting to be a certificate mentioned in subsection (2) is taken to be such a certificate and to have been duly given unless the contrary is established.

51 Delegations by ACMA to others

Subject to section 53, the ACMA may, by writing, delegate any or all of its functions and powers to:

- (a) a member; or
- (b) an associate member, if the delegated function or power relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment; or
- (c) a member of the ACMA staff; or
- (d) a person whose services are made available to the ACMA under subsection 55(1).

52 Delegations by a Division

- (1) Subject to section 53, a Division may delegate all or any of the functions and powers delegated to it under section 50 to:
 - (a) a member; or
 - (b) an associate member, if the delegated function or power relates to a matter connected with an inquiry, investigation, hearing or other matter specified in the associate member's instrument of appointment; or
 - (c) a member of the ACMA staff; or
 - (d) a person whose services are made available to the ACMA under subsection 55(1).
- (2) The delegation continues in force despite a change in the membership of the Division.
- (3) The delegation may be varied or revoked by the Division (whether or not there has been a change in the membership of the Division).
- (4) A certificate:
 - (a) stating any matter with respect to a delegation under subsection (1); and
 - (b) signed by:
 - (i) a member in the Division; or
 - (ii) an associate member who participated, or could have participated, in the making of the Division's decision to make the delegation;is prima facie evidence of the matter.
- (5) A document purporting to be a certificate mentioned in subsection (4) is taken to be such a certificate and to have been duly given unless the contrary is established.
- (6) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901* apply to a delegation under this section in the same way as they apply to the delegation under section 50 to the Division.

53 Limit on powers delegable to persons other than Divisions

- (1) Sections 51 and 52 do not apply to a power to make, vary or revoke an instrument that is a legislative instrument.
- (2) Sections 51 and 52 do not apply to a power to do any of the following under the *Broadcasting Services Act 1992*:
 - (a) cancel or suspend licences;
 - (b) decide that a person is not suitable to be allocated or to continue to hold a licence;
 - (c) impose, vary or revoke a condition on a licence (other than a timing condition on a temporary community broadcasting licence);
 - (d) determine, vary or revoke a program standard;
 - (g) prepare or vary licence area plans under section 26 of that Act;
 - (h) give an opinion under section 21 or 74 of that Act;
 - (i) approve or refuse to approve temporary breaches under section 67 of that Act;
 - (j) make, vary or revoke a determination under section 103L of that Act;
 - (k) issue, or extend the time for compliance with, a notice (other than a notice under Part 9C of that Act);
 - (l) refer a matter to the Director of Public Prosecutions;
 - (m) initiate a hearing.
- (3) Subsection (2) does not limit the generality of subsection (1).

Part 5—ACMA's staff etc.

54 Staff

- (1) The staff of the ACMA are to be persons engaged under the *Public Service Act 1999*.
- (2) For the purposes of the *Public Service Act 1999*:
 - (a) the Chair and the ACMA staff together constitute a Statutory Agency; and
 - (b) the Chair is the Head of that Statutory Agency.

55 Arrangements with authorities of the Commonwealth

- (1) The ACMA 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 ACMA; or
 - (b) for the services of the ACMA staff to be made available for the purposes of the authority.
- (2) In this section:

authority of the Commonwealth means:

 - (a) a Commonwealth entity within the meaning of the *Public Governance, Performance and Accountability Act 2013*; or
 - (b) a Commonwealth company within the meaning of the *Public Governance, Performance and Accountability Act 2013*; or
 - (c) any other body established for a public purpose by or under a law of the Commonwealth.

Part 6—Corporate planning and reporting by ACMA

56 Corporate plans

- (1) A corporate plan prepared by the Chair under section 35 of the *Public Governance, Performance and Accountability Act 2013* must include details of such other matters (if any) as the Minister requires.
- (2) The Minister may give the Chair written guidelines that are to be used by the Chair in deciding whether a matter is covered by subsection (1).

57 Annual reports

The annual report prepared by the Chair and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period must include:

- (a) a copy of each direction given to the ACMA under section 14 during the period; and
- (aa) a report on the following matters:
 - (i) remuneration, and other employment-related costs and expenses, in respect of APS employees whose duties relate to the performance of the eSafety Commissioner's functions or the exercise of the eSafety Commissioner's powers;
 - (ii) any other costs, expenses and other obligations incurred by the Commonwealth in connection with the performance of the eSafety Commissioner's functions or the exercise of the eSafety Commissioner's powers; and
- (b) if:

Section 57

- (i) the ACMA gave an instrument to a carrier or to a carriage service provider under section 581 of the *Telecommunications Act 1997* during the period; and
- (ii) in the ACMA's opinion, the instrument does not contain confidential information;
a copy of the instrument; and
- (c) in relation to each instrument the ACMA gave as mentioned in subparagraph (b)(i) and that, in the ACMA's opinion, contains confidential information:
 - (i) if, in the ACMA's opinion, part of the instrument can be reproduced in the annual report without disclosing confidential information—a copy of that part; and
 - (ii) if subparagraph (i) does not apply—a statement specifying the instrument and the carrier or carriage service provider to which, and the day on which, it was given; and
 - (iii) a statement that, because of confidential information contained in the instrument, or in a part of it, as the case requires, the instrument or part is not reproduced in the annual report; and
 - (iv) a note summarising so much of the instrument as is not so reproduced, but without disclosing any information that, in the ACMA's opinion, is confidential; and
- (d) a report on:
 - (i) the number and types of complaints made under Part 26 of the *Telecommunications Act 1997* during the period; and
 - (ii) the investigations conducted under Part 26 of that Act during the period as a result of complaints made under Part 26 of that Act; and
 - (iii) the results of those investigations; and
- (e) a report on the operation of Part 6 of the *Telecommunications Act 1997* during the period; and
- (f) a report setting out statistical information relating to information or documents disclosed under Division 3 of

Part 13 of the *Telecommunications Act 1997*, where the disclosure:

- (i) occurred during the period; and
- (ii) is covered by a report given to the ACMA under section 308 of the *Telecommunications Act 1997*.

Part 7—Advisory committees and the Consumer Consultative Forum

58 Advisory committees

- (1) The ACMA may, by writing, establish advisory committees to assist it in performing any of its functions.
- (2) An advisory committee consists of such persons as the ACMA from time to time appoints to the committee.
- (3) The ACMA may revoke a person's appointment to an advisory committee.
- (4) The ACMA may give an advisory committee written directions as to:
 - (a) the way in which the committee is to carry out its functions; and
 - (b) procedures to be followed in relation to meetings.
- (5) An appointment to an advisory committee is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

59 Consumer Consultative Forum

- (1) The Consumer Consultative Forum established under the *Australian Communications Authority Act 1997* continues in existence after the commencement of section 6 of this Act as if it were established by the ACMA, by writing, at that commencement.
- (2) The Forum's function is to assist the ACMA to perform the ACMA's functions in relation to matters affecting consumers.
- (3) The persons on the Forum are those the ACMA from time to time appoints to the Forum. The persons on the Forum immediately before the commencement of section 6 of this Act are taken to be appointed under this section at that commencement.

- (4) The ACMA may revoke a person's appointment to the Forum.
- (5) The ACMA may give the Forum written directions as to:
 - (a) the way in which the Forum is to carry out its function; and
 - (b) procedures to be followed in relation to meetings.
- (6) An appointment to the Forum is not a public office within the meaning of the *Remuneration Tribunal Act 1973*.

Part 7A—Disclosure of information

59A Disclosure to Ministers

- (1) An ACMA official may disclose authorised disclosure information to the Minister.
- (2) An ACMA official may disclose to a Minister authorised disclosure information that relates to a matter arising under a provision of an Act that is administered by that Minister.
- (3) Subsection (2) does not limit subsection (1).

59B Disclosure to public servants for advising their Ministers

- (1) For the purpose of advising the Minister, an ACMA official may disclose authorised disclosure information to:
 - (a) the Secretary of the Department; or
 - (b) an APS employee in the Department who is authorised, in writing, by the Secretary of the Department for the purposes of this subsection.
- (2) For the purpose of advising a Minister administering a particular provision of an Act, an ACMA official may disclose authorised disclosure information relating to a matter arising under that provision to:
 - (a) the Secretary of the Department that is administered by that Minister; or
 - (b) an APS employee in that Department who is authorised, in writing, by the Secretary of that Department for the purposes of this subsection.
- (3) Subsection (2) does not limit subsection (1).

59C Disclosure to Royal Commissions

- (1) An ACMA official may disclose authorised disclosure information to a Royal Commission (within the meaning of the *Royal Commissions Act 1902*).
- (2) The Chair may, by writing, impose conditions to be complied with in relation to authorised disclosure information disclosed under subsection (1).
- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

59D Disclosure to certain authorities

- (1) An ACMA official authorised by the Chair, in writing, for the purposes of this section may disclose authorised disclosure information to any of the following authorities if the Chair is satisfied that the information will enable or assist the authority to perform or exercise any of its functions or powers:
 - (a) the Australian Bureau of Statistics;
 - (b) the Australian Competition and Consumer Commission;
 - (c) the Australian Prudential Regulation Authority;
 - (d) the Australian Securities and Investments Commission;
 - (e) the Commissioner of Taxation;
 - (f) the Secretary of the Department administered by the Minister administering the *Foreign Acquisitions and Takeovers Act 1975* or an APS employee in that Department whose duties relate to that Act;
 - (g) the Secretary of the Department administered by the Minister administering the *Classification (Publications, Films and Computer Games) Act 1995* or an APS employee in that Department whose duties relate to that Act;

Section 59D

- (ga) the Secretary of the Department administered by the Minister administering the *Migration Act 1958* or an APS employee in that Department whose duties relate to that Act;
 - (h) the Secretary of the Department administered by the Minister administering the *Telecommunications (Interception and Access) Act 1979* or an APS employee in that Department whose duties relate to telecommunications or law enforcement;
 - (i) the Australian Federal Police;
 - (j) the Director of Public Prosecutions;
 - (k) the Australian Security Intelligence Organisation;
 - (l) an authority of a State or Territory responsible for enforcing one or more laws of the State or Territory;
 - (la) the eSafety Commissioner;
 - (m) the Regional Telecommunications Independent Review Committee;
 - (n) the Telecommunications Industry Ombudsman;
 - (na) the Secretary of the Department administered by the Minister administering Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* or an APS employee in that Department whose duties relate to that Part;
 - (o) an authority of a foreign country responsible for regulating matters relating to communications or media (including, for example, matters relating to broadcasting or the internet);
 - (p) an authority of a foreign country responsible for regulating matters relating to the provision of gambling services.
- (1A) Subsection (1) does not authorise the disclosure of information to an authority mentioned in paragraph (1)(ga) or (p) unless the information relates to:
- (a) a prohibited interactive gambling service; or
 - (b) a regulated interactive gambling service.
- (2) The Chair may, by writing, impose conditions to be complied with in relation to authorised disclosure information disclosed under subsection (1).

Section 59E

- (3) An instrument made under subsection (2) that imposes conditions relating to one particular disclosure identified in the instrument is not a legislative instrument.
- (4) Otherwise, an instrument made under subsection (2) is a legislative instrument.

59E Disclosure with consent

An ACMA official may disclose authorised disclosure information that relates to the affairs of a person if:

- (a) the person has consented to the disclosure; and
- (b) the disclosure is in accordance with that consent.

59F Disclosure of publicly available information

An ACMA official may disclose authorised disclosure information if it is already publicly available.

59G Disclosure of summaries and statistics

An ACMA official may disclose:

- (a) summaries of authorised disclosure information that are not likely to enable the identification of a person; and
- (b) statistics derived from authorised disclosure information that are not likely to enable the identification of a person.

59H Disclosure authorised by regulations

- (1) The regulations may:
 - (a) authorise an ACMA official to disclose authorised disclosure information in specified circumstances; and
 - (b) provide that the Chair may, by writing, impose conditions to be complied with in relation to the disclosure of authorised disclosure information in those circumstances.
- (2) An instrument made under regulations made for the purposes of paragraph (1)(b) that imposes conditions relating to one particular

Section 59J

disclosure identified in the instrument is not a legislative instrument.

- (3) Otherwise, an instrument made under regulations made for the purposes of paragraph (1)(b) is a legislative instrument.

59J This Part does not limit disclosure by ACMA official

This Part does not limit the circumstances in which an ACMA official is authorised to disclose information.

59K Relationship with Part 13 of the *Telecommunications Act 1997*

This Part does not authorise a disclosure of information that is prohibited by Part 13 of the *Telecommunications Act 1997*.

Note: Subsection 299(1) (in Part 13) of the *Telecommunications Act 1997* prohibits an ACMA official who has received information as described in that subsection from disclosing the information, except in certain circumstances.

59L Delegation of Chair's powers under this Part

- (1) The Chair may, by writing, delegate to a member any or all of the Chair's functions and powers under:
- (a) this Part; or
 - (b) regulations made for the purposes of section 59H.
- (2) In performing a function, or exercising a power, delegated under subsection (1), the delegate must comply with any directions of the Chair.

Part 8—Other matters

60 Charges relating to ACMA's expenses

- (1) The ACMA may, by written instrument, make determinations fixing charges for:
- (a) services provided by the ACMA; and
 - (b) any matter in relation to which expenses are incurred by the ACMA under:
 - (i) this Act; or
 - (ii) the *Telecommunications Act 1997*; or
 - (iii) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
 - (iv) the *Radiocommunications Act 1992*; or
 - (v) the *Broadcasting Services Act 1992*; or
 - (vi) an instrument made under an Act referred to in subparagraph (ii), (iii), (iv) or (v);
- and specifying the persons by whom, and the times when, the charges are payable.
- (2) A charge fixed under subsection (1) must not be such as to amount to taxation.
- (3) For the purposes of recovering all or part of the ACMA's expenses relating to the performance of its functions under paragraph 11(1)(a) or (b), the ACMA may charge a person an amount that has been:
- (a) agreed with the person; or
 - (b) worked out under an agreement with the person.

Note 1: Paragraph 11(1)(a) is about the ACMA preparing to provide for the management of electronic addressing, and paragraph 11(1)(b) is about the ACMA providing for the management of electronic addressing.

Note 2: Subsection (3) lets the ACMA charge a consenting person for things done by the ACMA in performing those functions, even though the

Section 61

charge would be a tax if it were imposed on the person without his or her consent.

- (4) Subsection (3) does not limit subsection (1).

Note: The ACMA need not obtain a person's agreement to a charge that relates to the ACMA's expenses in performing its functions mentioned in subsection (3) and does not amount to taxation (either because the charge is a fee for the ACMA providing the person with services or facilities or for another reason).

- (5) This section does not apply to services or facilities provided under contract.

61 Charges are payable to the Commonwealth

If section 60, or a provision of another Act, authorises the ACMA to fix a charge (however described), that charge is payable to the Commonwealth.

62 ACMA's expenses include related Commonwealth expenses

A reference in section 60, or a provision of another Act, to an expense (however described) incurred by the ACMA in relation to a thing, includes a reference to an expense incurred by the Commonwealth in relation to the thing.

62A Proceedings in the name of the ACMA

- (1) Proceedings brought by the Commonwealth in relation to the functions or powers of the ACMA may be brought in the name of the ACMA.

Note: This subsection does not authorise ACMA to bring proceedings against the Commonwealth: see also subsection 62B(2).

- (2) Proceedings brought against the Commonwealth in relation to the functions or powers of the ACMA may be brought against the Commonwealth in the name of the ACMA.

62B Decisions relating to the Commonwealth etc.

- (1) The fact that the ACMA does not have a legal identity separate from the Commonwealth does not affect the performance of the ACMA's functions in making, or the exercise of the ACMA's powers to make, decisions relating to:
 - (a) the Commonwealth; or
 - (b) any authority of the Commonwealth that is not a body corporate.
- (2) This section does not apply to decisions relating to bringing proceedings against the Commonwealth or such an authority.

63 Chair not subject to direction by ACMA on certain matters

The Chair is not subject to direction by the ACMA in relation to the Chair's performance of functions, or exercise of powers, under the *Public Governance, Performance and Accountability Act 2013* or the *Public Service Act 1999*.

64 Definitions determination

- (1) The ACMA may make a written determination defining 1 or more expressions used in specified instruments, being instruments that are made by the ACMA under 1 or more specified laws of the Commonwealth.
- (2) If the Minister is authorised to make an instrument under a law specified in a determination under subsection (1), the instrument may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, the provisions of a determination under subsection (1) as in force from time to time.

65 Determinations may define expressions by reference to other instruments

- (1) Without limiting the powers of the ACMA to make determinations under subsection 64(1), a determination under that subsection may

Section 66

define an expression used in a specified instrument by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:

- (a) as in force or existing at a particular time; or
- (b) as in force or existing from time to time;

even if the other instrument or writing does not yet exist when the determination is made.

- (2) A reference in subsection (1) to any other instrument or writing includes a reference to an instrument or writing:
 - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
 - (b) whether of a legislative, administrative or other official nature or of any other nature; and
 - (c) whether or not having any legal force or effect;for example:
 - (d) regulations or rules under an Act; or
 - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
 - (f) an international technical standard or performance indicator; or
 - (g) a written agreement or arrangement or an instrument or writing made unilaterally.
- (3) Nothing in this section limits the generality of anything else in it.
- (4) Subsection (1) has effect despite anything in the *Acts Interpretation Act 1901*.

66 Person not to use protected name or protected symbol

- (1) A person commits an offence if the person:
 - (a) uses in relation to a business, trade, profession or occupation;or

- (b) uses as the name, or as part of the name, of any firm, body corporate, institution, premises, vehicle, ship or craft (including aircraft); or
- (c) applies, as a trade mark or otherwise, to goods imported, manufactured, produced, sold, offered for sale or let on hire; or
- (d) uses in relation to:
 - (i) goods or services; or
 - (ii) the promotion, by any means, of the supply or use of goods or services;

either:

- (e) a protected name, or a name so closely resembling a protected name as to be likely to be mistaken for it; or
- (f) a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if the ACMA consents in writing to the use or application of the name or symbol.

Note: A defendant bears an evidential burden in relation to the matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

- (3) Nothing in subsection (1), so far as it applies in relation to a protected name or in relation to a protected symbol, affects rights conferred by law on a person in relation to:
 - (a) a trade mark that is registered under the *Trade Marks Act 1995*; or
 - (b) a design that is registered under the *Designs Act 2003*; and was registered under the *Trade Marks Act 1995* or the *Designs Act 1906* immediately before 11 May 2004 in relation to the name or symbol.
- (4) Nothing in this section, so far as it applies to a protected name or in relation to a protected symbol, affects the use, or rights conferred by law relating to the use, of the name or symbol by a person in a particular manner if, immediately before 11 May 2004, the person:

Section 67

- (a) was using the name or the symbol in good faith in that manner; or
 - (b) would have been entitled to prevent another person from passing off, by means of the use of the name or the symbol or a similar name or symbol, goods or services as the goods or services of the first-mentioned person.
- (5) Subsection (1) does not apply to a person who uses or applies a protected name or a protected symbol for the purpose of labelling customer equipment or customer cabling in accordance with section 407 of the *Telecommunications Act 1997* or section 182 of the *Radiocommunications Act 1992*.
- (6) The prosecution bears the evidential burden, and the legal burden, in relation to the matters in subsections (3), (4) and (5) (despite subsection 13.3(3) of the *Criminal Code*).
- (7) In this section:

customer cabling has the same meaning as in the *Telecommunications Act 1997*.

customer equipment has the same meaning as in the *Telecommunications Act 1997*.

protected name means:

- (a) “ACMA”; or
- (b) “Australian Communications and Media Authority”.

protected symbol means an official symbol of the ACMA, the design of which is prescribed in the regulations.

67 ACMA to maintain Register of policy notifications and Ministerial directions

- (1) The ACMA is to maintain a Register in which the ACMA includes:
- (a) all directions given to the ACMA under this Act or any other Act; and

- (b) the contents, immediately before the commencement of section 6 of this Act, of the register maintained under section 56 of the *Australian Communications Authority Act 1997*.
- (2) The Register may be maintained by electronic means.
- (3) A person may, on payment of the charge (if any) fixed by a determination under section 60:
- (a) inspect the Register; and
 - (b) make a copy of, or take extracts from, the Register.
- (4) For the purposes of this section, if the Register is maintained by electronic means, a person is taken to have made a copy of, or taken an extract from, the Register if the ACMA gives the person a printout of, or of the relevant parts of, the Register.
- (5) If a person requests that a copy be provided in an electronic form, the ACMA may provide the relevant information:
- (a) on a data processing device; or
 - (b) by way of electronic transmission.
- (6) In this section:

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

68 Regulations

The Governor-General may make regulations prescribing 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.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Australian Communications and Media Authority Act 2005	44, 2005	1 Apr 2005	s 3–68: 1 July 2005 (s 2(1) item 2) Remainder: 1 Apr 2005 (s 2(1) item 1)	
Do Not Call Register (Consequential Amendments) Act 2006	89, 2006	30 June 2006	Sch 1 (item 42): 31 May 2007 (s 2(1) item 3)	—
Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Act 2006	153, 2006	8 Dec 2006	Sch 1 (item 1): 1 Jan 2007 (s 2)	—
Communications Legislation Amendment (Content Services) Act 2007	124, 2007	20 July 2007	Sch 1 (items 1–7): 20 Jan 2008 (s 2(1) item 2)	—
Telecommunications (Interception and Access) Amendment Act 2007	177, 2007	28 Sept 2007	Sch 1 (items 13, 68): 1 Nov 2007 (s 2(1) item 2)	Sch 1 (item 68)
Communications Legislation Amendment (Information Sharing and Datacasting) Act 2007	178, 2007	28 Sept 2007	Sch 1 (items 1–4, 6–9): 29 Sept 2007 (s 2(1) item 2) Sch 1 (item 5): 20 Jan 2008 (s 2(1) item 3)	Sch 1 (item 4)
Statute Law Revision Act 2010	8, 2010	1 Mar 2010	Sch 5 (item 137(a)): 1 Mar 2010 (s 2(1) item 38)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Trade Practices Amendment (Australian Consumer Law) Act (No. 2) 2010	103, 2010	13 July 2010	Sch 6 (items 1, 24): 1 Jan 2011 (s 2(1) item 3)	—
Statute Law Revision Act 2011	5, 2011	22 Mar 2011	Sch 6 (item 122): 19 Apr 2011 (s 2(1) item 17)	—
Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011	36, 2011	26 May 2011	Sch 2 (item 1): 27 May 2011 (s 2(1) item 2)	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 132–138) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 2, 12)	Sch 3 (items 10, 11)
Telecommunications Legislation Amendment (Universal Service Reform) Act 2012	44, 2012	16 Apr 2012	Sch 1 (items 1–3): 1 July 2012 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 6 (items 7–9, 23): 24 June 2014 (s 2(1) item 9)	Sch 6 (item 23)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 5 (items 1–4), Sch 6 (items 13, 14), Sch 7 (items 203–214) and Sch 14: 1 July 2014 (s 2(1) items 3, 6, 14)	Sch 14
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Omnibus Repeal Day (Autumn 2014) Act 2014	109, 2014	16 Oct 2014	Sch 2 (items 5, 24): 17 Oct 2014 (s 2(1) item 2)	Sch 2 (item 24)
Broadcasting and Other Legislation Amendment (Deregulation) Act 2015	22, 2015	19 Mar 2015	Sch 1 (item 1): 20 Mar 2015 (s 2(1) item 2) Sch 2 (item 1): 19 Mar 2015 (s 2(1) item 3)	—
Enhancing Online Safety for Children (Consequential Amendments) Act 2015	25, 2015	24 Mar 2015	Sch 2 (items 1–8) and Sch 3: 1 July 2015 (s 2(1) items 4, 6)	Sch 3
Telecommunications Legislation Amendment (Deregulation) Act 2015	38, 2015	13 Apr 2015	Sch 1 (items 4–6, 138–163): 1 July 2015 (s 2(1) item 3) Sch 2 (items 1, 2): 14 Apr 2015 (s 2(1) item 4)	Sch 1 (items 138–163)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 44): 5 Mar 2016 (s 2(1) item 2)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Enhancing Online Safety for Children Amendment Act 2017	51, 2017	22 June 2017	Sch 1 (items 28, 29, 48–51): 23 June 2017 (s 2(1) item 1)	Sch 1 (items 48–51)
Interactive Gambling Amendment Act 2017	85, 2017	16 Aug 2017	Sch 1 (items 1–5, 147–149): 13 Sept 2017 (s 2(1) item 2)	Sch 1 (items 147–149)
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 1 (items 3, 4): 20 Sept 2017 (s 2(1) item 2)	—
Broadcasting Legislation Amendment (Broadcasting Reform) Act 2017	113, 2017	16 Oct 2017	Sch 5 (items 11–13, 22–25) and Sch 6 (items 1, 2, 38–42): 17 Oct 2017 (s 2(1) items 12, 13, 15)	Sch 5 (items 22–25) and Sch 6 (items 38–42)

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 3	am No 124, 2007; No 178, 2007; No 44, 2012; No 25, 2015; No 38, 2015; No 85, 2017
s 4	am No 124, 2007; No 109, 2014; No 25, 2015
Part 2	
Division 1	
s 6	am No 62, 2014
Division 2	
s 8	am No 89, 2006; No 177, 2007; No 103, 2010; No 46, 2011; No 44, 2012; No 38, 2015
s 9	am No 46, 2011; No 113, 2017
s 10	am No 153, 2006; No 124, 2007; No 8, 2010; No 25, 2015; No 38, 2015; No 113, 2017
Division 3	
Division 3	rs No 62, 2014
s 12	rs No 62, 2014
s 13	rep No 62, 2014
Part 3	
Part 3 heading	rs No 62, 2014
Division 1	rep No 62, 2014
s 18	rep No 62, 2014
Division 2	
Subdivision A	
s 22	am No 31, 2014
s 23	am No 46, 2011
Subdivision B	
s 25	am No 93, 2017
s 26	am No 46, 2011

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
Division 3	
s 29	rs No 62, 2014
s 30	rep No 62, 2014
s 34	am No 62, 2014
Part 4	
Division 1	
s 39	am No 62, 2014
s 40	am No 62, 2014
Division 2	
s 44	am No 62, 2014
Division 3	
s 47	am No 62, 2014
s 48	am No 62, 2014
Division 4	
s 53	am No 124, 2007; No 36, 2011; No 22, 2015; No 25, 2015; No 126, 2015 ed C24 am No 93, 2017
Part 5	
s 55	am No 5, 2011 (md Sch 6 item 122); No 62, 2014
Part 6	
s 56	rs No 62, 2014
s 57	rs No 62, 2014 am No 25, 2015; No 51, 2017
Part 7A	
Part 7A	ad No 178, 2007
s 59A	ad No 178, 2007
s 59B	ad No 178, 2007
s 59C	ad No 178, 2007
s 59D	ad No 178, 2007 am No 8, 2010; No 44, 2012; No 25, 2015; No 38, 2015; No 51, 2017; No 85, 2017

Endnote 4—Amendment history

Provision affected	How affected
s 59E.....	ad No 178, 2007
s 59F.....	ad No 178, 2007
s 59G.....	ad No 178, 2007
s 59H.....	ad No 178, 2007
s 59J.....	ad No 178, 2007
s 59K.....	ad No 178, 2007
s 59L.....	ad No 178, 2007
Part 8	
s 62A.....	ad No 62, 2014
s 62B.....	ad No 62, 2014
s 63.....	am No 62, 2014