



# **Communications Legislation Amendment (Prominence and Anti-siphoning) Act 2024**

**No. 62, 2024**

**An Act to amend the law relating to  
communications, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation  
(<https://www.legislation.gov.au/>)



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## Contents

1	Short title .....	1
2	Commencement.....	2
3	Schedules.....	2
<b>Schedule 1—Prominence framework</b>		<b>3</b>
Part 1—Main amendments		3
<i>Broadcasting Services Act 1992</i>		3
Part 2—Consequential amendments and application provisions		19
<i>Australian Communications and Media Authority Act 2005</i>		19
<i>Broadcasting Services Act 1992</i>		20
<b>Schedule 2—Anti-siphoning</b>		<b>25</b>
<i>Broadcasting Services Act 1992</i>		25





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No. 62, 2024

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## An Act to amend the law relating to communications, and for related purposes

[Assented to 9 July 2024]

The Parliament of Australia enacts:

### 1 Short title

This Act is the *Communications Legislation Amendment  
(Prominence and Anti-siphoning) Act 2024*.

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No. 62, 2024

*Communications Legislation Amendment (Prominence and Anti-  
siphoning) Act 2024*

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## 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.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent.	10 July 2024
2. Schedule 1	The day after this Act receives the Royal Assent.	10 July 2024
3. Schedule 2	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	17 December 2024 (F2024N01145)

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Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## Schedule 1—Prominence framework

### Part 1—Main amendments

#### *Broadcasting Services Act 1992*

##### 1 After Part 9D

Insert:

### Part 9E—Prominence framework

#### Division 1—Introduction

##### 130ZZF Simplified outline of this Part

The following is a simplified outline of this Part:

- This Part sets up a framework to regulate the accessibility and prominent display of certain broadcasting services and broadcasting video on demand services (called ***regulated television services***) on devices designed for viewing television (called ***regulated television devices***).
- The main rules are that a person who is a manufacturer of a regulated television device, or a related body corporate of a manufacturer:
  - (a) must not supply the device in Australia if the device does not comply with the minimum prominence requirements for a regulated television service; and
  - (b) must ensure the device continues to comply with those requirements after the device is supplied; and
  - (c) must not charge a regulated television service provider in relation to the device complying with those requirements; and
  - (d) must take reasonable steps to ensure that the audiovisual content provided by a regulated television service is not altered or interfered with.

There are exceptions to these rules.

- A person who contravenes these rules may be liable to a civil penalty.
- Regulated television services include national television broadcasting services, commercial television broadcasting services, community television broadcasting services and certain broadcasting video on demand services provided free to the public.
- The regulations may prescribe the minimum prominence requirements for a regulated television service.
- The ACMA has information gathering and enforcement functions and powers in relation to this Part.
- There is to be a review of the operation of this Part.

### **130ZZG Objects**

The objects of this Part are to ensure that audiences throughout Australia are able to access free-to-air television content in order to:

- (a) support Australia's representative democracy by informing Australians of issues or events that are relevant to public debate and democratic decision-making; and
- (b) ensure that audiences throughout Australia are able to access content that is of public significance at a local, regional or national level; and
- (c) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities.

### **130ZZH Definitions**

In this Part:

***audiovisual content*** includes television programs.

***Australia***, when used in a geographical sense, includes all the external Territories.



***broadcasting video on demand service*** has the meaning given by section 130ZZK.

***community television broadcasting service*** means a community broadcasting service that provides television programs.

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

***manufacturer*** has the same meaning as in the *Competition and Consumer Act 2010*.

***minimum prominence requirements***: see section 130ZZO.

***national television broadcasting service*** has the same meaning as in Schedule 4.

***offered*** has a meaning affected by subsection 130ZZN(9).

***primary user interface***: see section 130ZZL.

***regulated television device*** has the meaning given by section 130ZZI.

***regulated television service*** has the meaning given by section 130ZZJ.

***regulated television service provider*** means a person that provides a regulated television service.

***related body corporate*** has the same meaning as in the *Corporations Act 2001*.

***supply*** has the same meaning as in the *Competition and Consumer Act 2010*.

## **130ZZI Regulated television devices**

### *Meaning of regulated television device*

- (1) For the purposes of this Part, a ***regulated television device*** means:
    - (a) domestic reception equipment that:
      - (i) is capable of connecting to the internet and providing access to broadcasting video on demand services; and
-

(ii) is designed for the primary purpose of facilitating the viewing of audiovisual content; or

(b) specified domestic reception equipment that the ACMA determines, under subsection (2), is a regulated television device;

but does not include specified domestic reception equipment that the ACMA determines, under subsection (3), is not a regulated television device.

Note: The ACMA may also make guidelines about regulated television devices: see section 130ZZM.

*ACMA may determine specified regulated television devices*

(2) For the purposes of paragraph (1)(b), the ACMA may, by legislative instrument, determine that specified domestic reception equipment is a **regulated television device**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

(3) For the purposes of subsection (1), the ACMA may, by legislative instrument, determine that specified domestic reception equipment is not a **regulated television device**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

## **130ZZJ Regulated television services**

*Meaning of regulated television service*

(1) For the purposes of this Part, each of the following is a **regulated television service**:

(a) the following broadcasting services:

(i) national television broadcasting services provided by the Australian Broadcasting Corporation;

(ii) national television broadcasting services provided by the Special Broadcasting Service Corporation;

(iii) commercial television broadcasting services provided by a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1));

- (iv) community television broadcasting services provided by a community television broadcasting licensee;
- (b) a broadcasting video on demand service provided by any of the following, using an application that is covered by subsection (5) of this section:
  - (i) the Australian Broadcasting Corporation;
  - (ii) the Special Broadcasting Service Corporation;
  - (iii) a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1));
  - (iv) a related body corporate of a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1));
- (c) a specified service that the Minister determines, under subsection (2) of this section, is a regulated television service;

but does not include a specified service that the Minister determines, under subsection (3) of this section, is not a regulated television service.

*Minister may determine specified services*

- (2) For the purposes of paragraph (1)(c), the Minister may, by legislative instrument, determine that a specified service is a **regulated television service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) For the purposes subsection (1), the Minister may, by legislative instrument, determine that a specified service is not a **regulated television service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

*ACMA may give advice*

- (4) The ACMA may provide advice to the Minister on any matter relevant to:

- (a) the determination, by the Minister, that a specified service is a regulated television service; or
- (b) the determination, by the Minister, that a specified service is not a regulated television service.

*Broadcasting video on demand service applications*

- (5) For the purposes of paragraph (1)(b), an application is covered by this subsection if:
  - (a) the application is designed for the purpose of providing access to a particular broadcasting video on demand service; and
  - (b) the application is provided by:
    - (i) an entity mentioned in subparagraph (1)(b)(i), (ii), (iii) or (iv); or
    - (ii) an entity that provides a specified service that the Minister determines under subsection (2) is a regulated television service.

**130ZZK Broadcasting video on demand service**

For the purposes of this Part, a *broadcasting video on demand service* means a service that:

- (a) makes audiovisual content available on demand using a listed carriage service; and
- (b) is made available free to the general public.

**130ZZL Primary user interface**

*Meaning of primary user interface*

- (1) For the purposes of this Part, the *primary user interface* of a regulated television device means the interface of the device that:
  - (a) is either or both of the following:
    - (i) the home screen or main screen of the device;
    - (ii) the main interface most commonly used to provide access to applications that make audiovisual content available on demand using a listed carriage service; and

- (b) meets the description or requirements (if any) determined by the ACMA under subsection (3).
- (2) For the avoidance of doubt, the **primary user interface** of a regulated television device does not include any ancillary hardware or equipment for the device.

*ACMA may specify interface requirements*

- (3) For the purposes of paragraph (1)(b), the ACMA may, by legislative instrument, do either or both of the following:
  - (a) describe an interface;
  - (b) determine requirements relating to an interface.
- (4) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the ACMA may describe an interface, or determine requirements relating to an interface, differently in relation to:
  - (a) different regulated television devices or kinds of regulated television devices; or
  - (b) different kinds of things or circumstances.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (5) Despite subsection 14(2) of the *Legislation Act 2003*, an instrument under subsection (3) of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (6) If an instrument under subsection (3) makes provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the ACMA must ensure that the text of the matter applied, adopted or incorporated is published on its website.
- (7) Subsection (6) does not apply if the publication would infringe copyright.

### **130ZZM ACMA may make guidelines about regulated television devices**

- (1) The ACMA may make written guidelines to assist in determining whether particular kinds of domestic reception equipment are regulated television devices.

Note: For specification by class, see subsection 33(3AB) of the *Acts Interpretation Act 1901*.

- (2) The Minister may direct the ACMA to make guidelines under subsection (1).
- (3) Guidelines made under subsection (1) are not a legislative instrument.
- (4) Guidelines made under subsection (1) must be published on the ACMA's website.
- (5) Guidelines under subsection (1) that are inconsistent with this Act, the regulations or a legislative instrument made under subsection 130ZZI(2) or (3) have no effect to the extent of the inconsistency.

## **Division 2—Minimum prominence requirements**

### **130ZZN Regulated television devices must comply with minimum prominence requirements**

#### *Must carry obligations*

- (1) A person must not supply a regulated television device if:
  - (a) the person is the manufacturer of the device or a related body corporate of the manufacturer of the device; and
  - (b) the device is supplied to another person in Australia; and
  - (c) the device does not comply with the minimum prominence requirements for a regulated television service that is offered by a regulated television service provider.

Note 1: In relation to paragraph (b), supply does not include supply for use outside Australia (see the definition of **supply** and subsection 95A(2) of the *Competition and Consumer Act 2010*).

Note 2: In relation to paragraph (c), see subsection (9) for when a service is or is not taken to be **offered**.

- (2) A person who is subject to a requirement under subsection (1) in relation to a regulated television device must take reasonable steps to ensure that the device continues to comply with the minimum prominence requirements for a regulated television service during the period:
- (a) beginning immediately after the time the device is supplied; and
  - (b) ending at the earliest of the following times:
    - (i) the time when an action by a user of the device results in the device not complying with those requirements;
    - (ii) the time when the software used on the device is no longer provided, updated or supported by the manufacturer, or by another person on behalf of the manufacturer;
    - (iii) the time when the regulated television service is no longer offered by the regulated television service provider.

Note: In relation to subparagraph (b)(iii), see subsection (9) for when a service is or is not taken to be *offered*.

- (3) A person who is subject to a requirement under subsection (1) or (2) in relation to a regulated television device complying with the minimum prominence requirements for a regulated television service must not require the regulated television service provider to pay a fee, charge or any other consideration for, or in connection with, the device complying with those requirements.
- (4) A person who is subject to a requirement under subsection (1) or (2) in relation to a regulated television device complying with the minimum prominence requirements for a regulated television service, must take reasonable steps to ensure that the audiovisual content provided by that service, including any advertising or sponsorship matter, is not altered or interfered with.

*Civil penalty provisions*

- (5) Subsections (1), (2), (3) and (4) are civil penalty provisions.

*Exception*

- (6) Subsection (1) or (2) does not apply to a person if:
-

- (a) the person is subject to a requirement under that subsection; and
- (b) the person fails to comply with that requirement; and
- (c) that failure to comply is because of circumstances that are outside the control of the person.

*Warnings*

- (7) If the ACMA is satisfied that a person has contravened subsection (1), (2), (3) or (4), the ACMA may issue a formal warning to the person.
- (8) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a warning under subsection (7) is taken to be a notice under this Part.

*ACMA may prescribe when a regulated television service is offered*

- (9) For the purposes of this section, the ACMA may, by legislative instrument:
  - (a) determine circumstances in which a regulated television service is or is not taken to be ***offered***; and
  - (b) without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, determine different circumstances in relation to different regulated television services or kinds of regulated television services.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

**130ZZO Regulations may prescribe minimum prominence requirements**

- (1) The regulations may prescribe requirements (the ***minimum prominence requirements***), with which a regulated television device must comply, in relation to any or all of the following:
  - (a) access to regulated television services on the device;
  - (b) the display, location or positioning on the device or the primary user interface of the device of:
    - (i) regulated television services; or



- (ii) applications, covered by subsection 130ZZJ(5), that are used to access regulated television services; or
  - (iii) any other thing used to access regulated television services;
  - (c) installation on the device of applications, covered by subsection 130ZZJ(5), that are used to access regulated television services;
  - (d) the availability for installation on the device of such applications;
  - (e) the updating of such applications that are installed on the device;
  - (f) any electronic program guide on the device that provides information about or access to regulated television services.
- (2) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the regulations may prescribe:
- (a) different requirements in relation to different regulated television devices or kinds of regulated television devices; or
  - (b) different requirements in relation to different regulated television services or kinds of regulated television services; or
  - (c) different requirements in relation to different kinds of things or circumstances.
- Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.
- (3) Despite subsection 14(2) of the *Legislation Act 2003*, regulations made for the purposes of this section may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.
- (4) If regulations under this section make provision in relation to a matter by applying, adopting or incorporating, with or without modification, a matter contained in an instrument or writing, the Minister must ensure that the text of the matter applied, adopted or incorporated is published on the Department's website.
- (5) Subsection (4) does not apply if the publication would infringe copyright.

**130ZZP Remedial directions—contravention of minimum prominence requirements**

*Scope*

- (1) This section applies if the ACMA is satisfied that a person has contravened, or is contravening, subsection 130ZZN(1), (2), (3) or (4).

*Remedial directions*

- (2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene subsection 130ZZN(1), (2), (3) or (4), or is unlikely to contravene that subsection, in the future.

Note: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (3) A person must not contravene a direction under subsection (2).

*Civil penalty provision*

- (4) Subsection (3) is a civil penalty provision.
- (5) A person who contravenes subsection (3) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

- (6) Subsection (3) is a designated infringement notice provision.

*Notice*

- (7) For the purposes of this Act and the *Australian Communications and Media Authority Act 2005*, a direction under subsection (2) is taken to be a notice under this Part.

## **Division 3—Information gathering**

### **130ZZQ ACMA may obtain information and documents**

#### *Scope*

- (1) This section applies to a person who:
  - (a) is a manufacturer of a regulated television device; or
  - (b) is a related body corporate of a manufacturer of a regulated television device; or
  - (c) is a regulated television service provider;if:
  - (d) the ACMA has reason to believe that the person has information or a document that is relevant to:
    - (i) monitoring compliance with this Part; or
    - (ii) the performance of the ACMA's functions under paragraph 10(1)(a), (1a), (1b), (1c), (1d), (n) or (q) of the *Australian Communications and Media Authority Act 2005*.

#### *ACMA may require information or documents*

- (2) The ACMA may, by written notice given to the person, require the person to do any of the following:
  - (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information;
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents;
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies.
- (3) A person must comply with a requirement under subsection (2).

#### *Civil penalty provision*

- (4) Subsection (3) is a civil penalty provision.
- (5) A person who contravenes subsection (3) commits a separate contravention of that subsection in respect of each day (including a

day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

- (6) Subsection (3) is a designated infringement notice provision.

*Requirements for notice*

- (7) A period specified under paragraph (2)(a), (b) or (c) must not be shorter than 14 days after the notice is given.

**130ZZR Copies of documents**

- (1) The ACMA may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 130ZZQ(2)(c).

**Division 4—Miscellaneous**

**130ZZS Service of notices by electronic means**

Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* do not apply to:

- (a) a notice under this Part; or  
(b) a notice under any other provision of this Act, so far as that provision relates to this Part.

Note: Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act 1999* deal with the consent of the recipient of information to the information being given by way of electronic communication.

**130ZZT Relationship with other laws**

This Part does not limit the operation of any other provision of this Act.

### **130ZZU Concurrent operation of State and Territory laws**

It is the intention of the Parliament that this Part is not to apply to the exclusion of a law of a State or Territory to the extent to which that law is capable of operating concurrently with this Part.

### **Division 5—Review of this Part etc.**

#### **130ZZV Review of this Part**

##### *Review of this Part*

- (1) The Minister must cause a review to be conducted of the operation, effectiveness and implications of:
  - (a) this Part; and
  - (b) the remaining provisions of this Act to the extent to which they relate to this Part; and
  - (c) regulations made for the purposes of section 130ZZO; and
  - (d) any legislative instruments made under subsection 130ZZI(2) or (3), 130ZZJ(2) or (3), 130ZZL(3) or 130ZZN(9); and
  - (e) any guidelines made under subsection 130ZZM(1).
- (2) The review must commence as soon as practicable after the end of the 2 year period starting on the day that is 18 months after the commencement of this Part.

##### *Report*

- (3) The persons undertaking the review must give the Minister a written report of the review. The report must not include information that is commercially sensitive.
- (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.

#### **130ZZW Minister may request report**

The Minister may, by written notice given to the ACMA, request the ACMA to:

- (a) prepare a report about any one or more of the following:
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- (i) regulated television devices;
  - (ii) regulated television services;
  - (iii) technological developments that relate to regulated television devices or regulated television services;
  - (iv) access to regulated television services by users of regulated television devices;
  - (v) developments in the broadcasting service industry and broadcasting video on demand service industry; and
- (b) give the report to the Minister.
- (2) The ACMA must comply with a request under subsection (1).

**130ZZX Minister may direct ACMA about the exercise of its powers**

- (1) The Minister may, by legislative instrument, give a direction to the ACMA about the exercise of the powers conferred on the ACMA by this Part.
- (2) The ACMA must comply with a direction under subsection (1).

## **Part 2—Consequential amendments and application provisions**

### ***Australian Communications and Media Authority Act 2005***

#### **2 Section 3 (subparagraph (b)(i) of the definition of *authorised disclosure information*)**

After “7”, insert “, 9E”.

#### **3 Paragraph 10(1)(a)**

After “broadcasting services”, insert “, broadcasting video on demand services”.

#### **4 After paragraph 10(1)(l)**

Insert:

- (la) to develop guidelines and make determinations about regulated television devices under Part 9E of the *Broadcasting Services Act 1992*;
- (lb) to advise the Minister about regulated television services under Part 9E of the *Broadcasting Services Act 1992*;
- (lc) to monitor compliance with the minimum prominence requirements;
- (ld) to conduct investigations relating to compliance with the minimum prominence requirements;

#### **5 Paragraphs 10(1)(n) and (q)**

After “broadcasting industry,”, insert “broadcasting video on demand industry,”.

#### **6 After paragraph 53(2)(j)**

Insert:

- (ja) make, vary or revoke a determination about regulated television devices under subsection 130ZZI(2) or (3) of that Act;
- (jb) make, vary or revoke an instrument about primary user interfaces under subsection 130ZZL(3) of that Act;

(jc) determine, vary or revoke guidelines about regulated television devices under section 130ZZM of that Act;

## 7 Paragraph 53(2)(k)

After “Part 9C”, insert “or 9E”.

## *Broadcasting Services Act 1992*

### 8 Title

After “**broadcasting services**,”, insert “**broadcasting video on demand services**”.

### 9 After paragraph 3(1)(h)

Insert:

(ha) to promote access to certain broadcasting services and broadcasting video on demand services that are made available free to Australian audiences and users; and

### 10 Subsection 3(2)

Insert:

*broadcasting video on demand services* has the same meaning as in Part 9E.

### 11 Subsections 4(1) and (2)

After “broadcasting services” (wherever occurring), insert “, broadcasting video on demand services”.

### 12 Subparagraph 4(2)(c)(i)

After “broadcasting technologies”, insert “, broadcasting video on demand technologies”.

### 13 Subsection 4(4)

Insert:

*broadcasting video on demand service* has the same meaning as in Part 9E.

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**14 Paragraph 5(1)(a)**

After “broadcasting industry”, insert “, the broadcasting video on demand industry”.

**15 Subsection 5(4)**

Insert:

*broadcasting video on demand service* has the same meaning as in Part 9E.

**16 Subsection 204(1) (before table item dealing with section 143)**

Insert:

To give a remedial direction	Subsection 130ZZP(2)	The person to whom the direction was given
Variation of a remedial direction	Subsection 130ZZP(2)	The person to whom the direction was given
Refusal to revoke a remedial direction	Subsection 130ZZP(2)	The person to whom the direction was given

**17 After subsection 205F(5AA)**

Insert:

(5AB) The pecuniary penalty payable by a person in respect of:

- (a) a contravention of subsection 130ZZN(1), (2), (3) or (4); or
- (b) a contravention of section 205E that relates to a contravention of subsection 130ZZN(1), (2), (3) or (4);

must not exceed:

- (c) if the person is a body corporate—whichever of the following is greatest:
  - (i) 10,000 penalty units;
  - (ii) if the Federal Court can determine the value of the benefit that the body corporate, and any body corporate

related to the body corporate, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of that benefit;

- (iii) if the Federal Court cannot determine the value of that benefit—2% of the annual turnover of the body corporate during the period (the *turnover period*) of 12 months ending at the end of the month in which the contravention occurred; or

(d) if the person is not a body corporate—2,000 penalty units.

(5AC) The pecuniary penalty payable by a person in respect of:

- (a) a contravention of subsection 130ZZP(3); or
- (b) a contravention of section 205E that relates to a contravention of subsection 130ZZP(3);

must not exceed:

- (c) if the person is a body corporate—5,000 penalty units; and
- (d) if the person is not a body corporate—1,000 penalty units.

(5AD) The pecuniary penalty payable by a person in respect of:

- (a) a contravention of subsection 130ZZQ(3); or
- (b) a contravention of section 205E that relates to a contravention of subsection 130ZZQ(3);

must not exceed:

- (c) if the person is a body corporate—40 penalty units; and
- (d) if the person is not a body corporate—30 penalty units.

## 18 At the end of section 205F

Add:

### *Meaning of annual turnover*

- (9) For the purposes of this section, the *annual turnover* of a body corporate, during the turnover period, is the sum of the values of all the supplies that the body corporate, and any body corporate related to the body corporate, have made, or are likely to make, during that period, other than the following supplies:
  - (a) supplies made from any of those bodies corporate to any other of those bodies corporate;
  - (b) supplies that are input taxed;

- (c) supplies that are not for consideration (and are not taxable supplies under section 72-5 of the *A New Tax System (Goods and Services Tax) Act 1999*);
  - (d) supplies that are not made in connection with an enterprise that the body corporate carries on.
- (10) For the purposes of subsection (9), it is immaterial whether the supplies were made, or are likely to be made, within or outside Australia.
- (11) Expressions used in subsections (9) and (10) that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning in those subsections as they have in that Act.
- (12) The question whether 2 bodies corporate are related to each other is to be determined for the purposes of subsection (9) in the same way as for the purposes of the *Corporations Act 2001*.

### **19 Section 205XA**

After “designated infringement notice provision”, insert “(other than a designated infringement notice provision in Part 9E)”.

### **20 Subsection 205Y(3)**

Omit “subsection (4)”, substitute “subsections (4) and (5)”.

### **21 At the end of section 205Y**

Add:

- (5) Subsection (4) does not apply in relation to a contravention of a designated infringement notice provision in Part 9E.

### **22 Before paragraph 205ZA(1)(aa)**

Insert:

- (aaa) if the infringement notice relates to subsection 130ZZP(3) and the person is a body corporate—60 penalty units; or
- (aab) if the infringement notice relates to subsection 130ZZQ(3) and the person is a body corporate—30 penalty units; or

**23 Paragraph 205ZA(1)(a)**

Omit “subclause 25(1) of Schedule 8”, substitute “a provision mentioned in paragraph (aaa), (aab) or (aa)”.

**24 Application of amendments**

The amendments made by this Schedule apply in relation to a regulated television device that:

- (a) is manufactured on or after the day that is 18 months after the commencement of this Schedule; and
- (b) is supplied on or after that day.

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## Schedule 2—Anti-siphoning

### *Broadcasting Services Act 1992*

#### 1 After paragraph 3(1)(ea)

Insert:

- (eb) to promote the free availability to audiences throughout Australia of television coverage of events of national importance and cultural significance; and

#### 2 Subsection 6(1) (definition of *anti-siphoning event*)

Omit “a notice under subsection 115(1). For this purpose, disregard subsections 115(1AA) and (1B)”, substitute “the anti-siphoning list. For this purpose, disregard subsections 146V(2) and (4)”.

#### 3 Section 115

Repeal the section.

#### 4 After Part 10A

Insert:

## Part 10B—Anti-siphoning scheme

### Division 1—Introduction

#### 146S Simplified outline

- This Part sets up a scheme to promote the free availability to audiences throughout Australia of television coverage of events of national importance and cultural significance.
- The Minister may, by legislative instrument (the *anti-siphoning list*), specify the events that are covered by this Part. If an event is specified in the list, there is a period in which media content service providers (other than national broadcasters and certain Australian commercial television

broadcasting licensees) are prohibited from acquiring the rights to televise or otherwise provide coverage of a whole or a part of the event. This ensures that national broadcasters and certain Australian commercial television broadcasting licensees have the opportunity to acquire the rights and televise the event for free to the general public.

- If the rights to an event are not acquired within the relevant period, the event is automatically removed from the anti-siphoning list, unless the Minister makes another legislative instrument declaring that the event is to remain in the list.
- The Minister also has a general power to remove events from the list if the Minister considers it appropriate to do so (for example, if the Minister thinks that doing so is likely to have the effect that the event will be televised to a greater extent than if it remained in the list).
- The ACMA has information gathering and enforcement functions and powers in relation to this Part.
- There is to be a review of the operation of this Part.

## 146T Definitions

In this Part:

***anti-siphoning list*** means the instrument made under subsection 146V(1).

***audiovisual content*** includes television programs.

***Australia***, when used in a geographical sense, includes all the external Territories.

***coverage*** means coverage that involves audiovisual content or moving visual content.

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

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**media content service** has the meaning given by section 146U.

**media content service provider** means a person who provides a media content service.

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

### **146U Media content service**

- (1) For the purposes of this Part, **media content service** means any of the following:
- (a) a broadcasting service;
  - (b) an online information service (for example, a dial-up information service);
  - (c) an online entertainment service (for example, a video on demand service or an interactive computer game service);
  - (d) any other online service that allows end-users to access content using a listed carriage service;
  - (e) a specified service that the Minister determines, under subsection (2), is a media content service;
- but does not include a specified service that the Minister determines, under subsection (3), is not a media content service.

- (2) For the purposes of paragraph (1)(e), the Minister may, by legislative instrument, determine that a specified service is a **media content service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

- (3) For the purposes of subsection (1), the Minister may, by legislative instrument, determine that a specified service is not a **media content service**.

Note: For specification by class, see subsection 13(3) of the *Legislation Act 2003*.

## Division 2—Anti-siphoning rules

### 146V Minister may protect the free availability of certain types of programs

- (1) The Minister may, by legislative instrument (the *anti-siphoning list*), specify an event, or events of a kind, the televising of which should, in the opinion of the Minister, be available free to the general public.

Note: An instrument made under this subsection can be varied or revoked under subsection 33(3) of the *Acts Interpretation Act 1901*.

#### *Delisting of events before the event occurs*

- (2) An event specified in the anti-siphoning list is taken to be removed from the list 4,368 hours before the start of the event (the *delisting time*), unless:
  - (a) the Minister, by legislative instrument, declares that the event continues to be specified in the list; and
  - (b) does so before the delisting time.
- (3) The Minister may make a declaration under subsection (2) only if the Minister is satisfied that at least one commercial television broadcasting licensee or national broadcaster has not had a reasonable opportunity to acquire the right to televise the event concerned.

#### *Delisting of events after the event occurs*

- (4) An event specified in the anti-siphoning list is taken to be removed from the list 168 hours after the end of the event (the *delisting time*), unless:
  - (a) the Minister, by legislative instrument, declares that the event continues to be specified in the list after the delisting time; and
  - (b) does so before the delisting time.



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*General power to delist events*

- (5) The Minister may, by legislative instrument, amend the anti-siphoning list to remove an event if, in the Minister's opinion, it is appropriate in all the circumstances.

Examples: The following are examples of situations in which the Minister might exercise the power to remove an event from the anti-siphoning list:

- (a) The national broadcasters and commercial television broadcasting licensees have had a real opportunity to acquire the right to televise an event, but none of them has acquired the right within a reasonable time. The Minister is of the opinion that removing the event from the list is likely to have the effect that the event will be televised to a greater extent than if it remained in the list;
- (b) A commercial television broadcasting licensee has acquired the right to televise an event, but has failed to televise the event or has televised only an unreasonably small proportion of the event. The Minister is of the opinion that removing that event, or another event, from the list is likely to have the effect that the removed event will be televised to a greater extent than it would be if it remained in the list.

**146W Events in anti-siphoning list should be televised for free**

- (1) This section applies to a media content service provider, other than:
  - (a) a commercial television broadcasting licensee (other than a licensee who holds a licence allocated under section 38C or subsection 40(1)); or
  - (b) a national broadcaster.
- (2) A media content service provider must not acquire the right to televise or otherwise provide coverage of the whole or a part of an event that is included in the anti-siphoning list to end-users in Australia unless:
  - (a) a national broadcaster has the right to televise the whole or a part of the event on any of its broadcasting services; or
  - (b) both of the following apply:
    - (i) one or more commercial television broadcasting licensees (other than licensees who hold licences allocated under section 38C or subsection 40(1)) have the right to televise the whole or a part of the event;

- (ii) the television broadcasting services of that licensee, or of those licensees, cover a total of more than 50% of the Australian population.
- (3) Subsection (2) is a civil penalty provision.

*Exception*

- (4) The Minister may, by legislative instrument, determine that subsection (2) does not apply to a specified media content service provider if the Minister is satisfied that it is appropriate to do so.
- (5) In making such a determination, the Minister may have regard to the following:
  - (a) the object in paragraph 3(1)(eb);
  - (b) the extent to which the application of subsection (2) of this section to the provider would, in the circumstances, impose an undue burden or restriction on the provider;
  - (c) any other matter the Minister considers relevant.

**146X Extraterritorial application**

This Part extends to acts, omissions, matters and things outside Australia.

**146Y Remedial directions**

*Scope*

- (1) This section applies if the ACMA is satisfied that a media content service provider has contravened, or is contravening, subsection 146W(2).

*Remedial directions*

- (2) The ACMA may give the person a written direction requiring the provider to take specified action directed towards ensuring that, in the future:
  - (a) the provider does not contravene subsection 146W(2); or
  - (b) the provider is unlikely to contravene that subsection.

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- (3) The following are examples of the kinds of direction that may be given to a media content service provider under subsection (2):
- (a) a direction that the provider implement effective administrative systems for monitoring compliance with subsection 146W(2);
  - (b) a direction that the provider implement a system designed to give the provider's employees, agents and contractors a reasonable knowledge and understanding of the requirements of subsection 146W(2), in so far as those requirements affect the employees, agents or contractors concerned.
- (4) A person must not contravene a direction under subsection (2).

*Civil penalty provision*

- (5) Subsection (4) is a civil penalty provision.

### **Division 3—Information gathering**

#### **146Z ACMA may obtain information and documents**

*Scope*

- (1) This section applies to a person who:
- (a) is a media content service provider; or
  - (b) is a related body corporate of a media content service provider;
- if:
- (c) the ACMA has reason to believe that the person has information or a document that is relevant to:
    - (i) monitoring compliance with this Part; or
    - (ii) the performance of the ACMA's functions under paragraph 10(1)(a), (e), (n) or (q) of the *Australian Communications and Media Authority Act 2005*.

*ACMA may require information or documents*

- (2) The ACMA may, by written notice given to the person, require the person to do any of the following:

- (a) to give to the ACMA, within the period and in the manner and form specified in the notice, any such information;
  - (b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents;
  - (c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies.
- (3) A person must comply with a requirement under subsection (2).

*Civil penalty provision*

- (4) Subsection (3) is a civil penalty provision.
- (5) A person who contravenes subsection (3) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Designated infringement notice provision*

- (6) Subsection (3) is a designated infringement notice provision.

*Requirements for notice*

- (7) A period specified under paragraph (2)(a), (b) or (c) must not be shorter than 14 days after the notice is given.

**146ZA Copies of documents**

- (1) The ACMA may inspect a document or copy produced under this Part and may make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 146Z(2)(c).

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## Division 4—Review of this Part

### 146ZB Review of this Part

- (1) The Minister must cause a review to be conducted of the operation, effectiveness and implications of:
  - (a) this Part; and
  - (b) the anti-siphoning list.
- (2) The review must commence as soon as practicable after the end of the 2 year period starting on the day on which this Part commences.

#### *Report*

- (3) The persons undertaking the review must give the Minister a written report of the review. The report must not include information that is commercially sensitive.
- (4) The Minister must cause copies of the report to be tabled in each House of the Parliament within 15 sittings days of that House after receiving the report.

### 146ZC Minister may request report

- (1) The Minister may, by written notice given to the ACMA, request the ACMA to:
  - (a) prepare a report about any of the following:
    - (i) developments in the market for rights to provide coverage of sporting events in Australia;
    - (ii) trends in the provision and consumption of coverage of sporting events by audiences in Australia;
    - (iii) international developments in the regulation of the rights to provide coverage of sporting events and in the provision and consumption of such coverage;
    - (iv) technological developments that relate to media content services in Australia; and
  - (b) give the report to the Minister.
- (2) The ACMA must comply with a request under subsection (1).

## 5 After Division 1 of Part 11

Insert:

### Division 1A—Complaints relating to anti-siphoning

#### 149A Complaints relating to anti-siphoning

If a person believes that a media content service provider to whom section 146W applies has breached the civil penalty provision in subsection (2) of that section, the person may make a complaint to the ACMA about the matter.

Note: Section 146W deals with anti-siphoning restrictions in relation to persons who provide media content services, other than commercial television broadcasting licensees and national broadcasters.

#### 149B Investigation of complaints by the ACMA

The ACMA may investigate the complaint if the ACMA thinks that it is desirable to do so.

## 6 Subsection 204(1) (after table item dealing with Subsection 146D(4))

Insert:

To give a remedial direction	Subsection 146Y(2)	The person to whom the direction was given
Variation of a remedial direction	Subsection 146Y(2)	The person to whom the direction was given
Refusal to revoke a remedial direction	Subsection 146Y(2)	The person to whom the direction was given

## 7 Before subsection 205F(5A)

Insert:

(5AE) The pecuniary penalty payable by a person in respect of a contravention of subsection 146W(2) must not exceed:

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- 
- (a) if the person is a body corporate—whichever of the following is greater:
    - (i) 10,000 penalty units;
    - (ii) if the Court can determine the value of the benefit that the body corporate, and any body corporate related to the body corporate, has obtained directly or indirectly and that is reasonably attributable to the contravention—3 times the value of that benefit;
    - (iii) if the Court cannot determine the value of that benefit—2% of the annual turnover of the body corporate during the period (the *turnover period*) of 12 months ending at the end of the month in which the contravention occurred; or
  - (b) if the person is not a body corporate—2,000 penalty units.
- (5AF) The pecuniary penalty payable by a person in respect of a contravention of subsection 146Y(4) must not exceed:
- (a) if the person is a body corporate—5,000 penalty units; or
  - (b) if the person is not a body corporate—1,000 penalty units.
- (5AG) The pecuniary penalty payable by a person in respect of:
- (a) a contravention of subsection 146Z(3); or
  - (b) a contravention of section 205E that relates to a contravention of subsection 146Z(3);
- must not exceed:
- (c) if the person is a body corporate—40 penalty units; and
  - (d) if the person is not a body corporate—30 penalty units.

## **8 After paragraph 205ZA(1)(aab)**

Insert:

- (aac) if the infringement notice relates to subsection 146Z(3) and the person is a body corporate—30 penalty units; or

## **9 Paragraph 205ZA(1)(a)**

Omit “paragraph (aaa), (aab) or (aa)”, substitute “paragraph (aaa), (aab), (aac) or (aa)”.

**10 Paragraph 10(1)(e) of Schedule 2**

Repeal the paragraph.

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*[Minister's second reading speech made in—  
House of Representatives on 29 November 2023  
Senate on 4 July 2024]*

(167/23)

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