

EXPLANATORY STATEMENT

Broadcasting Services Act 1992

Determination under paragraph (c) of the definition of “broadcasting service” (No. 1 of 2000)

Issued by the authority of the Minister for Communications,
Information Technology and the Arts

The *Broadcasting Services Act 1992* (the Act) provides for the regulation of broadcasting services and certain other electronic communications services. Division 1 of Part 10 of the Act creates offences for a person to provide certain kinds of broadcasting service unless the person has a licence to provide that service.

The term “broadcasting service” is defined in subsection 6(1) of the Act to mean:

“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.”

Subsection 6(2) provides that a determination under paragraph (c) of the definition of “broadcasting service” is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

The Minister for Communications, Information Technology and the Arts announced on 21 July 2000 that, following a review, the government had decided that Internet audio and video streaming should not be regarded as a broadcasting service for the purposes of the Act. The review was necessary because of a lack of legal certainty as to whether a streaming service that makes programs available on the Internet falls within the terms of paragraph (b) of the definition.

The purpose of the accompanying determination under paragraph (c) of the definition of “broadcasting service” in subsection 6(1) of the Act is to make it clear that audio and video streaming over the Internet are not broadcasting services.

The determination provides that a service that makes available television programs or radio programs using the Internet (other than a service that delivers television programs and radio programs using the broadcasting services bands) does not fall within the definition of a broadcasting service. The determination includes a service that uses the Internet, even if part of the means of delivery of the service is technology which may not clearly be part of the Internet, so long as the service does not deliver

programs using the broadcasting services bands. For example, the determination will cover services which enable users to access material from the Internet using a wireless application protocol device such as a mobile phone, whether or not the wireless application protocol is itself part of the Internet.

The exclusion from the exemption for a service that delivers programs using the broadcasting services bands is necessary to prevent the exemption being exploited to deliver a *de facto* broadcasting service using those bands. “Broadcasting services bands” is defined in subsection 6(1) of the Act to mean that part of the radiofrequency spectrum that is designated under section 31 of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes and is assigned by the Minister to the Australian Broadcasting Authority for planning.

The accompanying determination commences on gazettal.