

1996-97-98

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*(As read a third time)*

**Television Broadcasting Services (Digital  
Conversion) Bill 1998**

**No.     , 1998**

**A Bill for an Act relating to digital television  
broadcasting, and for other purposes**



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1 This Bill originated in the House of  
2 Representatives; and, having this day passed,  
3 is now ready for presentation to the Senate  
4 for its concurrence.

5 I. C. HARRIS  
6 *Clerk of the House of Representatives*

7 House of Representatives  
8 3 June 1998  
9  
10

11 **A Bill for an Act relating to digital television**  
12 **broadcasting, and for other purposes**

13 The Parliament of Australia enacts:

14 **1 Short title**

15 This Act may be cited as the *Television Broadcasting Services*  
16 *(Digital Conversion) Act 1998*.

17 **2 Commencement**

18 This Act commences on the day on which it receives the Royal  
19 Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—Amendment of the Broadcasting Services Act 1992**

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5

### **1 Section 28**

6

Omit “the completion of the review referred to in section 215”,  
substitute “31 December 2008”.

7

8

### **2 Subsection 34(1)**

9

Omit “may decide”, substitute “may, by written instrument, determine”.

10

### **3 After paragraph 34(1)(f)**

11

Insert:

12

(fa) for the transmission of datacasting services on a temporary  
basis; or

13

14

### **4 Subsection 34(2)**

15

Omit “the decision”, substitute “a determination under subsection (1)”.

16

### **5 At the end of section 34**

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Add:

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(3) The ABA may, by written instrument, determine that a part or  
parts of the broadcasting services bands spectrum is or are  
available for allocation for the purposes of the transmission of  
datacasting services.

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(4) In making a determination under subsection (3), the ABA is to  
have regard to:

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(a) the possible future demand for the use of that part of the  
radiofrequency spectrum for the provision of commercial  
television broadcasting services; and

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(b) such other matters as the ABA considers relevant.

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(5) In this section:

1                    *datacasting service* has the same meaning as in Schedule 4.

2        **6 Transitional—section 34 of the *Broadcasting Services Act***  
3                    **1992**

4        (1)        This item applies to a decision of the ABA under subsection 34(1) of  
5                    the *Broadcasting Services Act 1992* if the decision was in effect  
6                    immediately before the commencement of this item.

7        (2)        The decision has effect as if it had been made in the form of a written  
8                    determination under subsection 34(1) of that Act immediately after the  
9                    commencement of this item.

10       **7 Section 92F**

11                    Omit “decision”, substitute “determination”.

12       **8 Section 215**

13                    Repeal the section.

14       **9 After section 216**

15                    Insert:

16       **216A Schedule 4 (digital television broadcasting)**

17                    Schedule 4 has effect.

18       **10 At the end of subclause 7(1) of Schedule 2**

19                    Add:

20                    (k) the licensee will comply with the requirements of the  
21                    commercial television conversion scheme in force under  
22                    clause 6 of Schedule 4 other than either of the following  
23                    requirements:

24                    (i) a requirement covered by paragraph 6(3)(a) or (b) of  
25                    that Schedule;

26                    (ii) a requirement of Part B of the scheme to commence  
27                    digital transmission;

28                    (l) the licensee will comply with so much of an implementation  
29                    plan:

- 1 (i) given by the licensee to the ABA in accordance with the  
2 commercial television conversion scheme in force under  
3 clause 6 of Schedule 4; and  
4 (ii) approved by the ABA;  
5 as does not relate to either of the following requirements:  
6 (iii) a requirement covered by paragraph 6(3)(a) or (b) of  
7 that Schedule;  
8 (iv) a requirement of Part B of the commercial television  
9 conversion scheme to commence digital transmission;
- 10 (m) if there is a simulcast period for the licence area of the  
11 licence—the licensee will not broadcast a television program  
12 in digital mode during the simulcast period for the licence  
13 area unless:  
14 (i) the program is broadcast simultaneously by the licensee  
15 in analog mode in that area; or  
16 (ii) under the regulations, the program is treated as  
17 incidental and directly linked to a program that is  
18 broadcast simultaneously by the licensee in both analog  
19 mode and digital mode in that area;
- 20 (n) the licensee will comply with standards applicable to the  
21 licence under clause 37 of Schedule 4 (which deals with  
22 digital broadcasting format);
- 23 (o) the licensee will comply with standards applicable to the  
24 licence under clause 38 of Schedule 4 (which deals with  
25 captioning of television programs for the deaf and hearing  
26 impaired);
- 27 (p) if the licensee holds a transmitter licence under section 102  
28 or 102A of the *Radiocommunications Act 1992* that  
29 authorises the operation of a transmitter—the licensee will  
30 not operate, or permit the operation of, that transmitter to  
31 transmit in digital mode:  
32 (i) a commercial broadcasting service that provides radio  
33 programs; or  
34 (ii) a subscription radio broadcasting service; or  
35 (iii) a subscription television broadcasting service; or  
36 (iv) a subscription radio narrowcasting service; or  
37 (v) a subscription television narrowcasting service; or
-

- 1 (vi) an open narrowcasting radio service; or  
2 (vii) an open narrowcasting television service.

3 **11 At the end of clause 7 of Schedule 2**

4 Add:

- 5 (3) An expression used in paragraph (1)(m) or (p) and in Schedule 4  
6 has the same meaning in that paragraph as it has in that Schedule.  
7 (4) Subclause 6(8) of Schedule 4 applies to paragraph (1)(m) of this  
8 clause in a corresponding way to the way in which it applies to  
9 paragraph 6(3)(c) of Schedule 4 and subclause 6(7) of Schedule 4.

10 **12 At the end of the Act**

11 Add:

12 **Schedule 4—Digital television broadcasting**

13 Note: See section 216A.

14 **Part 1—Introduction**

15

16 **1 Simplified outline**

17 The following is a simplified outline of this Schedule:

- 18 • The ABA is to formulate schemes for the conversion, over  
19 time, of the transmission of television broadcasting services  
20 from analog mode to digital mode.  
21 • There is to be a simulcast period throughout which  
22 broadcasters are to transmit their television programs in both  
23 analog mode and digital mode.  
24 • At the end of the simulcast period, analog transmissions are to  
25 cease.

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- Broadcasters must meet standards relating to High Definition Television (HDTV) format transmission of television programs in digital mode.
- Broadcasters must meet standards relating to captioning of television programs for the deaf and hearing impaired.
- Broadcasters will be allowed to use spare transmission capacity on digital transmission channels to provide datacasting services.
- Owners and operators of broadcasting transmission towers must give digital broadcasters and datacasters access to the towers for the purposes of installing or maintaining digital transmitters.
- There are to be reviews before 1 January 2001 and 31 December 2005 of certain elements of the digital television regulatory regime.

16 **2 Definitions**

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In this Schedule, unless the contrary intention appears:

*AAT* means the Administrative Appeals Tribunal.

*ACA* means the Australian Communications Authority.

*broadcasting transmission tower* means:

- (a) a tower; or
- (b) a pole; or
- (c) a mast; or
- (d) a similar structure;

used to supply a broadcasting service by means of radiocommunications using the broadcasting services bands.

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

1                    **commercial television conversion scheme** means a scheme under  
2                    clause 6.

3                    **coverage area** means:

- 4                    (a) a metropolitan coverage area; or  
5                    (b) a regional coverage area.

6                    **datacasting service** means a service (other than a broadcasting  
7                    service) that delivers information (whether in the form of data,  
8                    text, speech, images or in any other form) to persons having  
9                    equipment appropriate for receiving that information, where:

- 10                   (a) the delivery of the service uses the broadcasting services  
11                   bands; and  
12                   (b) the service is not of a kind specified in the regulations.

13                   **licence area** means a licence area for a commercial television  
14                   broadcasting licence.

15                   **metropolitan coverage area** means an area that corresponds to a  
16                   metropolitan licence area.

17                   **metropolitan licence area** means a licence area in which is  
18                   situated the General Post Office of the capital city of:

- 19                   (a) New South Wales; or  
20                   (b) Victoria; or  
21                   (c) Queensland; or  
22                   (d) Western Australia; or  
23                   (e) South Australia.

24                   **national broadcasting service** does not include a broadcasting  
25                   service provided under the *Parliamentary Proceedings*  
26                   *Broadcasting Act 1946*.

27                   **national television broadcasting service** means a national  
28                   broadcasting service that provides television programs.

29                   **national television conversion scheme** means a scheme under  
30                   clause 19.

1                    **radiocommunication** has the same meaning as in the  
2                    *Radiocommunications Act 1992*.

3                    **regional coverage area** means an area that corresponds to a  
4                    regional licence area.

5                    **regional licence area** means a licence area that is not a  
6                    metropolitan licence area.

7                    **remote coverage area** means an area that corresponds to a remote  
8                    licence area.

9                    **remote licence area** has the meaning given by clause 5.

10                  **simulcast period:**

11                  (a) in relation to a commercial television broadcasting service  
12                  where the licence area concerned is not a remote licence  
13                  area—has the meaning given by paragraph 6(3)(c) of this  
14                  Schedule; and

15                  (b) in relation to a commercial television broadcasting service  
16                  where the licence area concerned is a remote licence area—  
17                  has the meaning given by subclause 6(7) of this Schedule;  
18                  and

19                  (c) in relation to a national television broadcasting service where  
20                  the coverage area concerned is not a remote coverage area—  
21                  has the meaning given by paragraph 19(3)(c) of this  
22                  Schedule; and

23                  (d) in relation to a national television broadcasting service where  
24                  the coverage area concerned is a remote coverage area—has  
25                  the meaning given by subclause 19(7) of this Schedule.

26                  **transmitter licence** has the same meaning as in the  
27                  *Radiocommunications Act 1992*.

### 28                  **3 Analog mode**

29                  For the purposes of this Schedule, a program or service is  
30                  broadcast or transmitted in **analog mode** if the program or service  
31                  is broadcast or transmitted using an analog modulation technique.

1       **4 Digital mode**

2                     For the purposes of this Schedule, a program or service is  
3                     broadcast or transmitted in *digital mode* if the program or service  
4                     is broadcast or transmitted using a digital modulation technique.

5       **5 Remote licence area**

6                     (1) The ABA may, by writing, determine that a specified licence area  
7                     is a *remote licence area* for the purposes of this Schedule.

8                     (2) A determination under this clause has effect accordingly.

9                     (3) A determination under this clause is a disallowable instrument for  
10                    the purposes of section 46A of the *Acts Interpretation Act 1901*.

11       **Part 2—Commercial television**

12

13       **6 Commercial television conversion scheme**

14                     (1) As soon as practicable after the commencement of this clause, the  
15                     ABA must, by writing, formulate a scheme (the *commercial*  
16                     *television conversion scheme*) for the conversion, over time, of the  
17                     transmission of commercial television broadcasting services from  
18                     analog mode to digital mode.

19                     (2) The commercial television conversion scheme is to be divided into  
20                     the following Parts:

21                     (a) Part A, which is to deal with licence areas that are not remote  
22                     licence areas;

23                     (b) Part B, which is to deal with remote licence areas.

24                     *Policy objectives*

25                     (3) Part A of the commercial television conversion scheme must be  
26                     directed towards ensuring the achievement of the following policy  
27                     objectives:

28                     (a) the objective that each holder of a commercial television  
29                     broadcasting licence for a metropolitan licence area is

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- 1 required to commence transmitting the commercial television  
2 broadcasting service concerned in digital mode in that area  
3 on 1 January 2001;
- 4 (b) the objective that each holder of a commercial television  
5 broadcasting licence for a regional licence area is required to  
6 commence transmitting the commercial television  
7 broadcasting service concerned in digital mode in that area  
8 by such date during the period:
- 9 (i) beginning on 1 January 2001; and  
10 (ii) ending immediately before 1 January 2004;  
11 as the ABA determines under the scheme;
- 12 (c) the objective that there should be a transitional period for a  
13 licence area, that is:
- 14 (i) to be known as the *simulcast period*; and  
15 (ii) to run for 8 years or for such longer period as is  
16 prescribed in relation to that area; and  
17 (iii) in the case of a metropolitan licence area—to begin on 1  
18 January 2001; and  
19 (iv) in the case of a regional licence area—to begin on the  
20 date determined in relation to that area in accordance  
21 with paragraph (b);
- 22 throughout which the holder of a commercial television  
23 broadcasting licence for that area is required to transmit  
24 simultaneously the commercial television broadcasting  
25 service concerned in both analog mode and digital mode in  
26 that area;
- 27 (d) the objective that, throughout the simulcast period for a  
28 licence area, the holder of a commercial television  
29 broadcasting licence for that area should be authorised, under  
30 one or more transmitter licences, to use one or more  
31 additional channels to transmit the commercial television  
32 broadcasting service concerned in digital mode in that area;
- 33 (e) the objective that the additional channels should occupy the  
34 same amount of bandwidth as the channels used by the  
35 holder of the commercial television broadcasting licence to  
36 transmit the commercial television broadcasting service  
37 concerned in analog mode in that area;
-

- 1 (f) the objective that, as soon as is practicable after the start of  
2 the simulcast period for a licence area, and throughout the  
3 remainder of that period, the transmission of a commercial  
4 television broadcasting service in digital mode in that area  
5 should achieve the same level of coverage and potential  
6 reception quality as is achieved by the transmission of that  
7 service in analog mode in that area;
- 8 (g) the objective that, during the simulcast period for a licence  
9 area, there should, as far as is practicable, be co-location of:
- 10 (i) transmitters used by the holder of a commercial  
11 television broadcasting licence for that area to transmit  
12 the commercial television broadcasting service  
13 concerned in digital mode in that area; and
- 14 (ii) transmitters used by the holder to transmit that service  
15 in analog mode in that area;
- 16 (h) the objective that, at the end of the simulcast period for a  
17 licence area, all transmissions of commercial television  
18 broadcasting services in analog mode in that area are to cease  
19 and that each holder of a commercial television broadcasting  
20 licence for that area is to either:
- 21 (i) continue to transmit the commercial television  
22 broadcasting service concerned in digital mode in that  
23 area using the additional channels that were used for  
24 digital transmission during the simulcast period and  
25 surrender any transmitter licence that authorised analog  
26 transmission of that service in that area during the  
27 simulcast period; or
- 28 (ii) transmit the commercial television broadcasting service  
29 concerned in digital mode in that area using the  
30 channels that were used during the simulcast period to  
31 transmit that service in analog mode and surrender any  
32 transmitter licence that authorised digital transmission  
33 of that service on the additional channels in that area  
34 during the simulcast period;
- 35 (j) the objective that, after the end of the simulcast period for a  
36 licence area, the transmission of a commercial television  
37 broadcasting service in digital mode in that area should  
38 achieve the same level of coverage and potential reception
-

- 1 quality as was achieved by the transmission of that service in  
2 analog mode in that area immediately before the end of that  
3 period;
- 4 (k) the objective that holders of commercial television  
5 broadcasting licences be permitted to use any spare  
6 transmission capacity that is available on the digital  
7 transmission channels for the purpose of the transmission of  
8 datacasting services;
- 9 (l) the objective that the ABA is to consult holders of  
10 commercial television broadcasting licences about the  
11 implementation of the scheme;
- 12 (m) the objective that, if the implementation of the scheme  
13 affects particular broadcasting transmission towers, the ABA  
14 is to consult the owners and operators of those towers.
- 15 (4) Subclause (3) does not prevent the commercial television  
16 conversion scheme from allowing the holder of a commercial  
17 television broadcasting licence for a regional licence area to  
18 transmit the commercial television broadcasting service concerned  
19 in digital mode in that area during the whole or a part of the  
20 period:
- 21 (a) beginning on 1 January 2001; and  
22 (b) ending immediately before the start of the simulcast period  
23 for that area;
- 24 so long as that transmission complies with such requirements as  
25 are ascertained in accordance with the scheme.
- 26 (5) Subclause (3) does not prevent Part A of the commercial television  
27 conversion scheme from allowing the holder of a commercial  
28 television broadcasting licence for a licence area to transmit, on a  
29 test basis, the commercial television broadcasting service  
30 concerned in digital mode in that area before the start of the  
31 simulcast period for that area, so long as that transmission:
- 32 (a) complies with such requirements as are ascertained in  
33 accordance with that Part of the scheme; and  
34 (b) occurs during a period ascertained in accordance with that  
35 Part of the scheme.

- 1 (6) The objective mentioned in paragraph (3)(g) (which deals with  
2 co-location of transmitters) does not prevent Part A of the  
3 commercial television conversion scheme from making provision  
4 for the location of digital transmitters otherwise than as mentioned  
5 in that paragraph, where the ABA is satisfied that an alternative  
6 location is appropriate having regard to:
- 7 (a) the remaining objectives set out in subclause (3); and
  - 8 (b) the costs that are likely to be incurred by the licensee  
9 concerned; and
  - 10 (c) such other matters (if any) as the ABA considers relevant.

11 *Remote licence areas—simulcast period*

- 12 (7) Part B of the commercial television conversion scheme may make  
13 provision for a transitional period for a specified remote licence  
14 area, that is to be known as the *simulcast period*, throughout which  
15 the holder of a commercial television broadcasting licence for that  
16 area is required to transmit simultaneously the commercial  
17 television broadcasting service concerned in both analog mode and  
18 digital mode in that area.

19 *Simulcasting*

- 20 (8) In determining, for the purposes of paragraph (3)(c) and subclause  
21 (7), whether the holder of a commercial television broadcasting  
22 licence transmits simultaneously the commercial television  
23 broadcasting service concerned in both analog mode and digital  
24 mode:
- 25 (a) if a relevant determination is in force under subclause (9)—  
26 ignore any advertising or sponsorship matter covered by the  
27 determination, so long as the licensee complies with such  
28 conditions (if any) as are specified in the determination; and
  - 29 (b) if a relevant determination is in force under subclause (10)—  
30 ignore any television programs covered by the determination,  
31 so long as the licensee complies with such conditions (if any)  
32 as are specified in the determination.
- 33 (9) The ABA may, by writing, determine that paragraph (8)(a) applies  
34 to specified advertising or sponsorship matter transmitted by a
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1 specified commercial television broadcasting licensee during a  
2 specified period. The specified advertising or sponsorship matter  
3 may consist of all advertising or sponsorship matter transmitted by  
4 the licensee concerned. The specified period may consist of the  
5 simulcast period for the licence area concerned.

6 Note: For specification by class, see subsection 46(2) of the *Acts*  
7 *Interpretation Act 1901*.

8 (10) The ABA may, by writing, determine that paragraph (8)(b) applies  
9 to specified television programs transmitted by a specified  
10 commercial television broadcasting licensee during a specified  
11 period.

12 Note: For specification by class, see subsection 46(2) of the *Acts*  
13 *Interpretation Act 1901*.

14 (11) The ABA must not make a determination under subclause (9) or  
15 (10) unless the ABA is satisfied that, if it were assumed that the  
16 determination were made, the version of the commercial television  
17 broadcasting service transmitted in digital mode will be  
18 substantially the same as the version of the service transmitted in  
19 analog mode.

20 (12) A determination under subclause (9) or (10) is a disallowable  
21 instrument for the purposes of section 46A of the *Acts*  
22 *Interpretation Act 1901*.

23 (13) A reference in this clause to ***advertising or sponsorship matter*** is a  
24 reference to advertising or sponsorship matter (whether or not of a  
25 commercial kind).

## 26 **7 Scheme may confer administrative powers on the ABA**

27 The commercial television conversion scheme may make provision  
28 with respect to a matter by conferring on the ABA a power to  
29 make a decision of an administrative character.

1 **8 Transmitter licences**

2 *Grant of additional spectrum for digital transmission*

- 3 (1) The commercial television conversion scheme must make  
4 provision for requiring the ACA to issue transmitter licences  
5 authorising transmissions of commercial television broadcasting  
6 services in digital mode.

7 *Return of spectrum if digital transmission does not begin*

- 8 (2) Part A of the commercial television conversion scheme must make  
9 provision for requiring the holder of a commercial television  
10 broadcasting licence to surrender one or more transmitter licences  
11 authorising digital transmission if:  
12 (a) the holder does not commence digital transmission as  
13 mentioned in paragraph 6(3)(a) or (b) of this Schedule; and  
14 (b) the holder does not satisfy the ABA that there are exceptional  
15 circumstances.

16 *Return of spectrum if digital transmission does not continue*  
17 *throughout the simulcast period*

- 18 (3) Part A of the commercial television conversion scheme must make  
19 provision for requiring the holder of a commercial television  
20 broadcasting licence to surrender one or more transmitter licences  
21 authorising digital transmission if:  
22 (a) the holder commences digital transmission as mentioned in  
23 paragraph 6(3)(a) or (b) of this Schedule; and  
24 (b) the holder ceases digital transmission during the simulcast  
25 period for the licence area concerned; and  
26 (c) under the scheme, the ABA gives the holder a written  
27 direction to:  
28 (i) resume digital transmission in that area within the  
29 period specified in the direction (being a period that is  
30 not longer than one month); and  
31 (ii) continue digital transmission throughout the simulcast  
32 period for that area; and

- 1 (d) the holder does not comply with a direction referred to in  
2 paragraph (c); and  
3 (e) the holder does not satisfy the ABA that there are exceptional  
4 circumstances.

5 *Return of spectrum at end of simulcast period*

- 6 (4) Part A of the commercial television conversion scheme must make  
7 provision for requiring the holder of a commercial television  
8 broadcasting licence to whom subparagraph 6(3)(h)(i) of this  
9 Schedule applies to surrender the transmitter licence or licences as  
10 mentioned in that subparagraph.
- 11 (5) Part A of the commercial television conversion scheme must make  
12 provision for requiring the holder of a commercial television  
13 broadcasting licence to whom subparagraph 6(3)(h)(ii) of this  
14 Schedule applies to surrender the transmitter licence or licences as  
15 mentioned in that subparagraph.
- 16 (6) Part A of the commercial television conversion scheme must  
17 provide that, if the holder of a commercial television broadcasting  
18 licence for a licence area fails to notify the ABA, at least 6 months  
19 before the end of the simulcast period for that area, whether the  
20 holder intends to pursue the outcome referred to in subparagraph  
21 6(3)(h)(i) or (ii) of this Schedule, the holder is taken to have  
22 pursued the outcome referred to in subparagraph 6(3)(h)(i) of this  
23 Schedule.

24 *Return of spectrum if HDTV standards contravened*

- 25 (7) Part A of the commercial television conversion scheme must make  
26 provision for requiring the holder of a commercial television  
27 broadcasting licence for a licence area to surrender the transmitter  
28 licence or licences that authorised the transmission of the  
29 commercial television broadcasting service concerned in digital  
30 mode in that area if:  
31 (a) the holder contravenes a standard under subclause 37(1)  
32 (which deals with HDTV); and  
33 (b) under the scheme, the ABA gives the holder a written  
34 direction to comply with that standard within the period
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- 1 specified in the direction (being a period that is not longer  
2 than one month); and  
3 (c) the holder does not comply with a direction referred to in  
4 paragraph (b); and  
5 (d) the holder does not satisfy the ABA that there are exceptional  
6 circumstances.

- 7 (8) Subclause (7) does not prevent the commercial television  
8 conversion scheme from making provision for requiring the ACA  
9 to issue a transmitter licence to replace the licence that was  
10 surrendered as mentioned in that subclause. However, the amount  
11 of transmission capacity covered by the replacement licence must  
12 be less than the amount of transmission capacity covered by the  
13 surrendered licence.

14 *Variation of analog transmitter licence to allow digital*  
15 *transmission*

- 16 (9) Part A of the commercial television conversion scheme must make  
17 provision for requiring that, if subparagraph 6(3)(h)(ii) of this  
18 Schedule applies, the ACA must vary the conditions of the  
19 transmitter licence that authorised analog transmission of the  
20 commercial television broadcasting service concerned during the  
21 simulcast period so as to ensure that the licence authorises digital  
22 transmission of that service in the area concerned after the end of  
23 the simulcast period.

24 *Remote licence areas*

- 25 (10) Part B of the commercial television conversion scheme may make  
26 provision for requiring the holder of a commercial television  
27 broadcasting licence to surrender one or more transmitter licences  
28 authorising analog transmission or authorising digital transmission  
29 if the holder does not comply with a specified requirement of that  
30 Part of the scheme.  
31 (11) Part B of the commercial television conversion scheme may make  
32 provision for requiring the ACA to vary the conditions of a  
33 transmitter licence that authorised analog transmission of a  
34 commercial television broadcasting service in a remote licence
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1 area so as to ensure that the licence authorises digital transmission  
2 of that service in that area.

3 **9 Submission of implementation plans to the ABA**

4 (1) The commercial television conversion scheme must make  
5 provision for requiring holders of commercial television  
6 broadcasting licences to prepare, and submit to the ABA, one or  
7 more implementation plans relating to digital transmission, where  
8 the implementation plans are in accordance with the scheme.

9 (2) The commercial television conversion scheme may provide for  
10 variation of implementation plans submitted to the ABA by  
11 holders of commercial television broadcasting licences.

12 **10 Amendment of certain plans and guidelines**

13 (1) The commercial television conversion scheme may amend the  
14 frequency allotment plan or a licence area plan.

15 (2) The commercial television conversion scheme may amend  
16 technical planning guidelines in force under section 33.

17 (3) Subclauses (1) and (2) do not limit the ABA's powers under  
18 sections 25, 26 and 33.

19 **11 Reviews and reports**

20 The commercial television conversion scheme may provide for the  
21 ABA to conduct reviews, and report to the Minister, on specified  
22 matters.

23 **12 Ancillary or incidental provisions**

24 The commercial television conversion scheme may contain such  
25 ancillary or incidental provisions as the ABA considers  
26 appropriate.

1 **13 ABA to have regard to datacasting allocation power**

- 2 (1) In formulating or varying the commercial television conversion  
3 scheme, the ABA must have regard to its power under subsection  
4 34(3) (which deals with datacasting allocation).
- 5 (2) Subclause (1) does not limit the matters to which the ABA may  
6 have regard.

7 **14 ABA to have regard to special circumstances that apply in**  
8 **remote licence areas**

- 9 (1) In formulating or varying Part B of the commercial television  
10 conversion scheme, the ABA must have regard to the special  
11 circumstances that apply to the transmission of commercial  
12 television broadcasting services in remote licence areas.
- 13 (2) Subclause (1) does not limit the matters to which the ABA may  
14 have regard.

15 **15 Minister may give directions to the ABA**

- 16 (1) In formulating or varying the commercial television conversion  
17 scheme, the ABA must comply with any written directions given  
18 to it by the Minister under this subclause.
- 19 (2) A direction under subclause (1) may be of a general or specific  
20 nature.
- 21 (3) The Minister must arrange for a copy of a direction under  
22 subclause (1) to be published in the *Gazette* within 14 days after  
23 the direction is given.

24 **16 Variation of scheme**

- 25 (1) The commercial television conversion scheme may be varied, but  
26 not revoked, in accordance with subsection 33(3) of the *Acts*  
27 *Interpretation Act 1901*.

1                   (2) Subclause (1) does not limit the application of subsection 33(3) of  
2                   the *Acts Interpretation Act 1901* to other instruments under this  
3                   Act.

#### 4                   **17 Scheme to be a disallowable instrument**

5                   An instrument under subclause 6(1) is a disallowable instrument  
6                   for the purposes of section 46A of the *Acts Interpretation Act*  
7                   *1901*.

#### 8                   **18 Processes to be public**

9                   In formulating or varying the commercial television conversion  
10                  scheme, the ABA must make provision for:

- 11                  (a) public consultation; and
- 12                  (b) consultation with holders of commercial television  
13                  broadcasting licences; and
- 14                  (c) consultation with national broadcasters; and
- 15                  (d) consultation with the ACA; and
- 16                  (e) consultation with owners and operators of broadcasting  
17                  transmission towers.

### 18                  **Part 3—ABC/SBS television**

19

#### 20                  **19 National television conversion scheme**

21                  (1) As soon as practicable after the commencement of this clause, the  
22                  ABA must, by writing, formulate a scheme (the ***national television***  
23                  ***conversion scheme***) for the conversion, over time, of the  
24                  transmission of national television broadcasting services from  
25                  analog mode to digital mode.

26                  Note:        Under clause 32, the scheme does not take effect until approved by the  
27                  Minister.

28                  (2) The national television conversion scheme is to be divided into the  
29                  following Parts:

- 30                  (a) Part A, which is to deal with coverage areas that are not  
31                  remote coverage areas;
-

1 (b) Part B, which is to deal with remote coverage areas.

2 *Policy objectives*

3 (3) Part A of the national television conversion scheme must be  
4 directed towards ensuring the achievement of the following policy  
5 objectives:

6 (a) the objective that each national broadcaster is required to  
7 commence transmitting the national television broadcasting  
8 service concerned in digital mode in a metropolitan coverage  
9 area by such date as is ascertained in accordance with an  
10 implementation plan that was given by the broadcaster, and  
11 is in force, under clause 20;

12 (b) the objective that each national broadcaster is required to  
13 commence transmitting the national television broadcasting  
14 service concerned in digital mode in a regional coverage area  
15 by such date as is ascertained in relation to that area in  
16 accordance with an implementation plan that was given by  
17 the broadcaster, and is in force, under clause 20;

18 (c) the objective that there should be a transitional period for a  
19 coverage area, that is:

20 (i) to be known as the *simulcast period*; and

21 (ii) to begin on the date mentioned in whichever of  
22 paragraphs (a) and (b) is applicable; and

23 (iii) to end at the end of the simulcast period (within the  
24 meaning of paragraph 6(3)(c) of this Schedule) for the  
25 licence area that corresponds to that coverage area;

26 throughout which a national broadcaster is required to  
27 transmit simultaneously the national television broadcasting  
28 service concerned in both analog mode and digital mode in  
29 that coverage area;

30 (d) the objective that, throughout the simulcast period for a  
31 coverage area, each national broadcaster should be  
32 authorised, under one or more transmitter licences, to use one  
33 or more channels to transmit the national television  
34 broadcasting service concerned in digital mode in that area;

35 (e) the objective that the additional channels should occupy the  
36 same amount of bandwidth as the channels used by the

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- 1 national broadcaster to transmit the national television  
2 broadcasting service concerned in analog mode in that area;
- 3 (f) the objective that, as soon as is practicable after the start of  
4 the simulcast period for a coverage area, and throughout the  
5 remainder of that period, the transmission of a national  
6 television broadcasting service in digital mode in that area  
7 should achieve the same level of coverage and potential  
8 reception quality as is achieved by the transmission of that  
9 service in analog mode in that area;
- 10 (g) the objective that, during the simulcast period for a coverage  
11 area, there should, as far as is practicable, be co-location of:
- 12 (i) transmitters used by a national broadcaster to transmit  
13 the national television broadcasting service concerned  
14 in digital mode in that area; and
- 15 (ii) transmitters used by the national broadcaster to transmit  
16 that service in analog mode in that area;
- 17 (h) the objective that, at the end of the simulcast period for a  
18 coverage area, all transmissions of national television  
19 broadcasting services in analog mode in that area are to cease  
20 and that each national broadcaster is to either:
- 21 (i) continue to transmit the national television broadcasting  
22 service concerned in digital mode in that area using the  
23 additional channels that were used for digital  
24 transmission during the simulcast period and surrender  
25 any transmitter licence that authorised analog  
26 transmission of that service in that area during the  
27 simulcast period; or
- 28 (ii) transmit the national television broadcasting service  
29 concerned in digital mode using the channels that were  
30 used during the simulcast period to transmit that service  
31 in analog mode and surrender any transmitter licence  
32 that authorised digital transmission of that service in  
33 that area on the additional channels during the simulcast  
34 period;
- 35 (j) the objective that, after the end of the simulcast period for a  
36 coverage area, the transmission of a national television  
37 broadcasting service in digital mode in that area should  
38 achieve the same level of coverage and potential reception
-

- 1 quality as was achieved by the transmission of that service in  
2 analog mode in that area immediately before the end of that  
3 period;
- 4 (k) the objective that national broadcasters be permitted to use  
5 any spare transmission capacity that is available on the  
6 digital transmission channels for the purpose of the  
7 transmission of datacasting services;
- 8 (l) the objective that the ABA is to consult with national  
9 broadcasters about the implementation of the scheme;
- 10 (m) the objective that, if the implementation of the scheme  
11 affects particular broadcasting transmission towers, the ABA  
12 is to consult the owners and operators of those towers.
- 13 (4) Subclause (3) does not prevent the national television conversion  
14 scheme from allowing a national broadcaster to transmit the  
15 national television broadcasting service concerned in digital mode  
16 in a regional coverage area during the whole or a part of the  
17 period:
- 18 (a) beginning on 1 January 2001; and  
19 (b) ending immediately before the start of the simulcast period  
20 for that area;
- 21 so long as that transmission complies with such requirements as  
22 are ascertained in accordance with the scheme.
- 23 (5) Subclause (3) does not prevent Part A of the national television  
24 conversion scheme from allowing a national broadcaster to  
25 transmit, on a test basis, the national television broadcasting  
26 service concerned in digital mode in a coverage area before the  
27 start of the simulcast period for that area, so long as that  
28 transmission:
- 29 (a) complies with such requirements as are ascertained in  
30 accordance with that Part of the scheme; and  
31 (b) occurs during a period ascertained in accordance with that  
32 Part of the scheme.
- 33 (6) The objective mentioned in paragraph (3)(g) (which deals with  
34 co-location of transmitters) does not prevent Part A of the national  
35 television conversion scheme from making provision for the  
36 location of digital transmitters otherwise than as mentioned in that
-

1 paragraph, where the ABA is satisfied that an alternative location  
2 is appropriate having regard to:

- 3 (a) the remaining objectives set out in subclause (3); and
- 4 (b) the costs that are likely to be incurred by the national  
5 broadcaster concerned; and
- 6 (c) such other matters (if any) as the ABA considers relevant.

7 *Remote coverage areas—simulcast period*

- 8 (7) Part B of the national television conversion scheme may make  
9 provision for a transitional period for a specified remote coverage  
10 area, that is to be known as the *simulcast period*, throughout which  
11 a national broadcaster is required to transmit simultaneously the  
12 national television broadcasting service concerned in both analog  
13 mode and digital mode in that area.

14 *Simulcasting*

- 15 (8) In determining, for the purposes of paragraph (3)(c) and subclause  
16 (7), whether a national broadcaster transmits simultaneously the  
17 national television broadcasting service concerned in both analog  
18 mode and digital mode:
  - 19 (a) in the case of the Special Broadcasting Service Corporation  
20 where a relevant determination is in force under subclause  
21 (9)—ignore any advertising or sponsorship matter covered  
22 by the determination, so long as the Special Broadcasting  
23 Service Corporation complies with such conditions (if any)  
24 as are specified in the determination; and
  - 25 (b) if a relevant determination is in force under subclause (10)—  
26 ignore any television programs covered by the determination,  
27 so long as the national broadcaster complies with such  
28 conditions (if any) as are specified in the determination.
- 29 (9) The ABA may, by writing, determine that paragraph (8)(a) applies  
30 to specified advertising or sponsorship matter transmitted by the  
31 Special Broadcasting Service Corporation during a specified  
32 period. The specified advertising or sponsorship matter may  
33 consist of all advertising or sponsorship matter transmitted by the  
34 Special Broadcasting Service Corporation. The specified period

1                    may consist of the simulcast period for the coverage area  
2                    concerned.

3                    Note:        For specification by class, see subsection 46(2) of the *Acts*  
4                    *Interpretation Act 1901*.

5                    (10) The ABA may, by writing, determine that paragraph (8)(b) applies  
6                    to specified television programs transmitted by a specified national  
7                    broadcaster during a specified period.

8                    Note:        For specification by class, see subsection 46(2) of the *Acts*  
9                    *Interpretation Act 1901*.

10                  (11) The ABA must not make a determination under subclause (9) or  
11                  (10) unless the ABA is satisfied that, if it were assumed that the  
12                  determination were made, the version of the national television  
13                  broadcasting service transmitted in digital mode will be  
14                  substantially the same as the version of the service transmitted in  
15                  analog mode.

16                  (12) A determination under subclause (9) or (10) is a disallowable  
17                  instrument for the purposes of section 46A of the *Acts*  
18                  *Interpretation Act 1901*.

19                  (13) A reference in this clause to *advertising or sponsorship matter* is a  
20                  reference to advertising or sponsorship matter (whether or not of a  
21                  commercial kind).

22                  **20 National broadcasters to give implementation plans to the**  
23                  **Minister**

24                  (1) A national broadcaster:

25                          (a) may give the Minister one or more implementation plans  
26                          relating to the conversion, over time, of the transmission of  
27                          the national television broadcasting service concerned from  
28                          analog mode to digital mode; and

29                          (b) must, if and when required to do so by the Minister, give the  
30                          Minister one or more implementation plans relating to the  
31                          conversion, over time, of the transmission of the national  
32                          television broadcasting service concerned from analog mode  
33                          to digital mode.

- 1 (2) If an implementation plan is given to the Minister under this  
2 clause, the Minister must:
- 3 (a) approve the implementation plan; or  
4 (b) refuse to approve the implementation plan.
- 5 (3) In deciding whether to approve an implementation plan under this  
6 clause, the Minister must have regard to the following matters:
- 7 (a) in the case of an implementation plan that relates to a  
8 coverage area that is not a remote coverage area—whether  
9 the implementation plan is directed towards ensuring the  
10 achievement of the following policy objectives:
- 11 (i) the objective that each national broadcaster should be  
12 required to commence transmitting the national  
13 broadcasting service concerned in digital mode in each  
14 metropolitan coverage area on 1 January 2001;
- 15 (ii) the objective that each national broadcaster should be  
16 required to commence transmitting the national  
17 television broadcasting service concerned in digital  
18 mode to regional coverage areas (other than remote  
19 coverage areas) on or after 1 January 2001 so that all  
20 regional coverage areas (other than remote coverage  
21 areas) have digital transmission of the service by  
22 1 January 2004;
- 23 (b) in the case of an implementation plan that relates to a  
24 coverage area that is not a remote coverage area—the  
25 objectives mentioned in subclause 19(3);
- 26 (c) in the case of an implementation plan that relates to a remote  
27 coverage area—the special circumstances that apply to the  
28 transmission of national television broadcasting services in  
29 that area;
- 30 (d) such other matters (if any) as the Minister considers relevant.
- 31 (4) Before deciding whether to approve an implementation plan under  
32 this clause, the Minister may direct the ABA to give the Minister a  
33 report about the matter.
- 34 (5) If the Minister approves an implementation plan under this clause,  
35 the implementation plan comes into force on approval.
-

1 (6) If the Minister refuses to approve an implementation plan under  
2 this clause, the Minister may, by written notice given to the  
3 national broadcaster concerned, require the national broadcaster to  
4 give a fresh implementation plan.

5 (7) This clause applies to the giving or approval of a variation of an  
6 implementation plan in a corresponding way to the way in which it  
7 applies to the giving or approval of an implementation plan.

## 8 **21 Compliance with implementation plans**

9 If an implementation plan given by a national broadcaster under  
10 clause 20 is in force, the national broadcaster must comply with  
11 the implementation plan.

## 12 **22 Scheme may confer administrative powers on the ABA**

13 The national television conversion scheme may make provision  
14 with respect to a matter by conferring on the ABA a power to  
15 make a decision of an administrative character.

## 16 **23 Transmitter licences**

### 17 *Grant of additional spectrum for digital transmission*

18 (1) The national television conversion scheme must make provision  
19 for requiring the ACA to issue transmitter licences authorising  
20 transmissions of national television broadcasting services in digital  
21 mode.

### 22 *Return of spectrum if digital transmission does not begin*

23 (2) Part A of the national television conversion scheme must make  
24 provision for requiring a national broadcaster to surrender one or  
25 more transmitter licences authorising digital transmission if:  
26 (a) the national broadcaster does not commence digital  
27 transmission as mentioned in paragraph 19(3)(a) or (b) of  
28 this Schedule; and  
29 (b) the national broadcaster does not satisfy the ABA that there  
30 are exceptional circumstances.

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1                                    *Return of spectrum if digital transmission does not continue*  
2                                    *throughout the simulcast period*

- 3                    (3) Part A of the national television conversion scheme must make  
4                    provision for requiring a national broadcaster to surrender one or  
5                    more transmitter licences authorising digital transmission if:  
6                    (a) the national broadcaster commences digital transmission as  
7                    mentioned in paragraph 19(3)(a) or (b) of this Schedule; and  
8                    (b) the national broadcaster ceases digital transmission during  
9                    the simulcast period for the coverage area concerned; and  
10                   (c) under the scheme, the ABA gives the national broadcaster a  
11                   written direction to:  
12                   (i) resume digital transmission in that area within the  
13                   period specified in the direction (being a period that is  
14                   not longer than one month); and  
15                   (ii) continue digital transmission throughout the simulcast  
16                   period for that area; and  
17                   (d) the national broadcaster does not comply with a direction  
18                   referred to in paragraph (c); and  
19                   (e) the national broadcaster does not satisfy the ABA that there  
20                   are exceptional circumstances.

21                                    *Return of spectrum at end of simulcast period*

- 22                    (4) Part A of the national television conversion scheme must make  
23                    provision for requiring a national broadcaster to whom  
24                    subparagraph 19(3)(h)(i) of this Schedule applies to surrender the  
25                    transmitter licence or licences as mentioned in that subparagraph.  
26                    (5) Part A of the national television conversion scheme must make  
27                    provision for requiring a national broadcaster to whom  
28                    subparagraph 19(3)(h)(ii) of this Schedule applies to surrender the  
29                    transmitter licence or licences as mentioned in that subparagraph.  
30                    (6) Part A of the national television conversion scheme must provide  
31                    that, if a national broadcaster fails to notify the ABA, at least 6  
32                    months before the end of the simulcast period for a coverage area,  
33                    whether the broadcaster intends to pursue the outcome referred to  
34                    in subparagraph 19(3)(h)(i) or (ii) of this Schedule, the broadcaster

1 is taken to have pursued the outcome referred to in subparagraph  
2 19(3)(h)(i) of this Schedule.

3 *Return of spectrum if HDTV standards contravened*

- 4 (7) Part A of the national television conversion scheme must make  
5 provision for requiring a national broadcaster to surrender the  
6 transmitter licence or licences that authorised the transmission of  
7 the national television broadcasting service concerned in digital  
8 mode in the coverage area concerned if:
- 9 (a) the national broadcaster contravenes a standard under  
10 subclause 37(1) (which deals with HDTV); and
  - 11 (b) under the scheme, the ABA gives the national broadcaster a  
12 written direction to comply with the standard within the  
13 period specified in the direction (being a period that is not  
14 longer than one month); and
  - 15 (c) the national broadcaster does not comply with a direction  
16 referred to in paragraph (b); and
  - 17 (d) the national broadcaster does not satisfy the ABA that there  
18 are exceptional circumstances.
- 19 (8) Subclause (7) does not prevent the national television conversion  
20 scheme from making provision for requiring the ACA to issue a  
21 transmitter licence to replace the licence that was surrendered as  
22 mentioned in that subclause. However, the amount of transmission  
23 capacity covered by the replacement licence must be less than the  
24 amount of transmission capacity covered by the surrendered  
25 licence.

26 *Variation of analog transmitter licence to allow digital*  
27 *transmission*

- 28 (9) Part A of the national television conversion scheme must make  
29 provision for requiring that, if subparagraph 19(3)(h)(ii) of this  
30 Schedule applies, the ACA must vary the conditions of the  
31 transmitter licence that authorised analog transmission of the  
32 national broadcasting service concerned during the simulcast  
33 period so as to ensure that the licence authorises digital  
34 transmission of that service in the area concerned after the end of  
35 the simulcast period.
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1                                    *Remote coverage areas*

2                    (10) Part B of the national television conversion scheme may make  
3                                    provision for requiring a national broadcaster to surrender one or  
4                                    more transmitter licences authorising analog transmission or  
5                                    authorising digital transmission if the national broadcaster does not  
6                                    comply with a specified requirement of that Part of the scheme.

7                    (11) Part B of the national television conversion scheme may make  
8                                    provision for requiring the ACA to vary the conditions of a  
9                                    transmitter licence that authorised analog transmission of a  
10                                    national television broadcasting service in a remote coverage area  
11                                    so as to ensure that the licence authorises digital transmission of  
12                                    that service in that area.

13                    **24 Amendment of certain plans and guidelines**

14                                    (1) The national television conversion scheme may amend the  
15                                    frequency allotment plan or a licence area plan.

16                                    (2) The national television conversion scheme may amend technical  
17                                    planning guidelines in force under section 33.

18                                    (3) Subclauses (1) and (2) do not limit the ABA's powers under  
19                                    sections 25, 26 and 33.

20                    **25 Reviews and reports**

21                                    The national television conversion scheme may provide for the  
22                                    ABA to conduct reviews, and report to the Minister, on specified  
23                                    matters.

24                    **26 Ancillary or incidental provisions**

25                                    The national television conversion scheme may contain such  
26                                    ancillary or incidental provisions as the ABA considers  
27                                    appropriate.

1       **27 ABA to have regard to datacasting allocation power**

- 2               (1) In formulating or varying the national television conversion  
3               scheme, the ABA must have regard to its power under subsection  
4               34(3) (which deals with datacasting allocation).
- 5               (2) Subclause (1) does not limit the matters to which the ABA may  
6               have regard.

7       **28 ABA to have regard to special circumstances that apply in**  
8       **remote coverage areas**

- 9               (1) In formulating or varying Part B of the national television  
10              conversion scheme, the ABA must have regard to the special  
11              circumstances that apply to the transmission of national television  
12              broadcasting services in remote coverage areas.
- 13              (2) Subclause (1) does not limit the matters to which the ABA may  
14              have regard.

15       **29 Minister may give directions to the ABA**

- 16              (1) In formulating or varying the national television conversion  
17              scheme, the ABA must comply with any written directions given  
18              to it by the Minister under this subclause.
- 19              (2) A direction under subclause (1) may be of a general or specific  
20              nature.
- 21              (3) The Minister must arrange for a copy of a direction under  
22              subclause (1) to be published in the *Gazette* within 14 days after  
23              the direction is given.

24       **30 Variation of scheme**

- 25              (1) The national television conversion scheme may be varied, but not  
26              revoked, in accordance with subsection 33(3) of the *Acts*  
27              *Interpretation Act 1901*.

1                   (2) Subclause (1) does not limit the application of subsection 33(3) of  
2                   the *Acts Interpretation Act 1901* to other instruments under this  
3                   Act.

4                   **31 Scheme to be a disallowable instrument**

5                   An instrument under subclause 19(1) is a disallowable instrument  
6                   for the purposes of section 46A of the *Acts Interpretation Act*  
7                   *1901*.

8                   **32 Scheme does not take effect until approved by the Minister**

9                   The national television conversion scheme, or a variation of the  
10                  scheme, does not take effect unless and until it is approved, in  
11                  writing, by the Minister.

12                  **33 Processes to be public**

13                  In formulating or varying the national television conversion  
14                  scheme, the ABA must make provision for:

- 15                  (a) public consultation; and  
16                  (b) consultation with national broadcasters; and  
17                  (c) consultation with holders of commercial television  
18                  broadcasting licences; and  
19                  (d) consultation with the ACA; and  
20                  (e) consultation with owners and operators of broadcasting  
21                  transmission towers.

22                  **34 Compliance with scheme**

23                  A national broadcaster must comply with the national television  
24                  conversion scheme.

25                  **35 Simulcasting requirements**

26                  (1) If there is a simulcast period for a coverage area, a national  
27                  broadcaster must not broadcast a television program in digital  
28                  mode in that area during the simulcast period for that area unless:

- 1 (a) the program is broadcast simultaneously by the national  
2 broadcaster in analog mode in that area; or  
3 (b) under the regulations, the program is treated as incidental and  
4 directly linked to a program that is broadcast simultaneously  
5 by the national broadcaster in both analog mode and digital  
6 mode in that area; or  
7 (c) the program is of a kind that is declared by the regulations to  
8 be exempt from this clause.
- 9 (2) Subclause 19(8) applies to this clause in a corresponding way to  
10 the way in which it applies to paragraph 19(3)(c) of this Schedule  
11 and subclause 19(7) of this Schedule.

12 **36 Digital transmitter not to be used to provide a subscription**  
13 **television broadcasting service etc.**

- 14 (1) If a national broadcaster holds a transmitter licence that authorises  
15 the operation of a transmitter for transmitting the national  
16 broadcasting service concerned in digital mode, the national  
17 broadcaster must not operate, or permit the operation of, that  
18 transmitter to transmit in digital mode:  
19 (a) a commercial broadcasting service that provides radio  
20 programs; or  
21 (b) a subscription radio broadcasting service; or  
22 (c) a subscription television broadcasting service; or  
23 (d) a subscription radio narrowcasting service; or  
24 (e) a subscription television narrowcasting service; or  
25 (f) an open narrowcasting radio service; or  
26 (g) an open narrowcasting television service.
- 27 (2) Subclause (1) does not prevent a national broadcaster from doing  
28 anything that the broadcaster is authorised to do under paragraph  
29 35(1)(c) of this Schedule.

30 **Part 4—Standards**  
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**37 Digital television format standards***HDTV standards—non-remote areas*

- (1) The regulations must determine standards that require:
- (a) holders of commercial television broadcasting licences; and
  - (b) national broadcasters;
- to meet specified goals or targets in relation to the extent to which television programs, or specified kinds of television programs, are transmitted in accordance with one or more specified High Definition Television (HDTV) formats relating to the transmission of television programs in digital mode.
- (2) Subclause (1) does not apply in relation to the transmission of:
- (a) a commercial television broadcasting service in a remote licence area; or
  - (b) a national television broadcasting service in a remote coverage area.
- (3) Subclause (1) does not apply in relation to the transmission of a commercial television broadcasting service in a licence area unless:
- (a) that service is transmitted in digital mode in that area; and
  - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 8(8).
- (4) Subclause (1) does not apply in relation to the transmission of a national television broadcasting service in a coverage area unless:
- (a) that service is transmitted in digital mode in that area; and
  - (b) that service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned in subclause 23(8).

*HDTV standards—remote areas*

- (5) The regulations may determine standards that require:
- (a) holders of commercial television broadcasting licences; and
  - (b) national broadcasters;
-

1 to meet specified goals or targets in relation to the extent to which  
2 television programs, or specified kinds of television programs, are  
3 transmitted in accordance with one or more specified High  
4 Definition Television (HDTV) formats relating to the transmission  
5 of television programs in digital mode.

6 (6) Subclause (5) does not apply in relation to the transmission of a  
7 commercial television broadcasting service in a licence area  
8 unless:

- 9 (a) that area is a remote licence area; and  
10 (b) that service is transmitted in digital mode in that area; and  
11 (c) that service is not transmitted using a transmitter operated  
12 under the authority of a transmitter licence issued as  
13 mentioned in subclause 8(8).

14 (7) Subclause (5) does not apply in relation to the transmission of a  
15 national television broadcasting service in a coverage area unless:

- 16 (a) that area is a remote coverage area; and  
17 (b) that service is transmitted in digital mode in that area; and  
18 (c) that service is not transmitted using a transmitter operated  
19 under the authority of a transmitter licence issued as  
20 mentioned in subclause 23(8).

21 *Non-HDTV standards*

22 (8) The regulations may determine other standards that are to be  
23 observed by commercial television broadcasting licensees and  
24 national broadcasters in relation to the format in which television  
25 programs are to be transmitted in digital mode.

26 (9) Subclause (8) does not apply in relation to the transmission of a  
27 commercial television broadcasting service in a licence area unless  
28 that service is transmitted in digital mode in that area.

29 (10) Subclause (8) does not apply in relation to the transmission of a  
30 national television broadcasting service in a coverage area unless  
31 that service is transmitted in digital mode in that area.

1 *Compliance by national broadcasters*

2 (11) A national broadcaster must comply with a standard under  
3 subclause (1) or (8).

4 Note: For compliance by licensees, see clause 7 of Schedule 2.

5 **38 Captioning standards**

6 (1) The regulations must determine standards that are to be observed  
7 by:

8 (a) holders of commercial television broadcasting licences; and

9 (b) national broadcasters;

10 in relation to the captioning of television programs for the deaf and  
11 hearing impaired.

12 (2) Standards under subclause (1) must require licensees and national  
13 broadcasters to meet specified goals or targets in relation to the  
14 extent to which television programs, or specified kinds of  
15 television programs, are captioned for the deaf and hearing  
16 impaired.

17 (3) Subclause (2) does not limit subclause (1).

18 (4) Standards under subclause (1) must be directed towards ensuring  
19 the achievement of the following objectives:

20 (a) the objective that, as far as is practicable:

21 (i) holders of commercial television broadcasting licences;

22 and

23 (ii) national broadcasters;

24 should provide a captioning service for television programs  
25 transmitted during prime viewing hours;

26 (b) the objective that, as far as is practicable:

27 (i) holders of commercial television broadcasting licences;

28 and

29 (ii) national broadcasters;

30 should provide a captioning service for television news  
31 programs, and television current affairs programs,  
32 transmitted outside prime viewing hours.

- 1 (5) For the purposes of subclause (4), *prime viewing hours* are the  
2 hours:  
3 (a) beginning at 6 pm each day or, if another time is prescribed,  
4 beginning at that prescribed time each day; and  
5 (b) ending at 10.30 pm on the same day or, if another time is  
6 prescribed, ending at that prescribed time on the same day.
- 7 (6) Standards under subclause (1) do not apply to a particular licensee  
8 or national broadcaster before the first occasion on or after  
9 1 January 2001 on which the licensee or broadcaster broadcasts  
10 television programs in digital mode.
- 11 (7) A national broadcaster must comply with a standard under  
12 subclause (1).  
13 Note: For compliance by licensees, see clause 7 of Schedule 2.
- 14 (8) In this clause:  
15 *program* does not include advertising or sponsorship matter  
16 (whether or not of a commercial kind).

17 **39 Technical standards for digital transmission of television**  
18 **broadcasting services**

- 19 (1) The regulations may determine technical standards that:  
20 (a) relate to the transmission of commercial television  
21 broadcasting services, and national broadcasting services, in  
22 digital mode; and  
23 (b) are to be followed by the ABA in formulating or varying the  
24 commercial television conversion scheme or the national  
25 television conversion scheme.
- 26 (2) Standards under subclause (1), to the extent that they deal with  
27 conditional access systems, must be directed towards ensuring the  
28 achievement of the policy objective that, as far as is practicable,  
29 those systems should be open to all providers of television  
30 broadcasting services transmitted in digital mode using the  
31 broadcasting services bands.

- 1 (3) The commercial television conversion scheme must be consistent  
2 with any standards determined under subclause (1).
- 3 (4) The national television conversion scheme must be consistent with  
4 any standards determined under subclause (1).
- 5 (5) In this clause:
- 6 ***conditional access system*** means a conditional access system that:
- 7 (a) relates to the provision of one or more television  
8 broadcasting services transmitted in digital mode using the  
9 broadcasting services bands; and
- 10 (b) allows a provider of a television broadcasting service  
11 transmitted in digital mode using the broadcasting services  
12 bands to determine whether an end-user is able to receive a  
13 particular television broadcasting service transmitted in  
14 digital mode using the broadcasting services bands.

#### 15 **40 Datacasting standards**

- 16 (1) The regulations may determine standards that are to be observed  
17 by:
- 18 (a) holders of commercial television broadcasting licences; and  
19 (b) national broadcasters; and  
20 (c) other persons;
- 21 in relation to the provision, by the holders, broadcasters or other  
22 persons, of datacasting services transmitted in digital mode.
- 23 (2) Standards under subclause (1), to the extent that they deal with  
24 conditional access systems, must be directed towards ensuring the  
25 achievement of the policy objective that, as far as is practicable,  
26 those systems should be open to all providers of datacasting  
27 services transmitted in digital mode.
- 28 (3) If a transmitter licence authorises the transmission of datacasting  
29 services in digital mode, then, in addition to any conditions to  
30 which that licence is subject under the *Radiocommunications Act*  
31 *1992*, the licence is taken to be subject to a condition that the  
32 holder of the transmitter licence, and any person authorised by the

1 holder of the transmitter licence, must comply with a standard  
2 under subclause (1).

3 (4) In this clause:

4 ***conditional access system*** means a conditional access system that:

- 5 (a) relates to the provision of one or more datacasting services  
6 transmitted in digital mode; and  
7 (b) allows a provider of a datacasting service transmitted in  
8 digital mode to determine whether an end-user is able to  
9 receive a particular datacasting service transmitted in digital  
10 mode.

#### 11 **41 Standards may incorporate other instruments**

12 Section 589 of the *Telecommunications Act 1997* applies to  
13 regulations made for the purposes of this Part in a corresponding  
14 way to the way in which it applies to an instrument under that Act.

### 15 **Part 5—Transmitter access regime**

16

#### 17 **42 Simplified outline**

18 The following is a simplified outline of this Part:

- 19 • The owner or operator of a broadcasting transmission tower  
20 must provide:
- 21 (a) the holder of a commercial television broadcasting  
22 licence; or  
23 (b) a national broadcaster;
- 24 with access to the tower, and the site of the tower, for the  
25 purpose of installing or maintaining a transmitter for use in  
26 transmitting television broadcasting services in digital mode.

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- The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the tower, and the site of the tower, for the purpose of installing or maintaining a transmitter for use in transmitting datacasting services in digital mode.

6 **43 Definitions**

7 In this Part:

8 *ACCC* means the Australian Competition and Consumer  
9 Commission.

10 *business day* means a day that is not a Saturday, a Sunday or a  
11 public holiday in the place concerned.

12 *datacaster* means a person who provides a datacasting service.

13 *facility* includes apparatus, equipment, a structure or a line.

14 *site* means:

- 15 (a) land; or  
16 (b) a building on land; or  
17 (c) a structure on land.

18 *television broadcasting service* means a commercial television  
19 broadcasting service or a national broadcasting service.

20 **44 Extended meaning of access**

21 (1) For the purposes of this Part, *giving access* to a tower includes  
22 replacing the tower with another tower located on the same site  
23 and giving access to the replacement tower.

24 (2) For the purposes of this Part, *giving access* to a site on which is  
25 situated a tower includes replacing the tower with another tower  
26 located on the site.

1       **45 Access to broadcasting transmission towers**

2                               *Television broadcasting services in digital mode*

- 3               (1) The owner or operator of a broadcasting transmission tower must,  
4               if requested to do so by the holder of a commercial television  
5               broadcasting licence (the *access seeker*), or a national broadcaster  
6               (also the *access seeker*), give the access seeker access to the tower.
- 7               (2) The owner or operator of the broadcasting transmission tower is  
8               not required to comply with subclause (1) unless:
- 9                       (a) the access is provided for the sole purpose of enabling the  
10                      access seeker to install or maintain a transmitter and/or  
11                      associated facilities used, or for use, wholly or principally in  
12                      connection with the transmission of the access seeker's  
13                      television broadcasting service in digital mode; and  
14                      (b) the access seeker gives the owner or operator reasonable  
15                      notice that the access seeker requires the access.

16                               *Datacasting services in digital mode*

- 17               (3) The owner or operator of a broadcasting transmission tower must,  
18               if requested to do so by a datacaster (the *access seeker*), give the  
19               access seeker access to the tower.
- 20               (4) The owner or operator of the broadcasting transmission tower is  
21               not required to comply with subclause (3) unless:
- 22                       (a) the access is provided for the sole purpose of enabling the  
23                      access seeker to install or maintain a transmitter and/or  
24                      associated facilities used, or for use, in connection with the  
25                      provision of datacasting services in digital mode; and  
26                      (b) the access seeker gives the owner or operator reasonable  
27                      notice that the access seeker requires the access.

28                               *Compliance not technically feasible*

- 29               (5) The owner or operator of a broadcasting transmission tower is not  
30               required to comply with subclause (1) or (3) if there is in force a  
31               written certificate issued by the ABA stating that, in the ABA's

1 opinion, compliance with subclause (1) or (3), as the case may be,  
2 in relation to that tower is not technically feasible.

- 3 (6) In determining whether compliance with subclause (1) or (3) in  
4 relation to a tower is technically feasible, the ABA must have  
5 regard to:
- 6 (a) whether compliance is likely to result in significant  
7 difficulties of a technical or engineering nature; and
  - 8 (b) whether compliance is likely to result in a significant threat  
9 to the health or safety of persons who operate, or work on,  
10 the tower; and
  - 11 (c) if compliance is likely to have a result referred to in  
12 paragraph (a) or (b)—whether there are practicable means of  
13 avoiding such a result, including (but not limited to):
    - 14 (i) changing the configuration or operating parameters of a  
15 facility situated on the tower; and
    - 16 (ii) making alterations to the tower; and
  - 17 (d) such other matters (if any) as the ABA considers relevant.

18 *Issue of certificate*

- 19 (7) If the ABA receives a request to make a decision about the issue of  
20 a certificate under subclause (5), the ABA must use its best  
21 endeavours to make that decision within 10 business days after the  
22 request was made.

23 **46 Access to sites of broadcasting transmission towers**

24 *Television broadcasting services in digital mode*

- 25 (1) The owner or operator of a broadcasting transmission tower must,  
26 if requested to do so by the holder of a commercial television  
27 broadcasting licence (the *access seeker*), or a national broadcaster  
28 (also the *access seeker*), give the access seeker access to a site if:  
29 (a) the tower is situated on the site; and  
30 (b) either:
  - 31 (i) the site is owned, occupied or controlled by the owner  
32 or operator of the tower; or

1 (ii) the owner or operator of the tower has a right (either  
2 conditional or unconditional) to use the site.

3 (2) The owner or operator of the broadcasting transmission tower is  
4 not required to comply with subclause (1) unless:

5 (a) the access is provided for the sole purpose of enabling the  
6 access seeker to install or maintain a transmitter and/or  
7 associated facilities used, or for use, wholly or principally in  
8 connection with the transmission of the access seeker's  
9 television broadcasting service in digital mode; and

10 (b) the access seeker gives the owner or operator reasonable  
11 notice that the access seeker requires the access.

12 *Datacasting services in digital mode*

13 (3) The owner or operator of a broadcasting transmission tower must,  
14 if requested to do so by a datacaster (the *access seeker*), give the  
15 access seeker access to a site if the tower is situated on the site.

16 (4) The owner or operator of the broadcasting transmission tower is  
17 not required to comply with subclause (3) unless:

18 (a) the access is provided for the sole purpose of enabling the  
19 access seeker to install or maintain a transmitter and/or  
20 associated facilities used, or for use, in connection with the  
21 provision of datacasting services in digital mode; and

22 (b) the access seeker gives the owner or operator reasonable  
23 notice that the access seeker requires the access.

24 *Compliance not technically feasible*

25 (5) The owner or operator of a broadcasting transmission tower is not  
26 required to comply with subclause (1) or (3) if there is in force a  
27 written certificate issued by the ABA stating that, in the ABA's  
28 opinion, compliance with subclause (1) or (3), as the case may be,  
29 in relation to that tower is not technically feasible.

30 (6) In determining whether compliance with subclause (1) or (3) in  
31 relation to a site is technically feasible, the ABA must have regard  
32 to:

- 1 (a) whether compliance is likely to result in significant  
2 difficulties of a technical or engineering nature; and  
3 (b) whether compliance is likely to result in a significant threat  
4 to the health or safety of persons who operate, or work on, a  
5 facility situated on the site; and  
6 (c) if compliance is likely to have a result referred to in  
7 paragraph (a) or (b)—whether there are practicable means of  
8 avoiding such a result, including (but not limited to):  
9 (i) changing the configuration or operating parameters of a  
10 facility situated on the site; and  
11 (ii) making alterations to a facility situated on the site; and  
12 (d) such other matters (if any) as the ABA considers relevant.

13 *Issue of certificate*

- 14 (7) If the ABA receives a request to make a decision about the issue of  
15 a certificate under subclause (5), the ABA must use its best  
16 endeavours to make that decision within 10 business days after the  
17 request was made.

18 **47 Terms and conditions of access**

19 *Access to towers*

- 20 (1) The owner or operator of a broadcasting transmission tower must  
21 comply with subclause 45(1) or (3) on such terms and conditions  
22 as are:  
23 (a) agreed between the following parties:  
24 (i) the owner or operator;  
25 (ii) the access seeker (within the meaning of that  
26 subclause); or  
27 (b) failing agreement, determined by an arbitrator appointed by  
28 the parties.  
29 If the parties fail to agree on the appointment of an arbitrator, the  
30 ACCC is to be the arbitrator.

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*Access to sites*

(2) The owner or operator of a broadcasting transmission tower must comply with subclause 46(1) or (3) on such terms and conditions as are:

(a) agreed between the following parties:

- (i) the owner or operator;
- (ii) the access seeker (within the meaning of that subclause); or

(b) failing agreement, determined by an arbitrator appointed by the parties.

If the parties fail to agree on the appointment of an arbitrator, the ACCC is to be the arbitrator.

*Conduct of arbitration*

(3) The regulations may make provision for and in relation to the conduct of an arbitration under this clause.

(4) The regulations may provide that, for the purposes of a particular arbitration conducted by the ACCC under this clause, the ACCC may be constituted by a single member, or a specified number of members, of the ACCC. For each such arbitration, that member or those members are to be nominated in writing by the Chair of the ACCC.

(5) Subclause (4) does not, by implication, limit subclause (3).

**48 Code relating to access**

(1) The ACCC may, by written instrument, make a Code setting out conditions that are to be complied with in relation to the provision of access under this Part.

(2) Before making an instrument under subclause (1), the ACCC must consult:

- (a) commercial television broadcasting licensees; and
- (b) national broadcasters; and
- (c) owners and operators of broadcasting transmission towers.

- 1 (3) An access seeker must comply with the Code.
- 2 (4) The owner or operator of a broadcasting transmission tower must  
3 comply with the Code.
- 4 (5) An instrument under subclause (1) is a disallowable instrument for  
5 the purposes of section 46A of the *Acts Interpretation Act 1901*.

6 **49 Arbitration—acquisition of property**

- 7 (1) This clause applies to a provision of this Part that authorises the  
8 conduct of an arbitration (whether by the ACCC or another  
9 person).
- 10 (2) The provision has no effect to the extent (if any) to which it  
11 purports to authorise the acquisition of property if that acquisition:  
12 (a) is otherwise than on just terms; and  
13 (b) would be invalid because of paragraph 51(xxxi) of the  
14 Constitution.
- 15 (3) In this clause:  
16 *acquisition of property* has the same meaning as in paragraph  
17 51(xxxi) of the Constitution.  
18 *just terms* has the same meaning as in paragraph 51(xxxi) of the  
19 Constitution.

20 **50 Relationship between this Part and the *National Transmission***  
21 ***Network Sale Act 1998***

22 Part 3 of the *National Transmission Network Sale Act 1998* does  
23 not apply in relation to an access seeker seeking access to a  
24 broadcasting transmission tower or a site to the extent to which this  
25 Part applies in relation to the access seeker seeking access to that  
26 tower or site.

27 **Part 6—Collection of datacasting charge**  
28

1       **51 Collection of datacasting charge**

2                       *Definitions*

3               (1) In this clause:

4                       **charge** means charge imposed by the *Datacasting Charge*  
5                       *(Imposition) Act 1998*.

6                       **late payment penalty** means an amount that is payable by way of  
7                       penalty in accordance with a determination under subclause (3).

8                       *When charge due and payable*

9               (2) Charge is due and payable at the time ascertained in accordance  
10               with a written determination made by the ABA.

11                      *Late payment penalty*

12               (3) The ABA may, by written instrument, determine that, if any charge  
13               payable by a person remains unpaid after the time when it became  
14               due for payment, the person is liable to pay to the Commonwealth,  
15               by way of penalty, an amount calculated at the rate of:

16                      (a) 20% per annum; or

17                      (b) if the determination specifies a lower percentage—that lower  
18                      percentage per annum;

19               on the amount unpaid, computed from that time.

20                      *Determination has effect*

21               (4) A determination under subclause (3) has effect accordingly.

22                      *Remission of penalty*

23               (5) A determination under subclause (3) may authorise the ABA to  
24               make decisions about the remission of the whole or a part of an  
25               amount of late payment penalty.

1                                    *Payment of charge and late payment penalty*

2                    (6) Charge and late payment penalty are payable to the ABA on behalf  
3                    of the Commonwealth.

4                                    *Recovery of charge and penalty*

5                    (7) Charge and late payment penalty may be recovered by the ABA,  
6                    on behalf of the Commonwealth, as debts due to the  
7                    Commonwealth.

8                                    *Payment into Consolidated Revenue Fund*

9                    (8) Amounts received by way of charge or late payment penalty must  
10                   be paid into the Consolidated Revenue Fund.

11                                  *Disallowable instrument*

12                    (9) A determination under subclause (2) or (3) is a disallowable  
13                    instrument for the purposes of section 46A of the *Acts*  
14                    *Interpretation Act 1901*.

15                    **52 Cancellation of certain exemptions from datacasting charge**

16                    (1) This clause cancels the effect of a provision of another Act that  
17                    would have the effect of exempting a person from liability to pay  
18                    charge imposed by the *Datacasting Charge (Imposition) Act 1998*.

19                    (2) The cancellation does not apply if the provision of the other Act is  
20                    enacted after the commencement of this clause and refers  
21                    specifically to charge imposed by the *Datacasting Charge*  
22                    *(Imposition) Act 1998*.

23                    **53 ACA to report to the Minister on principles for determining the**  
24                    **amount of datacasting charge**

25                    (1) Before the ACA makes its first determination under section 7 of  
26                    the *Datacasting Charge (Imposition) Act 1998*, the ACA must  
27                    prepare, and give to the Minister, a written report about proposals  
28                    that are to be embodied in that determination.

- 1 (2) The report must contain a statement setting out the extent to which  
2 the ACA had regard to competitive neutrality principles in  
3 formulating those proposals.
- 4 (3) The Minister must cause copies of the report to be laid before each  
5 House of the Parliament within 15 sitting days of that House after  
6 receiving the report.

## 7 **Part 7—Injunctions**

8

### 9 **54 Injunctions**

#### 10 *Restraining injunctions*

- 11 (1) If:
- 12 (a) the holder of a commercial television broadcasting licence  
13 has, in accordance with the commercial television conversion  
14 scheme, given an implementation plan to the ABA; and  
15 (b) the ABA has approved the implementation plan; and  
16 (c) the holder has engaged, is engaging or is proposing to engage  
17 in any conduct in contravention of the implementation plan;  
18 the Federal Court may, on the application of the ABA, grant an  
19 injunction:
- 20 (d) restraining the holder from engaging in the conduct; and  
21 (e) if, in the court's opinion, it is desirable to do so—requiring  
22 the holder to do something.
- 23 (2) If a person has engaged, is engaging or is proposing to engage in  
24 any conduct in contravention of Part 5 of this Schedule, the  
25 Federal Court may, on the application of the ABA or of the access  
26 seeker referred to in that Part, grant an injunction:
- 27 (a) restraining the person from engaging in the conduct; and  
28 (b) if, in the court's opinion, it is desirable to do so—requiring  
29 the person to do something.

#### 30 *Performance injunctions*

- 31 (3) If:
-

1 (a) the holder of a commercial television broadcasting licence  
2 has, in accordance with the commercial television conversion  
3 scheme, given an implementation plan to the ABA; and  
4 (b) the ABA has approved the implementation plan; and  
5 (c) the holder has refused or failed, or is refusing or failing, or is  
6 proposing to refuse or fail, to do an act or thing; and  
7 (d) the refusal or failure was, is or would be a contravention of  
8 the implementation plan;  
9 the Federal Court may, on the application of the ABA, grant an  
10 injunction requiring the holder to do that act or thing.

11 (4) If:  
12 (a) a person has refused or failed, or is refusing or failing, or is  
13 proposing to refuse or fail, to do an act or thing; and  
14 (b) the refusal or failure was, is or would be a contravention of  
15 Part 5 of this Schedule;  
16 the Federal Court may, on the application of the ABA or of the  
17 access seeker referred to in that Part, grant an injunction requiring  
18 the person to do that act or thing.

## 19 **55 Interim injunctions**

### 20 *Grant of interim injunction*

21 (1) If an application is made to the court for an injunction under clause  
22 54, the court may, before considering the application, grant an  
23 interim injunction restraining a person from engaging in conduct of  
24 a kind referred to in that clause.

### 25 *No undertakings as to damages*

26 (2) The court is not to require an applicant for an injunction under  
27 clause 54, as a condition of granting an interim injunction, to give  
28 any undertakings as to damages.

## 29 **56 Discharge etc. of injunctions**

30 The court may discharge or vary an injunction granted under this  
31 Part.

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1 **57 Certain limits on granting injunctions not to apply**

2 *Restraining injunctions*

- 3 (1) The power of the court under this Part to grant an injunction  
4 restraining a person from engaging in conduct of a particular kind  
5 may be exercised:
- 6 (a) if the court is satisfied that the person has engaged in conduct  
7 of that kind—whether or not it appears to the court that the  
8 person intends to engage again, or to continue to engage, in  
9 conduct of that kind; or
- 10 (b) if it appears to the court that, if an injunction is not granted, it  
11 is likely that the person will engage in conduct of that kind—  
12 whether or not the person has previously engaged in conduct  
13 of that kind and whether or not there is an imminent danger  
14 of substantial damage to any person if the person engages in  
15 conduct of that kind.

16 *Performance injunctions*

- 17 (2) The power of the court under this Part to grant an injunction  
18 requiring a person to do an act or thing may be exercised:
- 19 (a) if the court is satisfied that the person has refused or failed to  
20 do that act or thing—whether or not it appears to the court  
21 that the person intends to refuse or fail again, or to continue  
22 to refuse or fail, to do that act or thing; or
- 23 (b) if it appears to the court that, if an injunction is not granted, it  
24 is likely that the person will refuse or fail to do that act or  
25 thing—whether or not the person has previously refused or  
26 failed to do that act or thing and whether or not there is an  
27 imminent danger of substantial damage to any person if the  
28 person refuses or fails to do that act or thing.

29 **58 Other powers of the court unaffected**

30 The powers conferred on the court under this Part are in addition  
31 to, and not instead of, any other powers of the court, whether  
32 conferred by this Act or otherwise.

1 **Part 8—Reviews**  
2

3 **59 Reviews before 1 January 2001**

4 (1) Before 1 January 2001, the Minister must cause to be conducted a  
5 review of the following matters:

6 (a) the content of regulations made for the purposes of the  
7 following provisions:

8 (i) subparagraph 7(1)(m)(ii) of Schedule 2 and paragraphs  
9 35(1)(b) and (c) of this Schedule (which deal with  
10 programming during the simulcast period);

11 (ii) the definition of *datacasting service* in clause 2 of this  
12 Schedule;

13 (b) whether any amendments of laws of the Commonwealth  
14 should be made in order to deal with convergence between  
15 broadcasting services and other services;

16 (c) whether any amendments of laws of the Commonwealth  
17 should be made to deal with the re-transmission, on  
18 subscription television broadcasting services, of commercial  
19 television broadcasting services transmitted in digital mode;

20 (d) whether any amendments of laws of the Commonwealth  
21 should be made in order to ensure that underserved regional  
22 licence areas are provided with the same number of  
23 commercial television broadcasting services as are provided  
24 in metropolitan licence areas;

25 (e) the regulatory arrangements that should apply to:

26 (i) the allocation of spectrum in the broadcasting services  
27 bands for use for the provision of datacasting services;  
28 and

29 (ii) the digital transmission of a community television  
30 service, free of charge, using spectrum in the  
31 broadcasting services bands allocated for use for the  
32 provision of datacasting services.

33 (2) A review under subclause (1) of the matter referred to in  
34 subparagraph (1)(e)(i) is to be conducted on the basis that:

35 (a) holders of commercial television broadcasting licences; and

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- 1 (b) national broadcasters;  
2 should not be eligible for the allocation of spectrum as mentioned  
3 in that subparagraph.
- 4 (3) The Minister must cause to be prepared a report of a review under  
5 subclause (1).
- 6 (4) The Minister must cause copies of a report to be laid before each  
7 House of the Parliament within 15 sitting days of that House after  
8 the completion of the preparation of the report.
- 9 (5) For the purposes of this clause, a regional licence area is  
10 *underserved* if, and only if, there are fewer than 3 commercial  
11 television broadcasting services in that area.

12 **60 Reviews before 31 December 2005**

- 13 (1) Before 31 December 2005, the Minister must cause to be  
14 conducted a review of the following matters:
- 15 (a) whether section 28 should be amended or repealed after  
16 31 December 2008;
- 17 (b) whether paragraph 7(1)(m) of Schedule 2 or clause 35 of this  
18 Schedule (which deal with simulcast requirements) should be  
19 amended or repealed;
- 20 (c) whether paragraph 7(1)(p) of Schedule 2 or clause 36 of this  
21 Schedule (which deal with subscription television  
22 broadcasting services and other matters) should be amended  
23 or repealed;
- 24 (d) the content of any regulations made for the purposes of  
25 paragraph 6(3)(c) of this Schedule (which deals with the  
26 duration of the simulcast period);
- 27 (e) whether all parts of the broadcasting services bands that are  
28 available for allocation for broadcasting services or  
29 datacasting services have been so identified;
- 30 (f) whether the parts of the broadcasting services bands that  
31 have been allocated for use for broadcasting services or  
32 datacasting services have been efficiently structured.

1 (2) The Minister must cause to be prepared a report of a review under  
2 subclause (1).

3 (3) The Minister must cause copies of a report to be laid before each  
4 House of the Parliament within 15 sitting days of that House after  
5 the completion of the preparation of the report.

## 6 **Part 9—Charges relating to the ABA’s costs**

7

### 8 **61 Charges relating to the ABA’s costs**

9 (1) The ABA may, by written instrument, make determinations fixing  
10 charges for any matter in relation to which expenses are incurred  
11 by the ABA under:

12 (a) the commercial television conversion scheme; or

13 (b) the national television conversion scheme; or

14 (c) subclause 45(5) or 46(5) (which deal with the issue of  
15 certificates);

16 and specifying the persons by whom, and the times when, the  
17 charges are payable.

18 (2) A charge fixed under subclause (1) must not be such as to amount  
19 to taxation.

20 (3) A determination under subclause (1) is a disallowable instrument  
21 for the purposes of section 46A of the *Acts Interpretation Act*  
22 *1901*.

## 23 **Part 10—Review of decisions**

24

### 25 **62 Review by the AAT**

26 *Commercial television licensees*

27 (1) An application may be made to the AAT for a review of any of the  
28 following decisions made by the ABA under the commercial  
29 television conversion scheme:

- 1 (a) a decision to refuse to approve an implementation plan, or a  
2 variation of an implementation plan, given to the ABA by the  
3 holder of a commercial television broadcasting licence;  
4 (b) a decision that the holder of a commercial television  
5 broadcasting licence has failed to satisfy the ABA that  
6 exceptional circumstances exist as mentioned in subclause  
7 8(2), (3) or (7) (which deal with surrender of transmitter  
8 licences);  
9 (c) a decision requiring the ACA to issue a replacement  
10 transmitter licence to the holder of a commercial television  
11 broadcasting licence as mentioned in subclause 8(8);  
12 (d) a prescribed decision that relates to the holder of a  
13 commercial television broadcasting licence.

- 14 (2) An application under subclause (1) may only be made by the  
15 licensee concerned.

16 *National broadcasters*

- 17 (3) An application may be made to the AAT for a review of any of the  
18 following decisions made by the ABA under the national television  
19 conversion scheme:  
20 (a) a decision that a national broadcaster has failed to satisfy the  
21 ABA that exceptional circumstances exist as mentioned in  
22 subclause 23(2), (3) or (7) (which deal with surrender of  
23 transmitter licences);  
24 (b) a decision requiring the ACA to issue a replacement  
25 transmitter licence to a national broadcaster as mentioned in  
26 subclause 23(8);  
27 (c) a prescribed decision that relates to a national broadcaster.

- 28 (4) An application under subclause (3) may only be made by the  
29 national broadcaster concerned.

30 *Transmitter access regime*

- 31 (5) An application may be made to the AAT for a review of a decision  
32 of the ABA to issue a certificate under subclause 45(5) or 46(5).

1 (6) An application under subclause (5) may only be made by the  
2 access seeker concerned.

3 (7) An application may be made to the AAT for a review of a decision  
4 of the ABA to refuse to issue a certificate under subclause 45(5) or  
5 46(5).

6 (8) An application under subclause (7) may only be made by the  
7 owner or operator of the broadcasting transmission tower  
8 concerned.

9 **63 Notification of decisions to include notification of reasons and**  
10 **appeal rights**

11 If the ABA makes a decision that is reviewable under clause 62,  
12 the ABA is to include in the document by which the decision is  
13 notified:

- 14 (a) a statement setting out the reasons for the decision; and  
15 (b) a statement to the effect that an application may be made to  
16 the AAT for a review of the decision.

1

2

## Schedule 2—Amendment of the Radiocommunications Act 1992

3

4

5

### 1 Section 5

6

Insert:

7

*datacasting service* has the same meaning as in Schedule 4 to the  
*Broadcasting Services Act 1992*.

8

9

### 2 After section 9A

10

Insert:

11

#### 9B Digital mode

12

For the purposes of this Act, a service is transmitted in *digital mode* if the service is transmitted using a digital modulation technique.

13

14

15

### 3 Subsection 100(1)

16

Omit “section 102”, substitute “sections 100B, 102 and 102A”.

17

### 4 Subsection 100(2)

18

Omit “decision”, substitute “determination”.

19

### 5 Subsection 100(2)

20

After “subsection 34(1)”, insert “or (3)”.

21

### 6 After section 100

22

Insert:

23

#### 100A NBS transmitter licences—authorisation of datacasting services

24

25

(1) If:

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- 1 (a) an NBS transmitter licence is or was issued under section  
2 100; and  
3 (b) the licence authorises the operation of one or more specified  
4 radiocommunications transmitters for transmitting the  
5 national broadcasting service concerned in digital mode  
6 using one or more channels;  
7 the licence is also taken to authorise the operation of the  
8 transmitter or transmitters concerned for transmitting datacasting  
9 services in digital mode using those channels.

10 (2) In this section:

11 *national broadcasting service* has the same meaning as in  
12 Schedule 4 to the *Broadcasting Services Act 1992*.

13 *NBS transmitter licence* means a transmitter licence for a  
14 transmitter that is for use for transmitting, to the public, a national  
15 broadcasting service.

16 **100B NBS transmitter licences required to be issued under digital**  
17 **conversion schemes**

18 (1) If the ACA is required, under a scheme in force under clause 19 of  
19 Schedule 4 to the *Broadcasting Services Act 1992*, to issue an NBS  
20 transmitter licence to a national broadcaster, the ACA must issue  
21 to the broadcaster an NBS transmitter licence that authorises the  
22 operation of one or more specified radiocommunications  
23 transmitters for transmitting the national broadcasting service  
24 concerned in digital mode.

25 (2) If an NBS transmitter licence is issued under this section, the  
26 licence is also taken to authorise the operation of the transmitter or  
27 transmitters concerned for transmitting datacasting services in  
28 digital mode using the channel or channels concerned.

29 (3) In this section:

30 *national broadcaster* has the same meaning as in the *Broadcasting*  
31 *Services Act 1992*.

1                    *national broadcasting service* has the same meaning as in  
2                    Schedule 4 to the *Broadcasting Services Act 1992*.

3                    *NBS transmitter licence* means a transmitter licence for a  
4                    transmitter that is for use for transmitting, to the public, a national  
5                    broadcasting service.

6                    **7 At the end of section 102**

7                    Add:

8                    (3) If:

9                    (a) a transmitter licence is or was issued under this section; and

10                    (b) the licence authorises the operation of one or more specified  
11                    radiocommunications transmitters for transmitting the  
12                    broadcasting service concerned in digital mode using one or  
13                    more channels;

14                    the licence is also taken to authorise the operation of the  
15                    transmitter or transmitters concerned for transmitting datacasting  
16                    services in digital mode using those channels.

17                    **8 After section 102**

18                    Insert:

19                    **102A Transmitter licences required to be issued under digital**  
20                    **conversion schemes**

21                    (1) If the ACA is required, under a scheme in force under clause 6 of  
22                    Schedule 4 to the *Broadcasting Services Act 1992*, to issue a  
23                    transmitter licence to a person who holds a commercial television  
24                    broadcasting licence (the *related licence*), the ACA must issue to  
25                    the person a transmitter licence that authorises the operation of one  
26                    or more specified radiocommunications transmitters for  
27                    transmitting the broadcasting service concerned in digital mode in  
28                    accordance with the related licence.

29                    (2) If the related licence is transferred, the transmitter licence is taken  
30                    to be issued to the person to whom the related licence is  
31                    transferred.

1 (3) If a transmitter licence is issued under this section, the licence is  
2 also taken to authorise the operation of the transmitter or  
3 transmitters concerned for transmitting datacasting services in  
4 digital mode using the channel or channels concerned.

5 **9 Subsections 103(2) and (4)**

6 Omit “101A or 102”, substitute “101A, 102 or 102A”.

7 **10 Subsection 106A(2)**

8 After “102”, insert “or 102A”.

9 **11 Subsection 107(3)**

10 Omit “101A or 102”, substitute “101A, 102 or 102A”.

11 **12 Subsection 108(5)**

12 Omit “101A or 102”, substitute “101A, 102 or 102A”.

13 **13 Subsections 109(1) and (2)**

14 After “102”, insert “or 102A”.

15 **14 Paragraph 111(1)(d)**

16 Omit “101A or 102”, substitute “101A, 102 or 102A”.

17 **15 At the end of section 111**

18 Add:

19 (5) If the ACA is required, under a scheme in force under clause 6 or  
20 19 of Schedule 4 to the *Broadcasting Services Act 1992*, to vary  
21 the conditions of a transmitter licence, the ACA must, by written  
22 notice given to the licensee, vary those conditions accordingly.

23 **16 Subsection 125(2)**

24 Omit “101A or 102”, substitute “101A, 102 or 102A”.

25 **17 Subsection 129(1)**

26 Omit “101A or 102”, substitute “101A, 102 or 102A”.

1 **18 Subsection 130(3)**

2 Repeal the subsection, substitute:

- 3 (3) In deciding whether to renew the licence, the ACA:
- 4 (a) except in the case of a licence issued under section 100B—  
5 must have regard to the same matters to which it must have  
6 regard under subsections 100(4) and (6) in deciding whether  
7 to issue such a licence; and
- 8 (b) except in the case of a licence issued under section 100B—  
9 may have regard to the same matters to which it may have  
10 regard under subsection 100(5) in deciding whether to issue  
11 such a licence; and
- 12 (c) in the case of a licence issued under section 100B—must  
13 have regard to the scheme in force under clause 19 of  
14 Schedule 4 to the *Broadcasting Services Act 1992*.

15 **19 Subsection 131AB(2)**

16 Repeal the subsection, substitute:

- 17 (2) In deciding whether to transfer the licence, the ACA:
- 18 (a) except in the case of a licence issued under section 100B—  
19 must have regard to the same matters to which it must have  
20 regard under subsections 100(4) and (6) in deciding whether  
21 to issue such a licence; and
- 22 (b) except in the case of a licence issued under section 100B—  
23 may have regard to the same matters to which it may have  
24 regard under subsection 100(5) in deciding whether to issue  
25 such a licence; and
- 26 (c) in the case of a licence issued under section 100B—must  
27 have regard to the scheme in force under clause 19 of  
28 Schedule 4 to the *Broadcasting Services Act 1992*.

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34 (68/98)

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