



NORFOLK ISLAND BROADCASTING ACT 2001

Norf'k Ailen Brordkaasen Aekt 2001

[Consolidated as at 26 March 2013
on the authority of the Administrator
and in accordance with
the *Enactments Reprinting Act 1980*]

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Norfolk Island Broadcasting Act 2001

Norf'k Ailen Brordkaasen Aekt 2001

An Act to make provision for the licensing, control, and regulation of both audio and visual broadcasting for the purposes of radio and television within the Territory of Norfolk Island and for related purposes.

Wan Aekt laanen wathing wi haew' duu f' laisens, kontroel, en regyuliet boeth d' lisenen en d' wohchen brordkaas soe dat gat boeth 'wailes en' tiivii oparieten hya withiin d' Teratri of Norf'k Aieln etsaelf, eswaeles f' orl dem tedha orthing haew' duu soe el getetgwen.

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Norfolk Island Broadcasting Authority Act 2001*.

Commencement

2. This Act shall commence on the day on which notification of assent to this Act is published in the Gazette.

Interpretation

3. In this Act, unless the contrary intention appears —

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

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or
- (c) a service, or a class of services, that the Minister determines, by notice in the Gazette, not to fall within this definition;

“*Broadcasting Services Act 1992*” means the Act by the same name of the Commonwealth of Australia;

“*Radiocommunications Act*” means the Act by the same name of the Commonwealth of Australia;

“Territory of Norfolk Island” means that area defined as Norfolk Island in the *Norfolk Island Act 1979* of the Commonwealth of Australia, and includes any area of land, sea, or air defined by boundary, box, radius, or other means over which or within which the Government of Norfolk Island has any control, duty, responsibility, or stewardship, pursuant to any Act, intergovernmental or international agreement, understanding, treaty, or accord.

Act not to bind the Crown

4. (1) The provisions of this Act shall not bind the Crown except as stated in any particular section or Part, and then only to the extent stated in that section or Part.

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

Application of Act

5. (1) This Act applies in the Territory of Norfolk Island and has extra territorial effect to the extent permissible at law or by virtue of any convention, protocol, or memorandum of understanding.

(2) This Act shall be read subject to the provisions of the *Broadcasting Services Act 1992* of the Commonwealth of Australia in force and effect as at the date of commencement of this Act, and as amended from time to time.

(3) Where the provisions of this Act are in conflict with the provisions of the *Broadcasting Services Act 1992* of the Commonwealth of Australia, the provisions of the *Broadcasting Services Act 1992* shall prevail.

(4) Nothing in this Act shall cause the Norfolk Island Government Radio Station VL2NI to be a Broadcasting Service within the meaning of any of the categories or classifications of broadcasting services mentioned and dealt with in the *Broadcasting Services Act 1992* of the Commonwealth of Australia.

(5) The radio broadcasting service of the Norfolk Island Government, being Norfolk Island Radio VL2NI, is not a Broadcasting Service within the meaning of section 11 of the *Broadcasting Services Act 1992* of the Commonwealth of Australia, and is a Norfolk Island Government Broadcasting Service.

(6) This Act shall further be read and applied subject to the *Radiocommunications Act 1992* of the Commonwealth of Australia and where there is any conflict between the provisions of this Act and the said *Radiocommunications Act 1992*, the provisions of the *Radiocommunications Act 1992* shall prevail.

(7) The provisions of the *Radiocommunications Act 1992* of the Commonwealth of Australia shall apply to the Norfolk Island Government Broadcasting Service referred to in this section to the extent required by that Act but nothing in this subsection shall make the Norfolk Island Government Broadcasting Service a broadcasting service to which the provisions of the *Broadcasting Services Act 1992* applies.

PART 2 — THE NORFOLK ISLAND GOVERNMENT BROADCASTING SERVICE

Establishment of the Norfolk Island Broadcasting Service under this Act

6. (1) The Radio Broadcasting Service known as Norfolk Island Radio VL2NI, owned and operated by the Norfolk Island Government, is constituted under this Act as a broadcasting service of the Norfolk Island Government and the Crown in the right of Norfolk Island and may be referred to as the “Government Broadcasting Service”, “Norfolk Island Government Broadcasting Service” or “Norfolk Island Radio VL2NI”.

(2) The Norfolk Island Government Broadcasting Service is not a community broadcasting service within the meaning of the *Broadcasting Services Act 1992* of the Commonwealth of Australia.

(3) The Crown in the right of Norfolk Island shall make provision for the efficient maintenance, operation, and conduct of the Government Broadcasting Service known as Norfolk Island Radio VL2NI.

(3A) There shall be a Manager of the Government Broadcasting Service who shall be responsible to ensure that the Minister has such support as may be necessary to facilitate his or her functions in accordance with the Act in an efficient and timely manner.

(4) The Crown in the right of Norfolk Island may, subject to this Act, make provision for the content, style, subject matter, or any other thing concerning and connected with the operation of the Norfolk Island Government Broadcasting Service.

(5) The Norfolk Island Government Broadcasting Service shall be considered as an essential Government Service.

(6) This section binds the Crown.

PART 3 — LICENSING OF BROADCASTING

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Objects of this Act

9. This Act has the following objects —

- (a)** to promote the availability to audiences in Norfolk Island of a diverse range of radio and television programming offering entertainment, education and information;
- (b)** to provide a regulatory environment that will ensure appropriate limitations on the development of broadcasting services in the Territory of Norfolk Island having regard to the small size of the Territory, the population of the Territory, and the specific and unique needs and requirements of the Norfolk Island community;
- (c)** to promote the provision of high quality and innovative programming by providers of broadcasting services;
- (d)** to promote and encourage the role of broadcasting services operating in Norfolk Island in developing and reflecting a sense of Norfolk Island identity, character, and culture;

- (e) to preserve and promote as far as practicable the use of the Norfolk Island language in broadcasting services;
- (f) to reflect community standards in the provisions of broadcasting services;
- (g) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them;
- (h) to encourage the provision of means for addressing complaints about broadcasting services; and
- (i) to ensure that the providers of commercial, community, or non-government broadcasting services are responsive to the need for a fair and accurate cover of matters of public interest and for appropriate coverage of matters of local significance.

Functions of the Minister

10. (1) The Minister shall be responsible for the issue of licences for the operation and provision of broadcasting services in the Territory of Norfolk Island.

(2) The Minister has the function of issuing licences for the operation and provision of broadcasting services in the Territory of Norfolk Island.

(3) The Minister has responsibility to hear and determine complaints against the operation, provision of, and content of programs which are provided by broadcasting services in the Territory.

(4) The Minister must monitor the operation, provision and content of broadcasting services operating in the Territory of Norfolk Island to ensure compliance with this Act and the objects of the Minister.

(5) The Minister may take whatever action is necessary, subject to this Act, to ensure compliance with this Act and the objects of the Minister.

(6) The Minister must not issue a licence unless he or she has informed the Legislative Assembly of—

- (a) the name of the proposed licensee;
- (b) the reasons for issuing the licence;
- (c) the ways in which the issue of the licence is expected to meet all or any of the objects of the Act;
- (d) the terms and conditions of the licence,

and the Legislative Assembly has by resolution approved the issue of the licence, and

- (e) the Minister has caused a notice of the approval of the Legislative Assembly to be published in the Gazette.

Powers of the Minister

11. (1) The Minister has the following powers –

- (a) To investigate, consider, and determine matters relevant to his or her functions;
- (b) to collect, gather, or receive evidence in relation to its functions and in that regard the Minister is not bound by the rules of evidence, and may obtain evidence in any matter under consideration in such reasonable manner as he or she considers appropriate;

- (c) to set and determine the quantum of any fee under this Act, and the period or periods to which such fees shall be applicable;

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- (e) to initiate proceedings, through the Norfolk Island Administration to recover monies or enforce any remedy, fine, obligation, or duty under this Act;

- (f) In addition to any other powers conferred on him or her by this or another Act, the Minister has power to do things that are necessary or convenient to be done for or in connection with the performance of his or her functions.

(2) The Minister does not have the power to receive monies.

(3) The Minister shall exercise his or her powers under this Act with equity, fairness, and natural justice.

Broadcasting services to be licensed

12. A person shall not operate, conduct, or provide a broadcasting service in Norfolk Island without a licence issued by the Minister.

Penalty: 50 penalty units and 10 penalty units for each day that the broadcasting service continues to operate in breach of this section after notification from the Minister of such breach.

Issue of licences

13. (1) A person may apply to the Minister for the provision of a licence in the prescribed manner and in the prescribed form.

(2) The Minister may impose such reasonable conditions as he or she sees fit, and subject to this Act, in respect of the issue of any licence.

(3) A licence shall not be issued for a period in excess of three years and is renewable.

(4) A licence fee is payable by a person who obtains a licence to operate, conduct or provide a broadcasting service and such fee shall be as prescribed and may be prescribed as an annual fee payable each year throughout the duration of the licence.

(5) The nature and form of a licence and the terms and conditions attaching to such licence shall be as prescribed.

(6) A person conducting, operating or providing a broadcasting service in Norfolk Island under licence shall comply with the terms and conditions imposed on such licence by the Minister or under the prescribed regulations.

Penalty: 20 penalty units.

(7) In the event that a person is in breach of this section or any of the terms and conditions of a licence issued under this section, the Minister may suspend the licence for a period not exceeding 14 days and may request the licence holder to show cause why the licence should not be cancelled or revoked by giving 14 days notice to the licence holder to show such cause.

(8) If a person has been given notice to show cause under this section and has not shown cause within the period required or if, in the opinion of the Minister, sufficient cause has not been shown, then the Minister may cancel a licence provided under this section.

Broadcasting rules

14. The Minister may, with the approval of the Legislative Assembly, and by notice published in the Gazette, make rules for the provision of broadcasting services in the Territory of Norfolk Island and, without limiting the generality thereof, such rules may include —

- (a) prohibition of offensive material, or a class or category of offensive material from the program content of a broadcasting service;
- (b) certain times of the day which will be reserved for program content suitable for children;
- (c) certain times of the day reserved for program material which may not be suitable for children;
- (d) the nature, and standards, of advertising material which may be broadcast;
- (e) rules relating to fairness and equality in political election comments or advertisements provided by any political party or candidate for an election under the *Legislative Assembly Act 1979*;
- (f) rules relating to the reasonable preservation of free speech and opinion by persons in the community and operators and providers of broadcasting services.

Determinations of Minister

15. (1) The Minister may investigate of his or her own motion or upon receiving a complaint from a member of the community or any other organisation or body, a breach of the Broadcasting Rules.

(2) If the Minister is satisfied that there has been a breach of the rules he or she may issue a notice to the broadcasting service concerned requiring such breach to be rectified or remedied —

- (a) forthwith; or
- (b) within a particular time stated by the Minister, but in any event no later than one month from the date of the notice.

(3) In the event that any breach of the rules is not rectified or remedied within the time stated then the Minister may take action against the broadcasting service as if the broadcasting service had acted in breach.

Delegation by Minister

15A. (1) Except as provided in subsection (2), the Minister may, by instrument, delegate all or any of the powers and functions of the Minister under this Act.

- (2)** The Minister is not empowered to delegate—
 - (a) this power of delegation;
 - (b) the powers under paragraph 11(1)(c);
 - (c) the powers under section 13; or
 - (d) the powers under section 14.

(3) A power or function so delegated may be exercised or performed by the delegate in accordance with the instrument of delegation.

(4) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the Minister.

PART 4 — MISCELLANEOUS

Immunity from liability

16. The Minister is not liable for any act, decision or thing done or performed in the proper and bona-fide pursuance of his or her duties, obligations and functions under this Act.

No compensation payable by Crown

17. No compensation is payable by the Crown as a result of any decision, act, function or power which is made, done, or exercised under this Act.

Receipt of Revenue

18. Any fees payable, or monies recovered under this Act, shall be monies of the Crown payable to the general revenue fund of the Administration.

Decisions of the Minister subject to review

19. A decision of the Minister is subject to review by the Administrative Review Tribunal other than a decision made under subsection 10(6).

Crown to be bound by rules

20. The Crown shall be bound by the rules issued and gazetted by the Minister.

Regulations

21. The Administrator may make such regulations as are contemplated by the Act, or as are necessary, convenient, or expedient for the purposes of this Act.

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NOTES

The *Norfolk Island Broadcasting Act 2001* as shown in this consolidation comprises Act No. 9 of 2001 and amendments as indicated in the Tables below.

Enactment	Number and year	Date of commencement	Application saving or transitional provision
<i>Norfolk Island Broadcasting Authority Act 2001</i>	9, 2001	29.6.01	
<i>Norfolk Island Broadcasting Authority (Amendment) Act 2009</i>	6, 2009	8.5.09	
<i>[Previously consolidated as at 9 May 2009]</i>			
<i>Interpretation (Amendment) Act 2012</i> <i>[to substitute throughout —</i> <i>Commonwealth Minister for Minister;</i> <i>and to substitute Minister for executive member]</i>	14, 2012	28.12.12	

Table of Amendments

Provisions affected	How affected	
Long title	am	6, 2009
3	am	6, 2009
Heading Part 3	am	6, 20049
7 and 8	rep	6, 2009
9	am	6, 2009
10	ad	6, 2009
11	am	6, 2009
12	am	6, 2009
13	am	6, 2009
14	ad	6, 2009
15	am	6, 2009
15A	ad	6, 2009
16	am	6, 2009
19	am	6, 2009
20	am	6, 2009
22	rep	6, 2009

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