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**1 MEETING OF SENATE**

The Senate met at 9.30 am. The President (Senator the Honourable Paul Calvert) took the chair and read prayers.

**2 NOTICE**

Senator Siewert: To move on the next day of sitting—That the Senate—

- (a) notes that the week beginning 15 October 2006 is National Carers Week;
- (b) acknowledges the enormous contribution made by carers to Australian society, often at great personal cost;
- (c) recognises that a recent report by Access Economics, *The economic value of informal care*, estimates that 1.2 billion hours of informal care are currently provided by unpaid family carers;
- (d) notes that this would translate into an economic cost to the community of \$30.5 billion; and
- (e) calls on the Government to recognise the economic and social contributions of carers by further investigating options for support and incentives. (*general business notice of motion no. 587*)

**3 ORDER OF BUSINESS—REARRANGEMENT**

The Minister for Justice and Customs (Senator Ellison) moved—That the order of general business for consideration today be as follows:

- (a) general business order of the day no. 20 (Sexuality and Gender Identity Discrimination Bill 2003 [2004]); and
- (b) orders of the day relating to government documents.

Question put and passed.

**4 POSTPONEMENTS**

The following items of business were postponed:

General business notice of motion no. 578 standing in the name of the Chair of the Rural and Regional Affairs and Transport Committee (Senator Heffernan) for today, relating to an extension of time for the committee to report, postponed till 18 October 2006.

General business notice of motion no. 580 standing in the name of the Leader of the Australian Democrats (Senator Allison) for today, relating to the Arab-Israeli conflict, postponed till 17 October 2006.

**5 FOREIGN AFFAIRS—COMPREHENSIVE NUCLEAR-TEST-BAN TREATY**

The Leader of the Australian Democrats (Senator Allison), pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 582—That the Senate—

- (a) notes the resolution of the International Physicians for the Prevention of Nuclear War, on 10 September 2006 in Helsinki, calling for:
  - (i) relevant governments to make public all information relevant to the health and environmental consequences of their nuclear test explosions, including opening their archives to independent researchers,
  - (ii) long-term health and environmental effects of nuclear test explosions to be comprehensively and independently evaluated,

- (iii) underground and underwater nuclear test sites and related contaminated areas to undergo best practice clean-up to be secured as much as feasible against radioactive and chemical toxic leakage into the biosphere and to be subject to long-term monitoring, and
  - (iv) responsibility for these public health measures to properly belong to the governments which conducted the nuclear test explosion;
- (b) urges the Government to initiate talks with nuclear weapons states that have conducted tests and those states that have hosted these tests with a view to developing a treaty between the parties to at least put in place the measures called for in paragraph (a);
  - (c) encourages the Government to redouble efforts to encourage other countries to ratify the Comprehensive Nuclear-Test-Ban Treaty and bring it into force; and
  - (d) urges the Government to use its best diplomatic endeavours to dissuade North Korea from further nuclear weapons testing, and resist calls for military action against North Korea.

Question put.

The Senate divided—

AYES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Faulkner	McEwen	Ray
Bishop	Forshaw	McLucas	Sherry
Brown, Bob	Hogg	Milne	Siewert
Brown, Carol	Hurley	Moore	Stephens
Campbell, G (Teller)	Hutchins	Murray	Sterle
Carr	Kirk	Nettle	Webber
Conroy	Ludwig	O'Brien	Wortley

NOES, 36

Senators—

Abetz	Coonan	Joyce	Patterson
Adams	Eggleston	Kemp	Payne
Barnett	Ellison	Lightfoot	Ronaldson
Bernardi	Ferris (Teller)	Macdonald, Ian	Santoro
Boswell	Fierravanti-Wells	Macdonald, Sandy	Scullion
Brandis	Fifield	Mason	Troeth
Calvert	Heffernan	McGauran	Trood
Chapman	Humphries	Nash	Vanstone
Colbeck	Johnston	Parry	Watson

Question negatived.

## 6 INDIGENOUS AUSTRALIANS—HUMAN RIGHTS

Senator Bartlett, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 562—That the Senate—

- (a) notes that:
  - (i) Australia was occupied by Aboriginal and Torres Strait Islander peoples who had settled on the continent for many thousands of years before British colonisation, and
  - (ii) Aboriginal and Torres Strait Islanders suffered major dispossession and dispersal upon acquisition of their traditional lands by the colonisers;

- (b) urges the Government to affirm:
  - (i) the importance of Aboriginal and Torres Strait Islander cultures and heritage, and
  - (ii) the entitlement of Aboriginal and Torres Strait Islanders to self-determination subject to the Constitution and the laws of the Commonwealth of Australia; and
- (c) calls on the Government:
  - (i) to support the adoption of the draft United Nations Declaration on the Rights of Indigenous Peoples, and
  - (ii) to ratify the Declaration upon its adoption as a way of ensuring that Indigenous peoples have minimum standards for the protection of their fundamental human rights.

Question put and negatived.

#### 7 **HEALTH—WORLD SIGHT DAY**

Senator Crossin, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 583—That the Senate—

- (a) notes that 12 October 2006 is World Sight Day;
- (b) recognises that approximately 500 000 Australians are blind or have low vision;
- (c) acknowledges that, with Australia's increasingly ageing population, it is likely that the number of Australians who are blind or have low vision will increase;
- (d) supports the commitment of the member organisations of Vision 2020 for raising awareness about conditions such as age-related macular degeneration, cataracts, diabetic eye disease, glaucoma and refractive error, and the serious level of trachoma in our Indigenous population; and
- (e) commends the work of the many support groups available for those people who are blind or have low vision.

Question put and passed.

#### 8 **FOREIGN AFFAIRS—NUCLEAR NON-PROLIFERATION**

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 584—That the Senate—

- (a) notes:
  - (i) the deteriorating security situation in North Asia following North Korea's nuclear test,
  - (ii) that India is not a signatory to the Nuclear Non-Proliferation Treaty (NPT),
  - (iii) that the India-United States of America (US) nuclear deal contravenes the NPT, and
  - (iv) that any sale of Australian uranium would contravene the NPT; and
- (b) calls on the Government to use its position in the Nuclear Suppliers Group to block the India-US nuclear deal and reject any sale of uranium to India.

Question put.

The Senate divided—

AYES, 6

Senators—

Allison	Brown, Bob	Nettle
Bartlett	Milne	Siewert (Teller)

NOES, 56

Senators—

Abetz	Coonan	Johnston	Payne
Adams	Crossin	Kirk	Polley
Barnett	Eggleston	Ludwig	Ray
Bernardi	Ellison	Lundy	Santoro
Bishop	Faulkner	Macdonald, Ian	Scullion
Boswell	Ferris (Teller)	Mason	Sherry
Brandis	Fierravanti-Wells	McEwen	Stephens
Brown, Carol	Fifield	McGauran	Sterle
Calvert	Forshaw	McLucas	Troeth
Campbell, George	Heffernan	Moore	Trood
Carr	Hogg	Nash	Vanstone
Chapman	Humphries	O'Brien	Watson
Colbeck	Hurley	Parry	Webber
Conroy	Hutchins	Patterson	Wortley

Question negatived. Senator Murray, by leave, recorded his vote for the ayes.

**9 POSTPONEMENT**

The Leader of the Australian Greens (Senator Bob Brown), by leave, moved—That general business notice of motion no. 585 standing in his name for today, relating to China and Tibet, be postponed till 16 October 2006.

Question put and passed.

**10 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—LEAVE TO MEET DURING SITTING**

Senator Ferris, at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Payne) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 577—That the Legal and Constitutional Affairs Committee be authorised to hold a public meeting during the sitting of the Senate on Monday, 16 October 2006, from 7.30 pm, to take evidence for the committee's inquiry into the performance of the Australian Federal Police, adopted by the committee pursuant to standing order 25(2)(b).

Question put and passed.

**11 FOREIGN AFFAIRS, DEFENCE AND TRADE—STANDING COMMITTEE—EXTENSION OF TIME TO REPORT**

Senator Ferris, at the request of the Chair of the Foreign Affairs, Defence and Trade Committee (Senator Johnston) and pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 579—

- (1) That the time for the presentation of the report of the Foreign Affairs, Defence and Trade Committee on the provisions of the Defence Legislation Amendment Bill 2006 be extended to 27 October 2006.

- (2) That the committee may consider any proposed government amendments to the bill.

Question put and passed.

**12 ENVIRONMENT—NATIONAL WEEDBUSTER WEEK**

Senator Milne, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 586—That the Senate—

- (a) notes that:
- (i) the second week in October is National Weedbuster Week,
  - (ii) weeds seriously deplete biodiversity and cost the Australian economy approximately \$4 billion per year,
  - (iii) climate change, as stated at the 15th Australian Weeds Conference, will make weed management increasingly more difficult, with sleeper weeds and warmer conditions leading to the habitat expansion of some weed species,
  - (iv) funding for the Defeating the Weed Menace Programme ends in the 2007-08 financial year, and
  - (v) the Weeds Cooperative Research Centre ends its current term in 2008; and
- (b) calls on the Government to:
- (i) consider extending the Defeating the Weed Menace Programme beyond its current term with an increase in its scope and funding base, and
  - (ii) fulfil its promise to fund a program to increase public awareness of the weed problem in Australia.

Question put and passed.

**13 DEATH OF MR WILLEM ZONGGONAU**

Senator Nettle, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 568—That the Senate—

- (a) notes:
- (i) the recent death of West Papuan politician Mr Willem Zonggonau while visiting Australia,
  - (ii) that Mr Zonggonau was a member of the Papuan legislature and Indonesian upper house in the 1960s, and
  - (iii) that while living in exile in Papua New Guinea Mr Zonggonau worked tirelessly for freedom and peace in West Papua; and
- (b) expresses its condolences to Mr Zonggonau's family and friends, and the people of West Papua for their loss.

Question put and passed.

**14 MIGRATION LEGISLATION AMENDMENT (ENABLING PERMANENT PROTECTION) BILL 2006**

Senator Bartlett, pursuant to notice of motion not objected to as a formal motion, moved general business notice of motion no. 581—That the following bill be introduced:

A Bill for an Act to remove unfair impediments preventing holders of temporary protection visas from obtaining permanent protection visas, and for related purposes.

Question put and passed.

Senator Bartlett presented the bill and moved—That this bill may proceed without formalities and be now read a first time.

Question put and passed.

Bill read a first time.

Senator Bartlett moved—That this bill be now read a second time.

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*Explanatory memorandum:* Senator Bartlett, by leave, tabled an explanatory memorandum relating to the bill.

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Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

**15 MEDICAL INDEMNITY LEGISLATION AMENDMENT BILL 2006**

**AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT) BILL 2006  
AUSTRALIAN PARTICIPANTS IN BRITISH NUCLEAR TESTS (TREATMENT)  
(CONSEQUENTIAL AMENDMENTS AND TRANSITIONAL PROVISIONS) BILL 2006**

Messages from the House of Representatives were reported transmitting for the concurrence of the Senate the following bills:

Message no. 404, dated 11 October 2006—A Bill for an Act to amend legislation relating to medical indemnity, and for related purposes.

Message no. 405, dated 11 October 2006—A Bill for an Act to provide for testing for and treatment of malignant neoplasia in Australian participants in British nuclear tests, and for other purposes.

Message no. 406, dated 11 October 2006—A Bill for an Act to amend laws, and to deal with transitional matters, in connection with the *Australian Participants in British Nuclear Tests (Treatment) Act 2006*, and for related purposes.

The Minister for Justice and Customs (Senator Ellison) moved—That these bills may proceed without formalities, may be taken together and be now read a first time.

Question put and passed.

Bills read a first time.

Senator Ellison moved—That these bills be now read a second time.

On the motion of Senator Ellison the debate was adjourned till the next day of sitting.

*Consideration of legislation:* Senator Ellison moved that the Medical Indemnity Legislation Amendment Bill 2006 be listed on the *Notice Paper* as a separate order of the day.

Question put and passed.

**16 ORDER OF BUSINESS—REARRANGEMENT**

Senator Parry, by leave and at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Payne), moved—That business of the Senate order of the day no. 1, relating to the presentation of the report of the Legal and Constitutional Affairs Committee on the Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006, be postponed till a later hour.

Question put and passed.



**17 FOUR BILLS—ALLOTMENT OF TIME**

The Minister for Justice and Customs (Senator Ellison), pursuant to notice, moved government business notice of motion no. 1—

- (1) That the time allotted for the remaining stages of the Broadcasting Services Amendment (Media Ownership) Bill 2006 and three related bills be as follows:

Committee stage                      Thursday, 12 October 2006—commencing immediately, until 1.15 pm

Third reading                      Thursday, 12 October 2006—until 1.45 pm.

- (2) That this order operate as an allocation of time under standing order 142.

Debate ensued.

Question put and passed.

**18 BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006  
BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2006  
COMMUNICATIONS LEGISLATION AMENDMENT (ENFORCEMENT POWERS)  
BILL 2006  
TELEVISION LICENCE FEES AMENDMENT BILL 2006**

Order of the day read for the further consideration of the bills in committee of the whole.

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*In the committee*

**BROADCASTING SERVICES AMENDMENT (MEDIA OWNERSHIP) BILL 2006—**

Consideration resumed of the bill.

Bill further debated.

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*Explanatory memorandum:* The Minister for Communications, Information Technology and the Arts (Senator Coonan) tabled a supplementary explanatory memorandum relating to the government amendments to be moved to the bill.

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On the motion of Senator Coonan the following amendments, taken together by leave, were debated and agreed to:

Schedule 1, item 8, page 13 (line 23), omit “concerned.”, substitute “concerned; and”.

Schedule 1, item 8, page 13 (after line 23), at the end of subsection 61AJ(4), add:  
(e) if subparagraph (b)(ii) applies—inform the applicant accordingly.

Schedule 1, item 8, page 14 (line 5), omit “under subsection (1)”.

Schedule 1, item 8, page 14 (after line 6), at the end of section 61AJ, add:

(9) The ACMA must deal with applications under subsection (1) in order of receipt.

(10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

Schedule 1, item 8, page 16 (line 26), omit “each”, substitute “any”.

Schedule 1, item 8, page 16 (after line 26), after subsection 61AN(4), insert:

- (4A) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) the registered controller failed to comply with a notice under section 61AJ; and
  - (b) the notice related, to any extent, to the media operation.
- (4B) Subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of a registered media group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of a media operation in the group if:
- (a) an approval under section 61AJ was given on the basis that the ACMA was satisfied that a person other than the registered controller would, within a particular period, take action that, to any extent, relates to the media operation; and
  - (b) the person failed to take the action within that period.
- (4C) If:
- (a) the ACMA made any of the following decisions (the *original decision*) in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence:
    - (i) a decision to enter the media group in the Register under subsection 61AY(1) or 61AZ(1);
    - (ii) a decision under subsection 61AZE(1) confirming the entry of the media group in the Register;
    - (iii) a decision under section 61AZF affirming a decision under subsection 61AZE(1) to confirm the entry of the media group in the Register;
    - (iv) a decision under section 61AZF revoking a decision under subsection 61AZE(1) to cancel the entry of the media group in the Register; and
  - (b) any of the following subparagraphs applies:
    - (i) in the case of a decision under subsection 61AZE(1)—a person applied to the ACMA for a reconsideration of the original decision;
    - (ii) in the case of a decision under section 61AZF—a person applied to the Administrative Appeals Tribunal for a review of the original decision;
    - (iii) in any case—a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the original decision; and
  - (c) the original decision was set aside or revoked; and
  - (d) after the original decision was set aside or revoked, the ACMA entered another registrable media group in relation to that licence area in the Register; and
  - (e) after that other group was entered in the Register, the Administrative Appeals Tribunal or a court made a decision the effect of which was to restore or affirm the original decision;

subsection (4) does not prevent the ACMA from giving a direction under subsection (1) to a registered controller of that other group that would have the effect of requiring the registered controller to cease to be in a position to exercise control of any media operation in that other group.

Schedule 1, item 8, page 16 (after line 29), after subsection 61AN(6), insert:

(6A) If:

- (a) the ACMA gives a direction under subsection (1) in the circumstances referred to in subsection (4C); and
- (b) subsection (8) does not apply;

the period specified in the direction must be 2 years.

Schedule 1, item 8, page 23 (after line 11), at the end of section 61AZ, add:

*Register frozen while ACMA reconsideration is pending or AAT/court proceedings are pending*

(5) If:

- (a) the ACMA makes a decision under this Subdivision in connection with a registrable media group in relation to the licence area of a commercial radio broadcasting licence; and

(b) any of the following subparagraphs applies:

- (i) in the case of a decision under subsection 61AZE(1)—a person applies to the ACMA for a reconsideration of the decision;
- (ii) in the case of a decision under section 61AZF—a person applies to the Administrative Appeals Tribunal for a review of the decision;
- (iii) in any case—a person applies to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to the decision;

then:

- (c) despite subsection (1), the ACMA must not enter any other registrable media group in relation to that licence area in the Register under that subsection during the period (the *pending period*) when that application has not been finalised unless the ACMA is satisfied that, assuming that the decision were not to be set aside or revoked, the coming into existence of the media group does not have the result that:

- (i) an unacceptable media diversity situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; or
- (ii) if an unacceptable media diversity situation already exists in relation to the licence area of a commercial radio broadcasting licence—there is a reduction in the number of points in the licence area; and

- (d) if the ACMA is satisfied that another registrable media group in relation to that licence area has come into existence during the pending period—subsection (3) has effect, in relation to the other registrable media group, as if the relevant notification, or the last of the relevant notifications, as the case may be, had been received on the first day after the end of the pending period.

- (6) For the purposes of subsection (5), an application for reconsideration of a decision is taken not to have been finalised during the period of 28 days beginning on:
- (a) if, because of the operation of subsection 61AZF(9), the decision is taken to be affirmed—the day on which the decision is taken to have been affirmed; or
  - (b) in any other case—the day on which the decision on the reconsideration is notified to the person concerned.

- (7) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
  - (b) the Administrative Appeals Tribunal makes a decision on the application;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

- (8) For the purposes of subsection (5), if:
- (a) a person applied to the Administrative Appeals Tribunal for a review of a decision; and
  - (b) the Administrative Appeals Tribunal made a decision on the application; and
  - (c) a person appeals from the decision to the Federal Court; and
  - (d) the Court makes a decision on the appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

- (9) For the purposes of subsection (5), if:
- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
  - (b) the court makes a decision on the application;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (b) is made.

- (10) For the purposes of subsection (5), if:
- (a) a person applied to a court for an order of review, a writ of mandamus or prohibition, or an injunction, in relation to a decision; and
  - (b) the court made a decision on the application; and
  - (c) the decision became the subject of an appeal; and
  - (d) the court or another court makes a decision on the appeal; and
  - (e) the decision mentioned in paragraph (d) could be the subject of an appeal;

the application is taken not to have been finalised during the period of 28 days beginning on the day on which the decision mentioned in paragraph (d) is made.

- (11) The regulations may provide that, in specified circumstances, an application is taken, for the purposes of subsection (5), not to have been finalised during a period ascertained in accordance with the regulations.
- (12) The regulations may extend the 28-day period referred to in subsection (6), (7), (8), (9) or (10).

Schedule 1, item 8, page 24 (after line 34), after section 61AZC, insert:

**61AZCA ACMA must deal with notifications in order of receipt**

- (1) For the purposes of sections 61AY, 61AZ, 61AZA, 61AZB and 61AZC, the ACMA must deal with notifications given, or purportedly given, under Division 6 in order of receipt.
- (2) Subsection (1) has effect subject to subsection 61AZ(5).

Schedule 1, item 8, page 29 (line 10), after “subsection (1)”, insert “at the end of that 28-day period”.

Schedule 1, item 8, page 30 (line 20), after “subsection (5)”, insert “at the end of that 28-day period”.

Schedule 1, page 37 (before line 18), after item 18, insert:

**18A At the end of section 205PA**

Add:

- The Federal Court may also grant injunctions in relation to transactions that are prohibited under Division 5A of Part 5 (which deals with media diversity).

**18B Section 205Q**

After “contravention of”, insert “section 61AH or”.

**18C At the end of clause 2 of Schedule 1**

Add:

- (5) The following are examples of situations that, depending on the circumstances, may be relevant in determining whether a person is in a position to exercise control of 2 or more licences:
- (a) the licensees share any or all of the following:
    - (i) equipment;
    - (ii) studios;
    - (iii) other production facilities;
    - (iv) transmission facilities;
    - (v) human resources;
    - (vi) other resources;
  - (b) the program content of a substantial percentage of the total number of hours of programs broadcast under one of those licences is the same as the program content of a substantial percentage of the total number of hours of programs broadcast under the other licence or licences;
  - (c) the licensees have financial relationships with each other;
  - (d) both of the following subparagraphs apply:
    - (i) the person is in a position to exercise control of one or more of the licences;

- (ii) the person has a financial relationship with another person who is in a position to exercise control of the other licence or one or more of the other licences.

Schedule 1, item 8, page 7 (after line 4), after the definition of *statutory control rules* in section 61AA, insert:

***unacceptable 3-way control situation*** has the meaning given by section 61AEA.

Schedule 1, item 8, page 11 (after line 6), after section 61AE, insert:

**61AEA Unacceptable 3-way control situation**

For the purposes of this Division, an ***unacceptable 3-way control situation*** exists in relation to the licence area of a commercial radio broadcasting licence (the ***first radio licence area***) if a person is in a position to exercise control of:

- (a) a commercial television broadcasting licence, where more than 50% of the licence area population of the first radio licence area is attributable to the licence area of the commercial television broadcasting licence; and
- (b) a commercial radio broadcasting licence, where the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area; and
- (c) a newspaper that is associated with the first radio licence area.

Schedule 1, item 8, page 15 (after line 28), after Subdivision B, insert:

**Subdivision BA—Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence etc.**

**61AMA Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—offence**

A person commits an offence if:

- (a) one or more transactions take place on or after the commencement day; and
- (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and
- (c) the person was:
  - (i) a party to the transactions; or
  - (ii) in a position to prevent the transactions taking place; and
- (d) the ACMA has not approved the transactions under section 61AMC.

Penalty: 20,000 penalty units.

**61AMB Prohibition of transactions that result in an unacceptable 3-way control situation coming into existence—civil penalty**

- (1) This section applies if:
  - (a) one or more transactions take place on or after the commencement day; and
  - (b) the transactions have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence; and

- (c) the ACMA has not approved the transactions under section 61AMC.
- (2) A person must not be:
  - (a) a party to the transactions; or
  - (b) in a position to prevent the transactions taking place.
- (3) Subsection (2) is a civil penalty provision.

**61AMC Prior approval of transactions that result in an unacceptable 3-way control situation coming into existence etc.**

- (1) A person may, before a transaction takes place that would place a person in breach of section 61AMA or 61AMB, make an application to the ACMA for an approval of the transaction.
- (2) An application is to be made in accordance with a form approved in writing by the ACMA.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) If, after receiving an application, the ACMA is satisfied that:
  - (a) if the transaction took place, it would place a person in breach of section 61AMA or 61AMB; and
  - (b) either:
    - (i) the applicant; or
    - (ii) another person;
 will take action, within a period of not longer than 12 months, to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned;
 

the ACMA may, by written notice given to the applicant:

    - (c) approve the transaction; and
    - (d) if subparagraph (b)(i) applies—specify a period within which action must be taken by the applicant to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned; and
    - (e) if subparagraph (b)(ii) applies—inform the applicant accordingly.
- (5) The period specified in the notice must be at least one month, but not longer than 12 months.
- (6) The ACMA may specify in a notice given to an applicant the action that the ACMA considers the applicant must take to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area concerned.
- (7) In deciding whether to approve a transaction, the ACMA may have regard to:
  - (a) any relevant undertakings that:
    - (i) have been accepted by the ACMA under section 61AS; and
    - (ii) have not been withdrawn or cancelled; and
  - (b) such other matters (if any) as the ACMA considers relevant.

- (8) If the ACMA refuses to approve a transaction, the ACMA must give written notice of the refusal to the applicant.
- (9) The ACMA must deal with applications under subsection (1) in order of receipt.
- (10) If the ACMA receives an application under subsection (1), the ACMA must use its best endeavours to make a decision on the application within 45 days after receipt of the application.

**61AMD Extension of time for compliance with prior approval notice**

- (1) A person who has been given a notice under section 61AMC may, within 3 months before the end of the period specified in the notice but not less than one month before the end of that period, apply in writing to the ACMA for an extension of that period.
- (2) The ACMA may grant an extension if it is of the opinion that an extension is appropriate in all the circumstances.
- (3) If the ACMA considers that additional information is required before the ACMA can make a decision on an application, the ACMA may, by written notice given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must not grant more than one extension, and the period of any extension must not exceed:
  - (a) the period originally specified in the notice; or
  - (b) 6 months;
 whichever is the lesser period.
- (5) In deciding whether to grant an extension to an applicant, the ACMA is to have regard to:
  - (a) the endeavours that the applicant made in attempting to comply with the notice; and
  - (b) the difficulties that the applicant experienced in attempting to comply with the notice;
 but the ACMA must not have regard to any financial disadvantage that compliance with the notice may cause.
- (6) If the ACMA does not, within 45 days after:
  - (a) receiving the application; or
  - (b) if the ACMA has requested further information—receiving that further information;
 extend the period or refuse to extend the period originally specified in the notice, the ACMA is to be taken to have extended that period by:
  - (c) the period originally specified in the notice; or
  - (d) 6 months;
 whichever is the lesser period.
- (7) If the ACMA refuses to approve an application made under subsection (1), the ACMA must give written notice of the refusal to the applicant.

**61AME Breach of prior approval notice—offence**

- (1) A person commits an offence if:
  - (a) the person has been given a notice under section 61AMC; and
  - (b) the person engages in conduct; and



(c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (2) A person who contravenes subsection (1) commits a separate offence in respect of each day (including a day of a conviction for the offence or any later day) during which the contravention continues.

**61AMF Breach of prior approval notice—civil penalty**

- (1) A person must comply with a notice under section 61AMC.  
 (2) Subsection (1) is a civil penalty provision.  
 (3) A person who contravenes subsection (1) commits a separate contravention of that subsection in respect of each day (including a day of the making of a relevant civil penalty order or any later day) during which the contravention continues.

Schedule 1, item 8, page 16 (line 2), at the end of the heading to section 61AN, add “—**unacceptable media diversity situation**”.

Schedule 1, item 8, page 17 (after line 16), after section 61AN, insert:

**61ANA Remedial directions—unacceptable 3-way control situation**

- (1) If, on or after the commencement day, the ACMA is satisfied that an unacceptable 3-way control situation exists in relation to the licence area of a commercial radio broadcasting licence, the ACMA may give a person such written directions as the ACMA considers appropriate for the purpose of ensuring that that situation ceases to exist.
- (2) The ACMA's directions may include:
- (a) a direction requiring the disposal of shares or interests in shares; or
  - (b) a direction restraining the exercise of any rights attached to:
    - (i) shares; or
    - (ii) interests in shares; or
  - (c) a direction prohibiting or deferring the payment of any sums due to a person in respect of shares, or interests in shares, held by the person; or
  - (d) a direction that any exercise of rights attached to:
    - (i) shares; or
    - (ii) interests in shares;
      - be disregarded.
- (3) Subsection (2) does not limit subsection (1).
- (4) A direction under subsection (1) must specify a period within which the person must comply with the direction.
- (5) The period must not be longer than 12 months.
- (6) If the ACMA is satisfied that the person:
- (a) acted in good faith; and
  - (b) took reasonable precautions, and exercised due diligence, to avoid the unacceptable 3-way control situation coming into existence;

the period specified in the direction must be 12 months.

- (7) If the ACMA is satisfied that the person acted flagrantly in breach of section 61AMA or 61AMB, the period specified in the direction must be one month.
- (8) The Parliament recognises that, if a period of one month is specified in a direction, the person to whom the direction is given or another person may be required to dispose of shares or interests in shares in a way, or otherwise make arrangements, that could cause the person a considerable financial disadvantage. Such a result is seen as necessary in order to discourage flagrant breaches of sections 61AMA and 61AMB.

Schedule 1, item 8, page 17 (line 18), after “61AN”, insert “or 61ANA”.

Schedule 1, item 8, page 17 (line 24), omit “The ACMA”, substitute “In the case of a direction under section 61AN, the ACMA”.

Schedule 1, item 8, page 17 (after line 30), after subsection 61AP(3), insert:

- (3A) In the case of a direction under section 61ANA, the ACMA may grant an extension if it is of the opinion that:
- (a) an unacceptable 3-way control situation is likely to cease to exist in the licence area concerned within 3 months after the end of the period specified in the direction under section 61ANA; and
  - (b) the applicant acted in good faith; and
  - (c) an extension is appropriate in all the circumstances.

Schedule 1, item 8, page 18 (line 10), after “61AN”, insert “or 61ANA, as the case may be”.

Schedule 1, item 8, page 18 (line 25), after “61AN”, insert “or 61ANA”.

Schedule 1, item 8, page 19 (line 2), after “61AN”, insert “or 61ANA”.

Schedule 1, item 8, page 19 (line 10), omit “either”, substitute “any”.

Schedule 1, item 8, page 19 (line 20), omit “area.”, substitute “area;”.

Schedule 1, item 8, page 19 (after line 20), at the end of subsection 61AS(1), add:

- (c) a written undertaking given by a person that the person will take specified action to ensure that an unacceptable 3-way control situation does not exist in relation to the licence area of a commercial radio broadcasting licence.

Schedule 1, item 8, page 22 (lines 22 to 37), omit paragraph 61AZ(1)(c), substitute:

- (c) the ACMA is satisfied that the coming into existence of the media group does not have the result that an unacceptable 3-way control situation comes into existence in relation to the licence area of a commercial radio broadcasting licence;

Schedule 1, item 18, page 37 (table item dealing with section 61AJ, 2nd column), after “61AJ”, insert “or 61AMC”.

Schedule 1, item 18, page 37 (table item dealing with section 61AK, 2nd column), after “61AK”, insert “or 61AMD”.

Schedule 1, page 37 (before line 18), after item 18, insert:

**18BA Section 205Q**

Before “subsection”, insert “61AMB or”.

Schedule 1, item 8, page 6 (lines 4 to 10), omit the definition of *metropolitan licence area*, substitute:

*metropolitan licence area* means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
  - (i) New South Wales; or
  - (ii) Victoria; or
  - (iii) Queensland; or
  - (iv) Western Australia; or
  - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1, item 8, Subdivision F.

Question—That Schedule 1, item 8, Subdivision F stand as printed—put and negatived.

Senator Murray moved the following amendment:

Schedule 1, item 8, page 20 (after line 15), at the end of Subdivision D, add:

**61 ATA Injunctions**

- (1) Subject to subsection (2), where, on the application of the ACMA, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:
  - (a) a contravention of section 61AG, 61AH, 61AL, 61AM, 61AQ or 61AR;
  - (b) attempting to contravene such a provision;
  - (c) aiding, abetting, counselling or procuring a person to contravene such a provision;
  - (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene such a provision;
  - (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of such a provision; or
  - (f) conspiring with others to contravene such a provision;
 the Court may grant an injunction in such terms as the Court determines to be appropriate.
- (2) Where an application for an injunction under subsection (1) has been made, the Court may, if the Court determines it to be appropriate, grant an injunction by consent of all the parties to the proceedings, whether or not the Court is satisfied that a person has engaged, or is proposing to engage, in conduct of a kind mentioned in subsection (1).
- (3) Where in the opinion of the Court it is desirable to do so, the Court may grant an interim injunction pending determination of an application under subsection (1).
- (4) The Court may rescind or vary an injunction granted under subsection (1) or (3).

- (5) The power of the Court to grant an injunction restraining a person from engaging in conduct may be exercised:
  - (a) whether or not it appears to the Court that the person intends to engage again, or to continue to engage, in conduct of that kind; and
  - (b) whether or not the person has previously engaged in conduct of that kind; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person engages in conduct of that kind.
- (6) The power of the Court to grant an injunction requiring a person to do an act or thing may be exercised:
  - (a) whether or not it appears to the Court that the person intends to refuse or fail again, or to continue to refuse or fail, to do that act or thing;
  - (b) whether or not the person has previously refused or failed to do that act or thing; and
  - (c) whether or not there is an imminent danger of substantial damage to any person if the first-mentioned person refuses or fails to do that act or thing.
- (7) Where the ACMA makes an application to the Court for the grant of an injunction or an interim injunction under this section, the Court shall not require the ACMA or any other person, as a condition of granting an injunction or an interim injunction, to give any undertakings as to damages.

#### **61ATB Stay of injunctions**

- (1) The Court may stay the operation of an injunction granted under section 61ATA if:
  - (a) any of the following has applied for the stay:
    - (i) a Minister of the Commonwealth;
    - (ii) the ACMA;
    - (iii) a party to the proceeding for the injunction; and
  - (b) the Court considers that granting the stay would, in all the circumstances, be just.
- (2) An order staying the operation of the injunction may be expressed to have effect for a specified period and may be varied or rescinded by the Court at any time.
- (3) Nothing in this section affects other powers of the Court.
- (4) In this section, *injunction* includes an interim injunction.

#### **61ATC Divestiture**

- (1) The Court may order, on the application of the ACMA, if the Court finds or has found in another proceeding instituted under this Part that a person has contravened section 61AG, 61AH, 61AL or 61AM, the disposal by the person of all or any of the shares or assets acquired in contravention of that section.

- (2) Where:
- (a) the Court finds, in a proceeding instituted under this Division, that a person (in this subsection referred to as the *acquirer*) has acquired shares in the capital of a body corporate or any assets of a person in contravention of section 61AG, 61AH, 61AL or 61AM; and
  - (b) the Court finds, whether in that proceeding or any other proceeding instituted under this Division, that the person (in this section referred to as the *vendor*) from whom the acquirer acquired those shares or those assets, as the case may be, was involved in the contravention; and
  - (c) at the time the finding referred to in paragraph (b) is made, any of those shares or those assets, as the case may be, are vested in the acquirer or, if the acquirer is a body corporate, in any body corporate that is related to the acquirer;
- the Court may, on the application of the ACMA, declare that the acquisition, in so far as it relates to the shares or assets referred to in paragraph (c), is void from the day on which it took place and, where the Court makes such a declaration:
- (d) the shares or the assets to which the declaration relates are deemed not to have been disposed of by the vendor; and
  - (e) the vendor must refund to the acquirer any amount paid to the vendor in respect of the acquisition of the shares or assets to which the declaration relates.
- (3) Where an application is made to the Court for an order under subsection (1) or a declaration under subsection (2), the Court, instead of making an order under subsection (1) for the disposal by a person of shares or assets or a declaration under subsection (2) that the acquisition by a person of shares or assets is void, may accept, upon such conditions (if any) as the Court thinks fit, an undertaking by the person to dispose of other shares or assets owned by the person.
- (4) An application under subsection (1) or (2) or an undertaking under subsection (3) may be made at any time within 3 years after the date on which the contravention occurred.
- (5) Where an application for an order under subsection (1) or for a declaration under subsection (2) has been made, the Court may, if the Court determines it to be appropriate, make an order or a declaration by consent of all the parties to the proceedings, whether or not the Court has made the findings referred to in subsections (1) and (2).

Debate ensued.

Question—That the amendment be agreed to—put and negatived.

Senator Joyce moved the following amendments together by leave:

Schedule 1, item 8, page 7 (after line 17), at the end of section 61AB, add:

- (3) For the purposes of this Division:
- (a) each entity and any related entity of a commercial radio broadcasting licensee or a commercial television broadcasting licensee is deemed to be worth one point in accordance with section 61AC;

(b) *related entity* in this subsection has the same meaning as in section 26-35 of the *Income Tax Assessment Act 1997*.

Schedule 1, item 8, page 10 (after line 7), at the end of section 61AC, add:

- (3) Despite anything to the contrary in this section, a commercial radio broadcasting licensee or a commercial television broadcasting licensee which broadcasts a content of 20% or less comprising *comment* (where *comment* includes news, current affairs, issues of public opinion and talkback radio) in any 24 hour period, is deemed to not be worth one point for the purposes of this section.

Debate ensued.

Question—That the amendments be agreed to—put.

The committee divided—

AYES, 35

Senators—

Allison	Evans	Ludwig	Polley
Bartlett	Faulkner	Lundy	Ray
Bishop	Fielding	McEwen	Sherry
Brown, Bob	Forshaw	McLucas	Siewert
Brown, Carol	Hogg	Milne	Stephens
Campbell, George	Hurley	Moore	Sterle
Carr	Hutchins	Murray	Webber (Teller)
Conroy	Joyce	Nettle	Wortley
Crossin	Kirk	O'Brien	

NOES, 35

Senators—

Abetz	Coonan	Lightfoot	Payne
Adams	Eggleston	Macdonald, Ian	Ronaldson
Barnett	Ellison	Macdonald, Sandy	Santoro
Bernardi	Ferguson	Mason	Scullion
Boswell	Fierravanti-Wells	McGauran	Troeth
Brandis	Fifield	Minchin	Trood
Calvert	Heffernan	Nash	Vanstone
Chapman	Humphries	Parry (Teller)	Watson
Colbeck	Johnston	Patterson	

The ayes and noes were equal and so the question was negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 1.

Schedule 1, as amended, debated and agreed to.

Senator Joyce moved the following amendment:

Page 37 (after line 21), after Schedule 1, insert:

**Schedule 1A—Amendments to deal with abuse of market power, creeping acquisitions and a divestiture remedy in relation to media markets**

***Broadcasting Services Act 1992***

**1 After section 61AZK**

Insert:

**Subdivision G—Misuse of market power in a media market**

**61AZL Misuse of market power in a media market**

- (1) A corporation that has a substantial degree of power in a media market shall not take advantage of that power in that or any other market for the purpose of:
  - (a) eliminating or substantially damaging a competitor of the corporation or of a body corporate that is related to the corporation in that or any other market; or
  - (b) preventing the entry of a person into that or any other market; or
  - (c) deterring or preventing a person from engaging in competitive conduct in that or any other market.
- (2) For the purposes of subsection (1):
  - (a) the reference in paragraph (1)(a) to a competitor includes a reference to competitors generally, or to a particular class or classes of competitors; and
  - (b) the reference in paragraphs (1)(b) and (c) to a person includes a reference to persons generally, or to a particular class or classes of persons.
- (3) In determining for the purposes of this section whether a corporation has a substantial degree of market power in a media market, the Court will at least take into account the following principles:
  - (a) the threshold of a substantial degree of power in a market is lower than the former threshold of substantial control previously used in section 46 of the *Trade Practices Act 1974*; and
  - (b) the substantial market power threshold does not require a corporation to have an absolute freedom from constraint, it is sufficient if the corporation is not constrained to a significant extent by competitors or suppliers; and
  - (c) more than one corporation can have a substantial degree of power in a market; and
  - (d) evidence of a corporation's behaviour in the market is relevant to a determination of substantial market power.
- (4) If:
  - (a) a body corporate that is related to a corporation has, or 2 or more bodies corporate each of which is related to the one corporation together have, a substantial degree of power in a media market; or
  - (b) a corporation and a body corporate that is, or a corporation and 2 or more bodies corporate each of which is, related to that corporation, together have a substantial degree of power in a media market;the corporation shall be taken for the purposes of this section to have a substantial degree of power in that market.
- (5) In determining for the purpose of this section whether a corporation has a substantial degree of power in a media market, the Court may consider the corporation's degree of power in a market to include any market power arising from any contracts, arrangements, understandings or covenants, whether formal or informal, which the corporation has entered into with other entities.

- (6) In determining for the purposes of this section the degree of power that a body corporate or bodies corporate has or have in a market, the Court shall have regard to the extent to which the conduct of the body corporate or of any of those bodies corporate in that market is constrained by the conduct of:
- (a) competitors, or potential competitors, of the body corporate or of any of those bodies corporate in that market; or
  - (b) persons to whom or from whom the body corporate or any of those bodies corporate supplies or acquires goods or services in that market.
- (7) In determining for the purposes of this section whether a corporation:
- (a) has a substantial degree of power in a media market; or
  - (b) has taken advantage of that power for the purpose described in paragraph (1)(a), (b) or (c);
- the Court may have regard to the capacity of the corporation, relative to other corporations in that or any other market, to sell in that or any other market a good or service at a price below the cost to the corporation of producing or acquiring the good or supplying the service.
- (8) In this section:
- (a) a reference to power is a reference to market power;
  - (b) a reference to a market is a reference to a market for goods or services; and
  - (c) a reference to power in relation to, or to conduct in, a market is a reference to power, or to conduct, in that market either as a supplier or as an acquirer of goods or services in that market.
- (9) Without extending by implication the meaning of subsection (1), a corporation shall not be taken to contravene that subsection by reason only that it acquires plant or equipment.
- (10) This section does not prevent a corporation from engaging in conduct that does not constitute a contravention of any of the following sections, namely sections 45, 45B, 47 and 50, of the *Trade Practices Act 1974* by reason that an authorization is in force or by reason of the operation of section 93 of the *Trade Practices Act 1974*.
- (11) A corporation may be taken to have taken advantage of its power for a purpose referred to in subsection (1) notwithstanding that, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the corporation or of any other person or from other relevant circumstances.

**61AZM Prohibition of acquisitions that would result in a substantial lessening of competition in a media market**

- (1) A corporation must not directly or indirectly:
  - (a) acquire shares in the capital of a body corporate; or
  - (b) acquire any assets of a person;
 if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market.
- (2) A person must not directly or indirectly:
  - (a) acquire shares in the capital of a corporation; or



- (b) acquire any assets of a corporation;  
if the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market.
- (3) Without limiting the matters that may be taken into account for the purposes of subsections (1) and (2) in determining whether the acquisition would have the effect, or be likely to have the effect, of substantially lessening competition in a media market, the following matters must be taken into account:
  - (a) the actual and potential level of import competition in the market;
  - (b) the height of barriers to entry to the market;
  - (c) the level of concentration in the market;
  - (d) the degree of countervailing power in the market;
  - (e) the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;
  - (f) the extent to which substitutes are available in the market or are likely to be available in the market;
  - (g) the dynamic characteristics of the market, including growth, innovation and product differentiation;
  - (h) the likelihood that the acquisition would result in the removal from the market of a vigorous and effective competitor;
  - (i) the nature and extent of vertical integration in the market.
- (4) Where:
  - (a) a person has entered into a contract to acquire shares in the capital of a body corporate or assets of a person;
  - (b) the contract is subject to a condition that the provisions of the contract relating to the acquisition will not come into force unless and until the person has been granted an authorization to acquire the shares or assets; and
  - (c) the person applied for the grant of such an authorization before the expiration of 14 days after the contract was entered into;the acquisition of the shares or assets shall not be regarded for the purposes of this Act as having taken place in pursuance of the contract before:
  - (d) the application for the authorization is disposed of; or
  - (e) the contract ceases to be subject to the condition;whichever happens first.
- (5) For the purposes of subsection (4), an application for an authorization shall be taken to be disposed of:
  - (a) in a case to which paragraph (b) of this subsection does not apply—at the expiration of 14 days after the period in which an application may be made to the Tribunal for a review of the determination by the Commission of the application for the authorization; or

- (b) if an application is made to the Tribunal for a review of the determination by the Commission of the application for the authorization—at the expiration of 14 days after the date of the making by the Tribunal of a determination on the review.
- (6) In this section:  
**market** means a substantial market for goods or services in:  
 (a) Australia; or  
 (b) a State; or  
 (c) a Territory; or  
 (d) a region of Australia.
- (7) For the purposes of the application of this section in relation to a particular corporation, an acquisition by the corporation shall be deemed to have or to be likely to have the effect of substantially lessening competition in a media market if that acquisition and any one or more other acquisitions by the corporation or a body corporate related to the corporation in that or any other market during the previous ten years together have or are likely to have that effect.

#### **61AZN Pecuniary penalties**

- (1) If the Court is satisfied that a person:  
 (a) has contravened section 61AZL or 61AZM;  
 (b) has attempted to contravene either provision;  
 (c) has aided, abetted, counselled or procured a person to contravene either provision;  
 (d) has induced, or attempted to induce, a person, whether by threats or promises or otherwise, to contravene either provision;  
 (e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of either provision;  
 or  
 (f) has conspired with others to contravene either provision;  
 the Court may order the person to pay to the Commonwealth such pecuniary penalty, in respect of each act or omission by the person to which this section applies, as the Court determines to be appropriate having regard to all relevant matters including the nature and extent of the act or omission and of any loss or damage suffered as a result of the act or omission, the circumstances in which the act or omission took place and whether the person has previously been found guilty by the Court in proceedings under this Part.
- (2) The pecuniary penalty payable under subsection (1) by a body corporate is not to exceed \$10,000,000 for each other act or omission to which this section applies.
- (3) The pecuniary penalty payable under subsection (1) by a person other than a body corporate is not to exceed \$500,000 for each act or omission to which this section applies.

#### **61AZO Injunctions**

Where, on the application of the Commission or any other person, the Court is satisfied that a person has engaged, or is proposing to engage, in conduct that constitutes or would constitute:

- (a) a contravention of section 61AZL or 61AZM;

- (b) attempting to contravene either provision;
- (c) aiding, abetting, counselling or procuring a person to contravene either provision;
- (d) inducing, or attempting to induce, whether by threats, promises or otherwise, a person to contravene either provision;
- (e) being in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by a person of either provision; or
- (f) conspiring with others to contravene either provision;

the Court may grant an injunction in such terms as the Court determines to be appropriate.

#### **61AZP Actions for damages**

- (1) A person who suffers loss or damage as a result of conduct of another person that contravened section 61AZL or 61AZM may recover the amount of the loss or damage by action against that other person or against any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct arose.

#### **61AZQ Divestiture for abuses of market power and anti-competitive mergers**

- (1) The Court may, on the application of the Commission or any other person, if it finds that a corporation has contravened section 61AZL or 61AZM, by order, give directions for the purpose of securing:
  - (a) the disposal or divestiture of shares or assets acquired in contravention of section 61AZM; or
  - (b) the reorganisation or division of the corporation into separate and distinct entities including directions for the disposal or divestiture of all or any of the shares in or assets of the corporation to facilitate the reorganisation or division of the corporation.

#### **61AZR Definitions**

In this Subdivision:

***the Court*** or ***the Federal Court*** means the Federal Court of Australia.

***Commission*** means the Australian Competition and Consumer Commission established by section 6A of the *Trade Practices Act 1974*.

***authorization*** means an authorization under Division 1 of Part VII of the *Trade Practices Act 1974* granted by the Commission or by the Tribunal on a review of a determination of the Commission.

***Tribunal*** means the Australian Competition Tribunal established under the *Trade Practices Act 1974*, and includes a member of that Tribunal or a Division of that Tribunal performing functions of that Tribunal.

Debate ensued.

Question—That the amendment be agreed to—put.

The committee divided—

AYES, 36

Senators—

Allison	Evans	Ludwig	Polley
Bartlett	Faulkner	Lundy	Ray
Bishop	Fielding	McEwen	Sherry
Brown, Bob	Forshaw	McLucas	Siewert
Brown, Carol	Hogg	Milne	Stephens
Campbell, George	Hurley	Moore	Sterle
Carr	Hutchins	Murray	Webber (Teller)
Conroy	Joyce	Nettle	Wong
Crossin	Kirk	O'Brien	Wortley

NOES, 36

Senators—

Abetz	Colbeck	Johnston	Parry
Adams	Coonan	Kemp	Payne
Barnett	Eggleston	Lightfoot	Ronaldson
Bernardi	Ferguson	Macdonald, Ian	Santoro
Boswell	Ferris (Teller)	Macdonald, Sandy	Scullion
Brandis	Fierravanti-Wells	Mason	Troeth
Calvert	Fifield	McGauran	Trood
Campbell, Ian	Heffernan	Minchin	Vanstone
Chapman	Humphries	Nash	Watson

The ayes and noes were equal and so the question was negatived.

On the motion of Senator Coonan the following amendments, taken together by leave, were debated and agreed to:

No. 1—Schedule 2, page 38 (after line 7), after item 1, insert:

**1A After paragraph 3(1)(e)**

Insert:

- (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and

No. 2—Schedule 2, item 7, page 51 (line 7), before “has”, insert “(except in sections 61CR and 61CS)”.

No. 3—Schedule 2, item 7, page 52 (line 29), after “Division”, insert “(other than sections 61CR and 61CS)”.

No. 4—Schedule 2, item 7, page 52 (line 30), after “Division”, insert “(other than sections 61CR and 61CS)”.

No. 5—Schedule 2, item 7, page 56 (after line 29), at the end of section 61CH, add:

*Occurrence of trigger event when ACMA's decision is pending*

(7) If:

- (a) a commercial radio broadcasting licensee gives the ACMA a draft local content plan under section 61CF as the result of the occurrence of a trigger event for the licence; and  
 (b) another trigger event for the licence occurs before the ACMA makes a decision under subsection (1) in relation to the plan;

then:

- (c) the ACMA is taken to have refused to approve the plan; and

(d) subsections (5) and (6) do not apply to that refusal.

No. 6—Schedule 2, item 7, page 58 (after line 21), at the end of section 61CM, add:

*Occurrence of trigger event when ACMA's decision is pending*

(7) If:

- (a) under section 61CK or 61CL, a commercial radio broadcasting licensee gives the ACMA a draft variation of an approved local content plan; and
- (b) a trigger event for the licence occurs after the receipt of the variation but before the ACMA makes a decision under subsection (1) in relation to the variation;

then:

- (c) the ACMA is taken to have refused to approve the variation; and
- (d) subsections (5) and (6) do not apply to that refusal.

No. 7—Schedule 2, item 7, page 59 (line 11), omit “**Investigations about other**”, substitute “**Other**”.

No. 8—Schedule 2, item 7, page 59 (after line 24), at the end of section 61CR, add:

- (4) This section does not limit the powers conferred on the Minister by section 61CS.

No. 9—Schedule 2, item 7, page 59 (after line 24), at the end of Subdivision D, add:

**61CS Minister may direct the ACMA to impose licence conditions relating to local content**

- (1) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (2) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring regional commercial radio broadcasting licensees to broadcast programs about matters of local significance.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (4) The Minister may give the ACMA a written direction requiring the ACMA to exercise its powers under section 43 to impose one or more specified conditions requiring a specified regional commercial radio broadcasting licensee to broadcast programs about matters of local significance.
- (5) The ACMA must comply with a direction under subsection (1), (2), (3) or (4).
- (6) This section does not limit the powers conferred on the ACMA by section 43.

**61CT Regular reviews of local content requirements**

- (1) At least once every 3 years, the Minister must cause to be conducted a review of the following matters:
  - (a) the operation of section 43B;
  - (b) the operation of this Division;
  - (c) the operation of paragraph 8(2)(c) of Schedule 2;
  - (d) whether section 43B should be amended;
  - (e) whether this Division should be amended;
  - (f) whether paragraph 8(2)(c) of Schedule 2 should be amended.
- (2) For the purposes of facilitating the conduct of a review under subsection (1), the ACMA must make available information about regional commercial radio broadcasting licensees' compliance with:
  - (a) licence conditions imposed as a result of section 43B; and
  - (b) licence conditions imposed as a result of an investigation directed under section 61CR; and
  - (c) licence conditions imposed as a result of a direction under section 61CS; and
  - (d) the licence condition set out in paragraph 8(2)(c) of Schedule 2.
- (3) The Minister may give the ACMA a written direction requiring the ACMA to make available specified information for the purposes of facilitating the conduct of a review under subsection (1).
- (4) The ACMA must comply with a direction under subsection (3).
- (5) The Minister must cause to be prepared a report of a review under subsection (1).
- (6) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.

No. 10—Schedule 2, item 7, page 50 (line 24), omit paragraph (a) of the definition of *designated local content program* in section 61CA, substitute:

- (a) a news bulletin; or
- (aa) a weather bulletin; or

No. 11—Schedule 2, item 7, page 50 (after line 28), after the definition of *draft local content plan* in section 61CA, insert:

*eligible local news bulletins* means local news bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins broadcast on each of those days have a total duration of at least 12.5 minutes;
- (c) the bulletins are broadcast during prime-time hours;
- (d) the bulletins adequately reflect matters of local significance;
- (e) none of the bulletins consists wholly of material that has previously been broadcast in the licence area concerned.

*eligible local weather bulletins* means local weather bulletins that meet the following requirements:

- (a) the bulletins are broadcast on at least 5 days during the week;
- (b) the bulletins are broadcast during prime-time hours.

No. 12—Schedule 2, item 7, page 50 (line 29) to page 51 (line 1), omit the definition of *eligible local news and weather bulletins* in section 61CA.

No. 13—Schedule 2, item 7, page 51 (after line 14), after the definition of *metropolitan licence area* in section 61CA, insert:

*news bulletin* means a regularly scheduled news bulletin.

No. 14—Schedule 2, item 7, page 51 (lines 15 and 16), omit the definition of *news and weather bulletin* in section 61CA.

No. 15—Schedule 2, item 7, page 51 (after line 29), after the definition of *trigger event* in section 61CA, insert:

*weather bulletin* means a regularly scheduled weather bulletin that is transmitted:

- (a) as a stand-alone bulletin; or
- (b) in conjunction with a news bulletin.

No. 16—Schedule 2, item 7, page 53 (after line 14), after paragraph 61CD(a), insert:

(aa) minimum service standards for local weather; and

No. 17—Schedule 2, item 7, page 53 (line 26), omit “and weather”.

No. 18—Schedule 2, item 7, page 53 (lines 29 and 30), omit “and weather”.

No. 19—Schedule 2, item 7, page 54 (after line 4), after subsection 61CE(2), insert:

*Local weather*

(2A) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the *minimum service standards for local weather* during a particular week if, during that week, the number of eligible local weather bulletins broadcast by the licensee is at least the local weather target number.

(2B) For the purposes of subsection (2A), the *local weather target number* is:

- (a) 5; or
- (b) if the Minister, by legislative instrument, declares that a greater number is the local weather target number—the greater number.

No. 20—Schedule 2, item 7, page 57 (after line 13), after subparagraph 61CK(1)(b)(i), insert:

(ia) paragraph 61CE(2B)(b); or

No. 21—Schedule 2, item 7, page 59 (after line 4), after section 61CP, insert:

**61CPA Licensee must submit annual compliance report**

- (1) This section applies if an approved local content plan for a regional commercial radio broadcasting licence was in force during the whole or a part of a financial year.
- (2) The regional commercial radio broadcasting licensee must, within 3 months after the end of the financial year, give the ACMA a report about the licensee’s compliance with the approved local content plan during the whole or the part, as the case may be, of the financial year.
- (3) A report under subsection (2) must:
  - (a) be in a form approved in writing by the ACMA; and
  - (b) set out such information as the ACMA requires.

No. 22—Schedule 2, item 3, page 40 (after line 10), after section 43B, insert:

**43C Local content—regional commercial radio broadcasting licences**

- (1) The ACMA must ensure that, at all times on and after 1 January 2008, there is in force under section 43 a condition that has the effect of requiring the licensee of a regional commercial radio broadcasting licence to broadcast, during daytime hours each business day, at least the applicable number of hours of material of local significance.

*Material of local significance*

- (2) The condition must define **material of local significance** for the purposes of the condition. If a regional commercial radio broadcasting licensee is required to comply with section 61CD, the definition of **material of local significance** must be broad enough to cover material that the licensee must broadcast in order to comply with that section.

*Applicable number*

- (3) For the purposes of the application of subsection (1) to a regional commercial radio broadcasting licence, the **applicable number** is:
- (a) 4.5; or
  - (b) if the Minister, by legislative instrument, declares that another number is the applicable number for regional commercial radio broadcasting licences generally—the other number; or
  - (c) if:
    - (i) the Minister, by legislative instrument, declares that another number is the applicable number for a specified class of regional commercial radio broadcasting licences; and
    - (ii) the regional commercial radio broadcasting licence is included in that class;
 the other number.
- (4) The Minister must not declare a number under paragraph (3)(b) or subparagraph (3)(c)(i) that is less than 4.5 unless:
- (a) the Minister has caused to be conducted a review of:
    - (i) whether a declaration should be made under paragraph (3)(b) or subparagraph (3)(c)(i) specifying a number that is less than 4.5; and
    - (ii) if so, the content of the declaration; and
  - (b) the Minister has caused to be prepared a report of the review; and
  - (c) the declaration made by the Minister is in accordance with a recommendation in the report.

*Section 43 powers etc.*

- (5) To avoid doubt, this section does not create any obligations under subsection 43(2) that would not exist apart from this section.
- (6) Subsection 43(5) does not apply to the condition.
- (7) This section does not limit the powers conferred on the ACMA by section 43 to impose, vary or revoke other conditions.

*Definitions*

- (8) In this section:  
**daytime hours** means the hours:



- (a) beginning at 6 am each day or, if another time is prescribed, beginning at that prescribed time each day; and
- (b) ending at 6 pm on the same day or, if another time is prescribed, ending at that prescribed time on the same day.

**metropolitan licence area** means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
  - (i) New South Wales; or
  - (ii) Victoria; or
  - (iii) Queensland; or
  - (iv) Western Australia; or
  - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

**regional commercial radio broadcasting licence** means a commercial radio broadcasting licence that has a regional licence area.

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

No. 23—Schedule 2, item 7, page 51 (lines 8 to 14), omit the definition of **metropolitan licence area**, substitute:

**metropolitan licence area** means:

- (a) a licence area in which is situated the General Post Office of the capital city of:
  - (i) New South Wales; or
  - (ii) Victoria; or
  - (iii) Queensland; or
  - (iv) Western Australia; or
  - (v) South Australia; or
- (b) the licence area known as Western Suburbs Sydney RA1.

*Amendments to proposed amendment no. 9:*

Paragraph 61CT(1)(a), omit “section 43B”, substitute “sections 43B and 43C”.

Paragraph 61CT(1)(d), omit “section 43B”, substitute “sections 43B and 43C”.

Paragraph 61CT(2)(a), after “section 43B”, insert “or 43C”.

*Amendment to proposed amendment no. 22:*

Omit subsection 43C(4), substitute:

- (4) Before 30 June 2007, the Minister must cause to be conducted a review of:
  - (a) whether:
    - (i) a declaration should be made under paragraph (3)(b); or
    - (ii) one or more declarations should be made under subparagraph (3)(c)(i); and
  - (b) the number or numbers that should be specified in the declaration or declarations concerned; and
  - (c) in the case of a declaration or declarations under subparagraph (3)(c)(i)—the class or classes that should be specified in the declaration or declarations concerned.

- (4A) The Minister must cause to be prepared a report of a review under subsection (4).
- (4B) The Minister must cause copies of a report to be laid before each House of the Parliament within 15 sitting days of that House after the completion of the report.
- (4C) Before the end of whichever of the following periods ends first:
  - (a) the period of 15 sitting days of the House of Representatives after the completion of the report;
  - (b) the period of 15 sitting days of the Senate after the completion of the report;
 the Minister must:
  - (c) either:
    - (i) make a declaration under paragraph (3)(b); or
    - (ii) make one or more declarations under subparagraph (3)(c)(i); and
  - (d) cause a copy of each such declaration to be laid before each House of the Parliament in accordance with section 38 of the *Legislative Instruments Act 2003*.

Senator Milne moved the following amendment:

Schedule 2, item 7, page 54 (line 31) to page 55 (line 2), omit subsection 61CE(6), substitute:

- (6) For the purposes of this Subdivision, a commercial radio broadcasting licensee meets the *minimum service standards for designated local content programs* during a particular week if, during that week, the amount of local content programs is at least:
  - (a) the local content program target amount; or
  - (b) if the average weekly amount of local content broadcast under the licence during the benchmark year is greater than the local content program target number—that amount.
- (7) For the purposes of subsection (6), the *local content program target amount* is:
  - (a) 4 ½ hours in every 24 hour period; or
  - (b) if the Minister, by legislative instrument, declares that a greater amount is the local content program target amount—the greater amount.

Question—That the amendment be agreed to—put and negatived.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, items 4 to 6.

Schedule 2, items 4 to 6 debated.

Question—That Schedule 2, items 4 to 6 stand as printed—put.

The committee divided—

AYES, 37

Senators—

Abetz	Coonan	Kemp	Ronaldson
Adams	Eggleston	Lightfoot	Santoro
Barnett	Ferguson	Macdonald, Ian	Scullion
Bernardi	Ferris (Teller)	Macdonald, Sandy	Troeth
Boswell	Fielding	Mason	Trood
Brandis	Fierravanti-Wells	McGauran	Vanstone
Calvert	Fifield	Minchin	Watson
Campbell, Ian	Heffernan	Nash	
Chapman	Humphries	Parry	
Colbeck	Johnston	Payne	

NOES, 35

Senators—

Allison	Evans	Lundy	Ray
Bartlett	Faulkner	McEwen	Sherry
Bishop	Forshaw	McLucas	Siewert
Brown, Bob	Hogg	Milne	Stephens
Brown, Carol	Hurley	Moore	Sterle
Campbell, George	Hutchins	Murray	Webber (Teller)
Carr	Joyce	Nettle	Wong
Conroy	Kirk	O'Brien	Wortley
Crossin	Ludwig	Polley	

Items agreed to.

Question—That the bill, as amended, be agreed to—divided in respect of Schedule 2, item 7, Division 5B.

Question—That Schedule 2, item 7, Division 5B stand as printed—put.

The committee divided—

AYES, 36

Senators—

Abetz	Colbeck	Humphries	Nash
Adams	Coonan	Johnston	Payne
Barnett	Eggleston	Kemp	Ronaldson
Bernardi	Ferguson	Lightfoot	Santoro
Boswell	Ferris (Teller)	Macdonald, Ian	Scullion
Brandis	Fielding	Macdonald, Sandy	Troeth
Calvert	Fierravanti-Wells	Mason	Trood
Campbell, Ian	Fifield	McGauran	Vanstone
Chapman	Heffernan	Minchin	Watson

NOES, 34

Senators—

Allison	Faulkner	McEwen	Sherry
Bartlett	Forshaw	McLucas	Siewert
Bishop	Hogg	Milne	Stephens
Brown, Bob	Hurley	Moore	Sterle
Brown, Carol	Hutchins	Murray	Webber (Teller)
Campbell, George	Joyce	Nettle	Wong
Carr	Kirk	O'Brien	Wortley
Conroy	Ludwig	Polley	
Crossin	Lundy	Ray	

Division agreed to.

Bill, as amended, agreed to.

*Limitation of debate:* The time allotted for the consideration of the bills in committee of the whole expired.

*In respect of the Broadcasting Legislation Amendment (Digital Television) Bill 2006:*

Question—That Schedule 1, item 4 stand as printed—put and negatived.

The following amendments circulated by the Government were agreed to:

Schedule 1, item 1, page 3 (line 9), at the end of the definition of *anti-siphoning event*, add “For this purpose, disregard subsections 115(1AA) and (1B).”.

Schedule 1, page 3 (after line 11), after item 2, insert:

**2A Before section 27**

Insert:

**26B Licence area plans—multi-channelled national television broadcasting services**

- (1) Licence area plans are not required to deal with SDTV multi-channelled national television broadcasting services.
- (2) Subsection (1) ceases to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the coverage area concerned.
- (3) In this section:

*SDTV multi-channelled national television broadcasting service* has the same meaning as in Schedule 4.

*simulcast-equivalent period* has the same meaning as in Schedule 4.

*simulcast period* has the same meaning as in Schedule 4.

Schedule 1, page 4 (after line 13), after item 9, insert:

**9A Clause 2 of Schedule 4**

Insert:

*simulcast-equivalent period*, in relation to a national television broadcasting service, has the meaning given by clause 4D.

**9B Before clause 5 of Schedule 4**

Insert:

**4D Simulcast-equivalent period for a coverage area**

If there is no simulcast period for a coverage area in relation to a national television broadcasting service, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the coverage area.

Schedule 1, item 18, page 6 (line 6), at the end of the heading to clause 41H, add “etc.”.

Schedule 1, item 18, page 6 (line 9), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 1, page 9 (after line 12), after item 28, insert:

**28A Variation of national television conversion scheme**

- (1) This item applies to a variation by the ACMA of the national television conversion scheme if:

- (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) the variation is made within 30 days after the commencement of this item.
- (2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
  - (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
  - (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

Schedule 2, page 11 (after line 20), after item 6, insert:

**6A After section 26**

Insert:

**26A Licence area plans—multi-channelled commercial television broadcasting services**

- (1) If:
  - (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and
  - (b) the licence authorises the licensee to provide a HDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the HDTV multi-channelled commercial television broadcasting service.

- (2) Subsection (1) ceases to have effect at the end of the simulcast period, or the simulcast-equivalent period, for the licence area concerned.
- (3) In this section:

*HDTV multi-channelled commercial television broadcasting service* has the same meaning as in Schedule 4.

*simulcast-equivalent period* has the same meaning as in Schedule 4.

*simulcast period* has the same meaning as in Schedule 4.

**6B After subsection 26B(1)**

Insert:

- (1A) Licence area plans are not required to deal with HDTV multi-channelled national television broadcasting services.

**6C Subsection 26B(2)**

Omit “Subsection (1) ceases”, substitute “Subsections (1) and (1A) cease”.

**6D Subsection 26B(3)**

Insert:

*HDTV multi-channelled national television broadcasting service* has the same meaning as in Schedule 4.

Schedule 2, page 13 (after line 32), after item 9, insert:

**9A Subsection 38A(9)**

Omit “services under”, substitute “at least one service under each of”.

Schedule 2, item 15, page 16 (after line 9), after subsection 40(12), insert:

*Licence condition*

- (13) If the ACMA allocates a commercial television broadcasting licence under subsection (1), the licence is subject to the condition that the licensee may only provide the commercial television broadcasting service concerned in digital mode (within the meaning of Schedule 4).

Schedule 2, item 17, page 17 (line 15), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 17, page 17 (line 24), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 29, page 19 (after line 31), after paragraph 7(1)(mb), insert:

(mc) subject to subclauses (5), (6) and (7), if:

- (i) the licence was allocated under section 38A or 38B; and
- (ii) there is a simulcast-equivalent period for the licence area of the licence;

the licensee will provide a HDTV multi-channelled commercial television broadcasting service during the simulcast-equivalent period for the licence area;

Schedule 2, item 40, page 21 (line 3), omit “and (mb)”, substitute “, (mb) and (mc)”.

Schedule 2, item 40, page 21 (line 8), omit “Paragraph (1)(ma) does not apply”, substitute “Paragraphs (1)(ma) and (mc) do not apply”.

Schedule 2, item 40, page 21 (line 13), omit “Paragraph (1)(mb) does not apply”, substitute “Paragraphs (1)(mb) and (mc) do not apply”.

Schedule 2, item 40, page 21 (line 19), after “(mb)”, insert “, (mc)”.

Schedule 2, items 47 and 48, page 22 (lines 12 to 25), omit the items, substitute:

**47 Clause 2 of Schedule 4 (definition of *simulcast-equivalent period*)**

Repeal the definition, substitute:

***simulcast-equivalent period:***

- (a) in relation to a commercial television broadcasting service—has the meaning given by clause 4C; or
- (b) in relation to a national television broadcasting service—has the meaning given by clause 4D.

**48 After clause 4B of Schedule 4**

Insert:

**4C Simulcast-equivalent period for a licence area**

If there is no simulcast period for a licence area of a commercial television broadcasting licence, the ACMA may, by legislative instrument, declare that a specified period is the simulcast-equivalent period for the licence area.

Schedule 2, page 24 (after line 16), after item 50, insert:

**50A After subclause 6(5B) of Schedule 4**

Insert:

(5BA) An election made under subclause (5A) or (5AA) remains in force until:

- (a) it is revoked, by written notice given to the ACMA, by:
  - (i) if neither of the licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable has been transferred since the making of the election—the holder of the licence allocated under section 38A or 38B; or
  - (ii) if the licence allocated under section 38A or 38B has been transferred since the making of the election—the holder of that licence; or
  - (iii) if a parent licence referred to in whichever of section 38A or 38B is applicable has been transferred since the making of the election—the holder of that parent licence; and
- (b) the ACMA approves the revocation under clause 7B.

**50B Paragraph 6(7C)(b) of Schedule 4**

Omit “in writing”, substitute “under clause 7B”.

**50C Subclauses 6(7D) and (7E) of Schedule 4**

Repeal the subclauses.

**50D Subparagraph 6(7F)(b)(ii) of Schedule 4**

Omit “the other”, substitute “each other”.

Schedule 2, page 24 (after line 31), after item 51, insert:

**51A After clause 7A of Schedule 4**

Insert:

**7B Revocation of multi-channelling election**

*Scope*

- (1) This clause applies if a commercial television broadcasting licensee gives the ACMA a notice of revocation under subclause 6(5BA) or (7C).

*Approval of revocation*

- (2) If the ACMA is satisfied that there is sufficient radiofrequency spectrum available, the ACMA must, by notice in writing given to the licensee:
  - (a) approve the revocation; and
  - (b) specify a day as the day on which the revocation takes effect; and
  - (c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee.
- (3) For the purposes of subclause (2), any part of the spectrum covered by a determination under subsection 34(3) is taken not to be available.
- (4) The ACMA may, before the day specified under paragraph (2)(b), by notice in writing, vary the day on which the revocation takes effect.

*Refusal to approve revocation*

- (5) If the ACMA refuses to approve the revocation, the ACMA must give written notice of the refusal to the licensee.

Schedule 2, item 70, page 29 (line 9), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 2, item 74, page 30 (line 18), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 2, item 85, page 34 (line 8), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 85, page 34 (line 30), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 85, page 35 (line 24), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 85, page 36 (line 1), after “captioning service”, insert “for the program”.

Schedule 2, item 85, page 36 (line 6), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 85, page 36 (line 18), after “captioning service”, insert “for the program”.

Schedule 2, item 86, page 37 (line 13), at the end of the heading to clause 41C, add “etc.”.

Schedule 2, item 86, page 37 (line 17), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, item 87, page 38 (line 23), at the end of the heading to clause 41J, add “etc.”.

Schedule 2, item 87, page 38 (line 26), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 2, page 41 (after line 14), after item 90, insert:

**90A Subsection 102(2D)**

After “transmitting”, insert “, in digital mode,”.

**90B Subsection 102(2D)**

After “service”, insert “or services”.

**90C Subsection 102(2D)**

After “the licence”, insert “(the *related licence*)”.

**90D After subsection 102(2E)**

Insert:

(2EA) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.

**90E After subsection 102(2F)**

Insert:

(2G) If:

- (a) under subclause 6(5BA) of Schedule 4 to the *Broadcasting Services Act 1992*, the licensee of a commercial television broadcasting licence (the *related licence*) gives the ACMA a notice of revocation of an election; and



(b) the ACMA approves the revocation under clause 7B of Schedule 4 to that Act;

the ACMA must issue to the licensee of the related licence a new transmitter licence that authorises the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

(2H) The new transmitter licence comes into force on the day on which the revocation takes effect.

(2J) If the related licence is transferred, the new transmitter licence is taken to be issued to the person to whom the related licence is transferred.

**90F Paragraph 102(3)(b)**

After “service”, insert “or services”.

Schedule 2, page 41 (after line 16), after item 91, insert:

**91A Subsection 102A(2D)**

After “licensee” (first occurring), insert “of a commercial television broadcasting licence (the *related licence*)”.

**91B Subsection 102A(2D)**

After “service”, insert “or services”.

Schedule 2, Part 1, page 42 (after line 24), at the end of the Part, add:

**92A Subsection 103(1)**

After “apparatus licence”, insert “(other than an apparatus licence issued under subsection 102(2D), 102(2G) or 102A(2D))”.

**92B Subsection 103(4)**

Omit “or 102A”.

**92C Subsection 103(4A)**

Omit “section 102”, substitute “subsection 102(1)”.

**92D Paragraphs 103(4A)(a) and (b)**

Omit “section”, substitute “subsection”.

**92E After subsection 103(4B)**

Insert:

- (4C) A transmitter licence issued under subsection 102(2D):
- (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4D) A transmitter licence issued under subsection 102(2G):
- (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4E) A transmitter licence issued under subsection 102A(1):
- (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and

- (b) does not have effect while the related licence referred to in that subsection is suspended.
- (4F) A transmitter licence issued under subsection 102A(2D):
  - (a) subject to paragraph (b), continues in force while the related licence referred to in that subsection remains in force; and
  - (b) does not have effect while the related licence referred to in that subsection is suspended.

Schedule 2, page 43 (after line 17), after item 93, insert:

**93A Approval of revocation of multi-channelling election etc.**

- (1) This item applies to a notice that was given under subclause 6(7D) of Schedule 4 to the *Broadcasting Services Act 1992* before the commencement of this item.
- (2) The notice has effect, after the commencement of this item, as if it had been given under subclause 7B(2) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Schedule.

**93B Variation of the day on which a revocation of a multi-channelling election takes effect**

- (1) This item applies to a notice given under subclause 6(7E) of Schedule 4 to the *Broadcasting Services Act 1992* before the commencement of this item.
- (2) The notice has effect, after the commencement of this item, as if it had been given under subclause 7B(4) of Schedule 4 to the *Broadcasting Services Act 1992* as amended by this Schedule.

**93C Variation of program standards**

- (1) This item applies to a variation by the ACMA of a program standard if:
  - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:
    - (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
    - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Section 126 of the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

**93D Variation of commercial television conversion scheme**

- (1) This item applies to a variation by the ACMA of the commercial television conversion scheme if:
  - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:

- (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
  - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Clause 18 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
  - (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
  - (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

### **93E Variation of national television conversion scheme**

- (1) This item applies to a variation by the ACMA of the national television conversion scheme if:
  - (a) the variation deals with transitional and/or consequential matters in connection with the amendments made by this Schedule; and
  - (b) either:
    - (i) the variation was made before the commencement of this item in accordance with section 4 of the *Acts Interpretation Act 1901*; or
    - (ii) the variation is made within 30 days after the commencement of this item.
- (2) Clause 33 of Schedule 4 to the *Broadcasting Services Act 1992* does not apply to the variation.
- (3) Section 17 of the *Legislative Instruments Act 2003* does not apply to the variation.
- (4) The ACMA must not make the variation unless a copy of the proposed variation was made available on the ACMA's Internet site for a period of at least 5 business days.

Schedule 3, page 45 (after line 13), after item 2, insert:

#### **2A After subsection 26A(1)**

Insert:

(1A) If:

- (a) a commercial television broadcasting licence for a licence area was in force immediately before 1 January 2007; and
- (b) the licence authorises the licensee to provide a SDTV multi-channelled commercial television broadcasting service in the licence area;

the relevant licence area plan is not required to deal with the SDTV multi-channelled commercial television broadcasting service.

#### **2B Subsection 26A(2)**

Omit "Subsection (1) ceases", substitute "Subsections (1) and (1A) cease".

**2C Subsection 26A(3)**

Insert:

*SDTV multi-channelled commercial television broadcasting service*  
has the same meaning as in Schedule 4.

Schedule 3, page 45 (after line 13), after item 2, insert:

**2D Paragraph 38B(21A)(c)**

Omit “one or both”, substitute “any or all”.

**2E Subsection 38B(21B)**

Omit “a commercial”, substitute “at least one commercial”.

Schedule 3, page 49 (after line 6), after item 6, insert:

**6A Paragraph 7(1)(p) of Schedule 2**

After “section”, insert “101B, 101C,”.

Schedule 3, item 14, page 51 (line 14), at the end of the heading to clause 41A, add “etc.”.

Schedule 3, item 14, page 51 (line 18), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 3, item 14, page 52 (line 20), at the end of the heading to clause 41B, add “etc.”.

Schedule 3, item 14, page 52 (line 25), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 3, item 15, page 54 (line 3), at the end of the heading to clause 41D, add “etc.”.

Schedule 3, item 15, page 54 (line 8), after “period”, insert “, or a simulcast-equivalent period,”.

Schedule 3, item 15, page 55 (line 13), at the end of the heading to clause 41E, add “etc.”.

Schedule 3, item 15, page 55 (line 16), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 15, page 56 (line 24), at the end of the heading to clause 41F, add “etc.”.

Schedule 3, item 15, page 56 (line 27), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 15, page 57 (line 30), at the end of the heading to subclause 41G(1), add “etc.”.

Schedule 3, item 15, page 57 (line 35), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 15, page 58 (line 3), at the end of the heading to subclause 41G(2), add “etc.”.

Schedule 3, item 15, page 58 (line 7), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 16, page 58 (line 14), at the end of the heading to clause 41K, add “etc.”.

Schedule 3, item 16, page 58 (line 17), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 16, page 59 (line 24), at the end of the heading to clause 41L, add “etc.”.

Schedule 3, item 16, page 59 (line 27), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 16, page 60 (line 29), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, item 16, page 60 (line 34), after “period”, insert “, or the simulcast-equivalent period,”.

Schedule 3, page 61 (before line 1), before item 17, insert:

**16A Section 5 (paragraph (a) of the definition of *datacasting transmitter licence*)**

After “section”, insert “101B, 101C,”.

**16B Subsection 100(1)**

After “100B,”, insert “101B, 101C,”.

**16C After section 101A**

Insert:

**101B Transmitter licence—application if multi-channelling election is in force in relation to remote licence area**

(1) If:

- (a) a commercial television broadcasting licence (the *related licence*) allocated under section 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and
- (b) an election under subclause 6(7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence;

the licensee of the related licence may, before the end of whichever of the following periods is applicable:

- (c) the simulcast period for the licence area;
- (d) the simulcast-equivalent period for the licence area;

apply in writing to the ACMA for the issue of a transmitter licence under this section.

(2) An application under subsection (1) must be in a form approved by the ACMA.

*Issue of transmitter licence*

(3) If:

- (a) an application is made under subsection (1); and
- (b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;

the ACMA must:

- (c) vary the relevant digital channel plan under the commercial television conversion scheme to allot a channel to the licensee of the related licence; and

- (d) issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.
- (4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.
- (5) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

*Definitions*

- (6) In this section:
  - simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.
  - simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**101C Transmitter licence—application before the end of the simulcast period etc. if multi-channelling election is in force**

- (1) If:
  - (a) a commercial television broadcasting licence (the *related licence*) allocated under section 38A or 38B of the *Broadcasting Services Act 1992* is in force on or after 1 January 2009; and
  - (b) an election under subclause 6(5A), (5AA) or (7B) of Schedule 4 to that Act is in force for a commercial television broadcasting service provided under the related licence; and
  - (c) no transmitter licence has been issued to the licensee of the related licence under section 101B;
 the licensee of the related licence may, before the end of whichever of the following periods is applicable:
  - (d) the simulcast period for the licence area;
  - (e) the simulcast-equivalent period for the licence area;
 apply in writing to the ACMA for the issue of a transmitter licence under this section.
- (2) An application under subsection (1) must be in a form approved by the ACMA.

*Issue of transmitter licence*

- (3) If:
  - (a) an application is made under subsection (1); and
  - (b) the ACMA is satisfied that there is sufficient radiofrequency spectrum available;
 the ACMA must issue to the licensee of the related licence a transmitter licence authorising the operation of one or more specified radiocommunications transmitters for transmitting commercial television broadcasting services in digital mode in accordance with the related licence.

- (4) For the purposes of paragraph (3)(b), any part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992* is taken not to be available.
- (5) The transmitter licence comes into force at the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the related licence.
- (6) If the related licence is transferred, the transmitter licence is taken to be issued to the person to whom the related licence is transferred.

*Consequences of revocation of election*

- (7) If:
  - (a) an application is made under subsection (1); and
  - (b) the election referred to in paragraph (1)(b) is revoked before the ACMA makes a decision on the application;
 the application is taken never to have been made.
- (8) If:
  - (a) a transmitter licence is issued under subsection (3); and
  - (b) the election referred to in paragraph (1)(b) is subsequently revoked;
 the transmitter licence is cancelled.

*Definitions*

- (9) In this section:
  - simulcast-equivalent period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.
  - simulcast period* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**16D Paragraph 102(2A)(e)**

Omit “another commercial television broadcasting service (the *additional service*)”, substitute “one or more other commercial television broadcasting services (the *additional services*)”.

**16E Paragraph 102(2A)(f)**

Omit “the additional service”, substitute “at least one of the additional services”.

**16F Paragraph 102(2A)(g)**

Omit “the additional service”, substitute “any of the additional services”.

**16G Paragraph 102(2A)(h)**

Omit “service”, substitute “services”.

**16H Subsection 102(2C)**

After “service” (first occurring), insert “or services”.

**16J Paragraph 102(2F)(a)**

After “service”, insert “or services”.

**16K Paragraph 102A(2A)(e)**

Omit “another commercial television broadcasting service (the *additional service*)”, substitute “one or more other commercial television broadcasting services (the *additional services*)”.

**16L Paragraph 102A(2A)(f)**

Omit “the additional service”, substitute “at least one of the additional services”.

**16M Subsection 102A(2A)**

Omit “the additional service in”, substitute “any of the additional services in”.

Schedule 3, page 63 (after line 20), at the end of the Schedule, add:

**18 Subsection 103(1)**

After “subsection”, insert “101C(3),”.

**19 Subsection 103(2)**

After “101A,”, insert “101B, 101C,”.

**20 After subsection 103(4)**

Insert:

(4AA) A transmitter licence issued under section 101B:

- (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and
- (b) does not have effect while the related licence referred to in that section is suspended.

(4AB) A transmitter licence issued under section 101C:

- (a) subject to paragraph (b), continues in force while the related licence referred to in that section remains in force; and
- (b) does not have effect while the related licence referred to in that section is suspended.

**21 Subsection 106A(2)**

After “section”, insert “101B, 101C,”.

**22 Subsection 107(3)**

After “101A,”, insert “101B, 101C,”.

**23 Subsection 108(5)**

After “101A,”, insert “101B, 101C,”.

**24 Subsection 109(1)**

After “section”, insert “101B, 101C,”.

**25 After subsection 109(1)**

Insert:

- (1A) The conditions of a licence issued under section 101B, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101B.



- (1B) The conditions of a licence issued under section 101C, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the commercial television broadcasting licence referred to in section 101C.

**26 Subsection 109(2)**

Omit “the licence”, substitute “a licence issued under section 102 or 102A”.

**27 Paragraph 111(1)(d)**

After “101A,”, insert “101B, 101C,”.

**28 Subsection 125(2)**

After “101A,”, insert “101B, 101C,”.

**29 Subsection 129(1)**

After “101A,”, insert “101B, 101C,”.

Clause 2, page 2 (after table item 3), insert:

- 3A. Schedule 2A      A single day to be fixed by Proclamation.  
    However, if any of the provision(s) do not  
    commence within the period of 6 months  
    beginning on the day on which this Act  
    receives the Royal Assent, they commence  
    on the first day after the end of that period.

Schedule 2, page 10 (before line 6), before item 1, insert:

**1A Subsection 6(1)**

Insert:

*channel B datacasting transmitter licence* has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

Schedule 2, page 10 (after line 24), after item 3, insert:

**3A Subsection 6(1)**

Insert:

*domestic digital television receiver* has the same meaning as in the *Radiocommunications Act 1992*.

Schedule 2, page 17 (after line 11), after item 16, insert:

**16A After section 51**

Insert:

**51A This Part does not apply to certain channel B datacasting transmitter licences**

This Part does not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

Schedule 2, page 18 (after line 24), after item 23, insert:

**23A After subsection 212(2A)**

Insert:

(2B) The rule in subsection (2) does not prevent an action, suit or proceeding against a person under the *Radiocommunications Act 1992* in relation to a breach of any of the conditions of a datacasting transmitter licence.

(2C) The Minister may give the ACMA a written direction about the exercise of the power conferred by subparagraph (1)(b)(ii).

Schedule 2, page 40 (after line 14), after item 88, insert:

**88A At the end of clause 41 of Schedule 6**

Add:

(3) Subclauses (1) and (2) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

Schedule 2, page 40 (after line 15), before item 89, insert:

**88B Section 5**

Insert:

*BSA exempt re-transmission service* means a service that, under subsection 212(1) of the *Broadcasting Services Act 1992*, is exempt from the regulatory regime established by that Act.

**88C Section 5**

Insert:

*channel A datacasting transmitter licence* has the meaning given by section 98A.

**88D Section 5**

Insert:

*channel B datacasting transmitter licence* has the meaning given by section 98B.

**88E Section 5**

Insert:

*commercial broadcasting service* has the same meaning as in the *Broadcasting Services Act 1992*.

**88F Section 5**

Insert:

*commercial radio broadcasting licence* has the same meaning as in the *Broadcasting Services Act 1992*.

**88G Section 5**

Insert:

*community television broadcasting service* has the same meaning as in the *Broadcasting Services Act 1992*.

**88H Section 5**

Insert:

*domestic digital television receiver* means domestic reception equipment that:

- (a) is not a hand-held device; and
- (b) is capable of receiving television programs transmitted in:
  - (i) SDTV digital mode; or
  - (ii) HDTV digital mode; and
- (c) has such other characteristics (if any) as are specified in a legislative instrument made by the ACMA under this paragraph.

For the purposes of paragraph (b), disregard clause 6 of Schedule 6 to the *Broadcasting Services Act 1992*.

**88J Section 5**

Insert:

*HDTV digital mode* has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

**88K Section 5**

Insert:

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

**88L Section 5**

Insert:

*open narrowcasting television service* has the same meaning as in the *Broadcasting Services Act 1992*.

**88M Section 5**

Insert:

*subscription television broadcasting service* has the same meaning as in the *Broadcasting Services Act 1992*.

**88N At the end of Division 1 of Part 3.3 of Chapter 3**

Add:

**98A Channel A datacasting transmitter licence**

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a *channel A datacasting transmitter licence* for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a *channel A datacasting transmitter licence* for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.

- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

**98B Channel B datacasting transmitter licence**

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a *channel B datacasting transmitter licence* for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a *channel B datacasting transmitter licence* for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA's Internet site.

Schedule 2, page 42 (after line 24), after item 92, insert:

**92F After subsection 106(5)**

Insert:

- (5A) A system so determined must provide that a person is not eligible to apply for a channel A datacasting transmitter licence unless the person meets specified requirements.

**92G Subsection 106(7)**

After "(5)", insert "(5A)".

**92H After subsection 106(9)**

Insert:

- (9A) The Minister may give written directions to the ACMA in relation to the exercise of the power conferred by subsection (5A).

**92J Subsection 106(10)**

After "(9)", insert "or (9A)".

**92K At the end of subsection 106(11)**

Add "or (9A)".

**92L Paragraph 109A(1)(g)**

Before "a condition", insert "if the licence is neither a channel A datacasting transmitter licence nor a channel B datacasting transmitter licence—".

**92M Paragraph 109A(1)(ga)**

Repeal the paragraph, substitute:

- (ga) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 18 months after the allocation of the licence or within such longer period as is notified in writing by the ACMA;

**92N Paragraph 109A(1)(h)**

Repeal the paragraph.

**92P At the end of paragraph 109A(1)(i)**

Add:

- or (iii) that service is a BSA exempt re-transmission service;

**92Q After paragraph 109A(1)(i)**

Insert:

- (ia) if the licence is a channel A datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless:
  - (i) the service is provided under, and in accordance with the conditions of, a BSA datacasting licence, and the service is capable of being received by a domestic digital television receiver; or
  - (ii) the service is an open narrowcasting television service that is capable of being received by a domestic digital television receiver; or
  - (iii) the service is a community television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ib) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the datacasting service is:
  - (i) a commercial broadcasting service; or
  - (ii) a subscription television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ic) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the licensee or the person so authorised is:
  - (i) a company that holds a commercial television broadcasting licence; or
  - (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or
  - (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;and the datacasting service is capable of being received by a domestic digital television receiver;
- (id) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service provided under a BSA datacasting licence if the holder of the BSA datacasting licence is:
  - (i) a company that holds a commercial television broadcasting licence; or

- (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or
  - (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;
- and the datacasting service is capable of being received by a domestic digital television receiver;
- (ie) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if:
    - (i) the service is a BSA exempt re-transmission service; and
    - (ii) the service is capable of being received by a domestic digital television receiver;
  - (if) if the licence is a channel A datacasting transmitter licence or a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless that service is transmitted in digital mode (within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*);

**92R Subsection 109A(1A)**

After “(1)(g)”, insert “or (ga)”.

**92S Subsection 109A(1B)**

Repeal the subsection, substitute:

- (1B) For the purposes of subparagraph (1)(ib)(ii), it is immaterial whether a domestic digital television receiver is capable of receiving subscription television broadcasting services when used:
  - (a) in isolation; or
  - (b) in conjunction with any other equipment.
- (1C) A condition specified in a licence under paragraph (1)(k) may deal with the commencement or continuity of transmission of datacasting services.
- (1D) Subsection (1C) does not limit paragraph (1)(k).
- (1E) Paragraphs (1)(g) and (ga) do not limit subsection (1C).

**92T Subsection 109A(4)**

After “subparagraphs”, insert “(1)(ic)(ii), (iii) and (v), (1)(id)(ii), (iii) and (v),”.

**92U At the end of section 109A**

Add:

- (5) Subsections (2) and (3) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

*Ministerial directions*

- (6) The Minister may give the ACMA a written direction about the exercise of the power conferred by paragraph (1)(k) to specify conditions in a channel A datacasting transmitter licence.

**92V Paragraph 125(1)(a)**

Omit “(h), (i)”, substitute “(i), (ia), (ib), (ic), (id), (ie), (if)”.

**92W Subsection 128C(1)**

Omit “(h), (i)”, substitute “(i), (ia), (ib), (ic), (id), (ie), (if)”.

**92X Section 128D**

Omit “(h), (i)”, substitute “(i), (ia), (ib), (ic), (id), (ie), (if)”.

**92Y Section 128E**

Repeal the section.

Page 44 (after line 3), after Schedule 2, insert:

**Schedule 2A—Amendments commencing on Proclamation**

*Broadcasting Services Act 1992*

**1 After Part 9**

Insert:

**Part 9A—Technical standards**

**130A Technical standards for digital transmission**

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of any or all of the following services delivered using the broadcasting services bands:
- (a) commercial television broadcasting services;
  - (b) national television broadcasting services;
  - (c) community television broadcasting services;
  - (d) subscription television broadcasting services;
  - (e) television broadcasting services provided under a class licence;
  - (f) datacasting services provided under datacasting licences.

*Conditional access systems*

- (2) Standards under subsection (1), to the extent that they deal with conditional access systems, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those systems should be open to all providers of eligible datacasting services.

*Application program interfaces*

- (3) Standards under subsection (1), to the extent that they deal with application program interfaces, must be directed towards ensuring the achievement of the policy objective that, as far as is practicable, those interfaces should be open to all providers of eligible datacasting services.

*Conversion schemes*

- (4) The commercial television conversion scheme under clause 6 of Schedule 4 must be consistent with any standards determined under subsection (1).
- (5) The national television conversion scheme under clause 19 of Schedule 4 must be consistent with any standards determined under subsection (1).

*Instruments*

- (6) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Compliance*

- (7) A national broadcaster must comply with a standard determined under subsection (1).

Note 1: For compliance by holders of commercial television broadcasting licences, see clause 7 of Schedule 2.

Note 2: For compliance by holders of community television broadcasting licences, see clause 9 of Schedule 2.

Note 3: For compliance by holders of subscription television broadcasting licences, see clause 10 of Schedule 2.

Note 4: For compliance by providers of television broadcasting services provided under a class licence, see clause 11 of Schedule 2.

Note 5: For compliance by holders of datacasting licences, see clause 24 of Schedule 6.

Note 6: For compliance by holders of datacasting transmitter licences, see section 109A of the *Radiocommunications Act 1992*.

*Definitions*

- (8) In this section:

***application program interface*** has the meaning generally accepted within the broadcasting industry.

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

- (a) relates to the provision of one or more eligible datacasting services; and
- (b) allows a provider of an eligible datacasting service to determine whether an end-user is able to receive a particular eligible datacasting service.

***digital mode*** has the same meaning as in Schedule 4.

***eligible datacasting service*** means:

- (a) a datacasting service provided under, and in accordance with the conditions of, a datacasting licence; or
- (b) a television broadcasting service transmitted in digital mode using the broadcasting services bands.

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



**130B Technical standards for domestic digital reception equipment**

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
- (a) commercial television broadcasting services;
  - (b) national television broadcasting services;
  - (c) community television broadcasting services;
  - (d) subscription television broadcasting services;
  - (e) television broadcasting services provided under a class licence;
  - (f) datacasting services provided under datacasting licences.

*Offence*

- (2) A person commits an offence if:
- (a) the person supplies equipment; and
  - (b) the equipment is domestic reception equipment; and
  - (c) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
    - (i) commercial television broadcasting services;
    - (ii) national television broadcasting services;
    - (iii) community television broadcasting services;
    - (iv) subscription television broadcasting services;
    - (v) television broadcasting services provided under a class licence;
    - (vi) datacasting services provided under datacasting licences;
  - (d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

*Civil penalty*

- (3) A person must not supply domestic reception equipment if:
- (a) the equipment is capable of receiving any or all of the following services transmitted in digital mode using the broadcasting services bands:
    - (i) commercial television broadcasting services;
    - (ii) national television broadcasting services;
    - (iii) community television broadcasting services;
    - (iv) subscription television broadcasting services;
    - (v) television broadcasting services provided under a class licence;
    - (vi) datacasting services provided under datacasting licences;
  - (b) the equipment does not comply with a standard determined under subsection (1).
- (4) Subsection (3) is a civil penalty provision.

*Instruments*

- (5) Section 589 of the *Telecommunications Act 1997* applies to standards determined under subsection (1) of this section in a corresponding way to the way in which it applies to an instrument under that Act.

*Reception of subscription television broadcasting services*

- (6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:
- (a) in isolation; or
  - (b) in conjunction with any other equipment.

*Exemptions*

- (7) The ACMA may, by legislative instrument, exempt specified domestic reception equipment from subsections (2) and (3).

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

*Definitions*

- (8) In this section:

**digital mode** has the same meaning as in Schedule 4.

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

**supply** has the same meaning as in the *Trade Practices Act 1974*.

**Part 9B—Industry codes and industry standards****Division 1—Simplified outline****130C Simplified outline**

The following is a simplified outline of this Part:

- Industry codes may be registered by the ACMA.
- The ACMA has a reserve power to make an industry standard if there are no industry codes or if an industry code is deficient.
- Compliance with industry standards is mandatory.

**Division 2—Interpretation****130D Industry codes**

For the purposes of this Part, an **industry code** is a code developed under this Part (whether or not in response to a request under this Part).

**130E Industry standards**

For the purposes of this Part, an **industry standard** is a standard determined under this Part.

**130F Industry activities**

- (1) For the purposes of this Part, each of the following is an **industry activity**:
- (a) providing a commercial television broadcasting service;

- (b) providing a national television broadcasting service (within the meaning of Schedule 4);
- (c) providing a community television broadcasting service;
- (d) providing a subscription television broadcasting service;
- (e) providing a television broadcasting service under a class licence;
- (f) providing a datacasting service under a datacasting licence;
- (g) importing, manufacturing or supplying domestic reception equipment that is capable of receiving any or all of the following:
  - (i) commercial television broadcasting services;
  - (ii) national television broadcasting services;
  - (iii) community television broadcasting services;
  - (iv) subscription television broadcasting services;
  - (v) television broadcasting services provided under a class licence;
  - (vi) datacasting services provided under datacasting licences;
- (h) operating a transmitter under a datacasting transmitter licence.

*Reception of subscription television broadcasting services*

- (2) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving subscription television broadcasting services when used:
  - (a) in isolation; or
  - (b) in conjunction with any other equipment.

*Definitions*

- (3) In this section:
  - import** means import into Australia.
  - national television broadcasting service** has the same meaning as in Schedule 4.
  - supply** has the same meaning as in the *Trade Practices Act 1974*.

**130G Sections of the industry**

- (1) For the purposes of this Part, **sections of the industry** are to be ascertained in accordance with this section.
- (2) The ACMA may, by legislative instrument, determine that persons carrying on, or proposing to carry on, one or more specified kinds of industry activity constitute a section of the industry for the purposes of this Part.
- (3) The section must be identified in the determination by a unique name and/or number.
- (4) A determination under subsection (2) has effect accordingly.
- (5) Sections of the industry determined under subsection (2):
  - (a) need not be mutually exclusive; and
  - (b) may consist of the aggregate of any 2 or more sections of the industry determined under subsection (2); and
  - (c) may be subsets of a section of the industry determined under subsection (2).
- (6) Subsection (5) does not, by implication, limit subsection (2).

**130H Participants in a section of the industry**

For the purposes of this Part, if a person is a member of a group that constitutes a section of the industry, the person is a *participant* in that section of the industry.

**Division 3—General principles relating to industry codes and industry standards****130J Statement of regulatory policy**

The Parliament intends that bodies or associations that the ACMA is satisfied represent sections of the industry should develop codes (*industry codes*) that are to apply to participants in that section of the industry in relation to the industry activities of the participants.

**130K Examples of matters that may be dealt with by industry codes and industry standards**

- (1) This section sets out examples of matters that may be dealt with by industry codes and industry standards.
- (2) The applicability of a particular example will depend on which section of the industry is involved.
- (3) The examples are as follows:
  - (a) the labelling of domestic reception equipment;
  - (b) electronic program guides, including the provision of information for the purpose of compiling electronic program guides;
  - (c) the numbering of digital services, including the use of logical channel numbers;
  - (d) application program interfaces (within the meaning of section 130A);
  - (e) conditional access systems (within the meaning of section 130A);
  - (f) the updating of software used in domestic reception equipment.

**130L Industry codes and industry standards not to deal with certain matters**

For the purposes of this Part, an industry code or an industry standard that deals with a particular matter has no effect to the extent (if any) to which the matter is dealt with by:

- (a) a code registered, or a standard determined, under Part 6 of the *Telecommunications Act 1997*; or
- (b) a code registered, or a standard determined, under Part 9 of this Act; or
- (c) a standard determined under Part 9A of this Act; or
- (d) a standard determined under Part 4 of Schedule 4 to this Act; or
- (e) a code registered, or a standard determined, under Part 5 of Schedule 5 to this Act; or
- (f) a code registered, or a standard determined, under Part 4 of Schedule 6 to this Act.

**Division 4—Industry codes****130M Registration of industry codes**

- (1) This section applies if:
  - (a) the ACMA is satisfied that a body or association represents a particular section of the industry; and
  - (b) that body or association develops an industry code that applies to participants in that section of the industry and deals with one or more matters relating to the industry activities of those participants; and
  - (c) the body or association gives a copy of the code to the ACMA; and
  - (d) the ACMA is satisfied that:
    - (i) to the extent to which the code deals with one or more matters of substantial relevance to the community—the code provides appropriate community safeguards for that matter or those matters; and
    - (ii) to the extent to which the code deals with one or more matters that are not of substantial relevance to the community—the code deals with that matter or those matters in an appropriate manner; and
  - (e) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
    - (i) the body or association published a draft of the code and invited members of the public to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from members of the public within that period; and
  - (f) the ACMA is satisfied that, before giving the copy of the code to the ACMA:
    - (i) the body or association published a draft of the code and invited participants in that section of the industry to make submissions to the body or association about the draft within a specified period; and
    - (ii) the body or association gave consideration to any submissions that were received from participants in that section of the industry within that period.
- (2) The ACMA must register the code by including it in the Register of industry codes kept under section 130ZA.
- (3) A period specified under subparagraph (1)(e)(i) or (1)(f)(i) must run for at least 30 days.
- (4) If:
  - (a) an industry code (the *new code*) is registered under this Part; and
  - (b) the new code is expressed to replace another industry code;the other code ceases to be registered under this Part when the new code is registered.

**130N ACMA may request codes**

- (1) If the ACMA is satisfied that a body or association represents a particular section of the industry, the ACMA may, by written notice given to the body or association, request the body or association to:
  - (a) develop an industry code that applies to participants in that section of the industry and deals with one or more specified matters relating to the industry activities of those participants; and
  - (b) give the ACMA a copy of the code within the period specified in the notice.
- (2) The period specified in a notice under subsection (1) must run for at least 120 days.
- (3) The ACMA must not make a request under subsection (1) in relation to a particular section of the industry unless the ACMA is satisfied that:
  - (a) the development of the code is necessary or convenient in order to:
    - (i) provide appropriate community safeguards; or
    - (ii) otherwise deal with the performance or conduct of participants in that section of the industry; and
  - (b) in the absence of the request, it is unlikely that an industry code would be developed within a reasonable period.
- (4) The ACMA may vary a notice under subsection (1) by extending the period specified in the notice.
- (5) Subsection (4) does not, by implication, limit the application of subsection 33(3) of the *Acts Interpretation Act 1901*.
- (6) A notice under subsection (1) may specify indicative targets for achieving progress in the development of the code (for example, a target of 60 days to develop a preliminary draft of the code).

**130P Publication of notice where no body or association represents a section of the industry**

- (1) If the ACMA is satisfied that a particular section of the industry is not represented by a body or association, the ACMA may publish a notice in the *Gazette*:
  - (a) stating that, if such a body or association were to come into existence within a specified period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and
  - (b) setting out the matter or matters relating to the industry activities that would be likely to be specified in the subsection 130N(1) notice.
- (2) The period specified in a notice under subsection (1) must run for at least 60 days.

**130Q Replacement of industry codes**

- (1) Changes to an industry code are to be achieved by replacing the code instead of varying the code.

- (2) If the replacement code differs only in minor respects from the original code, section 130M has effect, in relation to the registration of the code, as if paragraphs 130M(1)(e) and (f) had not been enacted.

Note: Paragraphs 130M(1)(e) and (f) deal with submissions about draft codes.

### **Division 5—Industry standards**

#### **130R ACMA may determine an industry standard if a request for an industry code is not complied with**

- (1) This section applies if:
  - (a) the ACMA has made a request under subsection 130N(1) in relation to the development of a code that is to:
    - (i) apply to participants in a particular section of the industry; and
    - (ii) deal with one or more matters relating to the industry activities of those participants; and
  - (b) any of the following conditions is satisfied:
    - (i) the request is not complied with;
    - (ii) if indicative targets for achieving progress in the development of the code were specified in the notice of request—any of those indicative targets were not met;
    - (iii) the request is complied with, but the ACMA subsequently refuses to register the code; and
  - (c) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
    - (i) provide appropriate community safeguards in relation to that matter or those matters; or
    - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (3) Before determining an industry standard under this section, the ACMA must consult the body or association to whom the request mentioned in paragraph (1)(a) was made.
- (4) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

#### **130S ACMA may determine industry standard where no industry body or association formed**

- (1) This section applies if:
  - (a) the ACMA is satisfied that a particular section of the industry is not represented by a body or association; and
  - (b) the ACMA has published a notice under subsection 130P(1) relating to that section of the industry; and
  - (c) that notice:
    - (i) states that, if such a body or association were to come into existence within a particular period, the ACMA would be likely to give a notice to that body or association under subsection 130N(1); and

- (ii) sets out one or more matters relating to the industry activities of the participants in that section of the industry; and
- (d) no such body or association comes into existence within that period; and
- (e) the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard in order to:
  - (i) provide appropriate community safeguards in relation to that matter or those matters; or
  - (ii) otherwise regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (2) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (3) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

**130T ACMA may determine industry standards—total failure of industry codes**

- (1) This section applies if:
  - (a) an industry code that:
    - (i) applies to participants in a particular section of the industry; and
    - (ii) deals with one or more matters relating to the industry activities of those participants;
      - has been registered under this Part for at least 180 days; and
  - (b) the ACMA is satisfied that the code is totally deficient (as defined by subsection (6)); and
  - (c) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (d) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with that matter or those matters.
- (2) The period specified in a notice under paragraph (1)(c) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with that matter or those matters. A standard under this subsection is to be known as an *industry standard*.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).
- (5) The industry code ceases to be registered under this Part on the day on which the industry standard comes into force.



- (6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with one or more matters relating to the industry activities of those participants is **totally deficient** if, and only if:
- (a) the code is not operating to provide appropriate community safeguards in relation to that matter or those matters; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter or those matters.
- (7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

**130U ACMA may determine industry standards—partial failure of industry codes**

- (1) This section applies if:
- (a) an industry code that:
    - (i) applies to participants in a particular section of the industry; and
    - (ii) deals with 2 or more matters relating to the industry activities of those participants;has been registered under this Part for at least 180 days; and
  - (b) section 130T does not apply to the code; and
  - (c) the ACMA is satisfied that the code is deficient (as defined by subsection (6)) to the extent to which the code deals with one or more of those matters (the **deficient matter** or **deficient matters**); and
  - (d) the ACMA has given the body or association that developed the code a written notice requesting that deficiencies in the code be addressed within a specified period; and
  - (e) that period ends and the ACMA is satisfied that it is necessary or convenient for the ACMA to determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters.
- (2) The period specified in a notice under paragraph (1)(d) must run for at least 30 days.
- (3) The ACMA may, by legislative instrument, determine a standard that applies to participants in that section of the industry and deals with the deficient matter or deficient matters. A standard under this subsection is to be known as an **industry standard**.
- (4) If the ACMA is satisfied that a body or association represents that section of the industry, the ACMA must consult the body or association before determining an industry standard under subsection (3).
- (5) On and after the day on which the industry standard comes into force, the industry code has no effect to the extent to which it deals with the deficient matter or deficient matters. However, this subsection does not affect:
- (a) the continuing registration of the remainder of the industry code; or

- (b) any investigation, proceeding or remedy in respect of a contravention of the industry code that occurred before that day.
- (6) For the purposes of this section, an industry code that applies to participants in a particular section of the industry and deals with 2 or more matters relating to the industry activities of those participants is *deficient* to the extent to which it deals with a particular one of those matters if, and only if:
  - (a) the code is not operating to provide appropriate community safeguards in relation to that matter; or
  - (b) the code is not otherwise operating to regulate adequately participants in that section of the industry in relation to that matter.
- (7) The Minister may give the ACMA a written direction as to the exercise of its powers under this section.

#### **130V Compliance with industry standards**

- (1) If:
  - (a) an industry standard that applies to participants in a particular section of the industry is registered under this Part; and
  - (b) a person is a participant in that section of the industry;
 the person must comply with the industry standard.

##### *Offence*

- (2) A person commits an offence if:
  - (a) the person is subject to a requirement under subsection (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the requirement.

Penalty: 1,500 penalty units.

##### *Civil penalty*

- (3) Subsection (1) is a civil penalty provision.

#### **130W Formal warnings—breach of industry standards**

- (1) This section applies to a person who is a participant in a particular section of the industry.
- (2) The ACMA may issue a formal warning if the person contravenes an industry standard registered under this Part.

#### **130X Variation of industry standards**

The ACMA may, by legislative instrument, vary an industry standard that applies to participants in a particular section of the industry if it is satisfied that it is necessary or convenient to do so to:

- (a) provide appropriate community safeguards in relation to one or more matters relating to the industry activities of those participants; and
- (b) otherwise regulate adequately those participants in relation to one or more matters relating to the industry activities of those participants.

#### **130Y Revocation of industry standards**

- (1) The ACMA may, by legislative instrument, revoke an industry standard.

- (2) If:
- (a) an industry code is registered under this Part; and
  - (b) the code is expressed to replace an industry standard;
- the industry standard is revoked when the code is registered.

**130Z Public consultation on industry standards**

- (1) Before determining or varying an industry standard, the ACMA must:
- (a) cause to be published in a newspaper circulating in each State a notice:
    - (i) stating that the ACMA has prepared a draft of the industry standard or variation; and
    - (ii) stating that free copies of the draft will be made available to members of the public during normal office hours throughout the period specified in the notice; and
    - (iii) specifying the place or places where the copies will be available; and
    - (iv) inviting interested persons to give written comments about the draft to the ACMA within the period specified under subparagraph (ii); and
  - (b) make copies of the draft available in accordance with the notice.
- (2) The period specified under subparagraph (1)(a)(ii) must run for at least 30 days after the publication of the notice.
- (3) Subsection (1) does not apply to a variation if the variation is of a minor nature.
- (4) If interested persons have given comments in accordance with a notice under subsection (1), the ACMA must have due regard to those comments in determining or varying the industry standard, as the case may be.
- (5) In this section:  
*State* includes the Australian Capital Territory and the Northern Territory.

**Division 6—Register of industry codes and industry standards**

**130ZA ACMA to maintain Register of industry codes and industry standards**

- (1) The ACMA is to maintain a Register in which the ACMA includes:
- (a) all industry codes required to be registered under this Part; and
  - (b) all industry standards; and
  - (c) all requests made under section 130N; and
  - (d) all notices under section 130P.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

**2 After paragraph 7(1)(b) of Schedule 2**

Insert:

- (ba) the licensee will comply with subsection 130V(1) (which deals with industry standards);

**3 Paragraph 7(1)(n) of Schedule 2**

Repeal the paragraph.

**4 Paragraph 7(1)(oa) of Schedule 2**

Omit “regulations made for the purposes of clause 36B of Schedule 4 (which deals with the accessibility of domestic reception equipment)”, substitute “standards under section 130A (which deals with technical standards for digital transmission)”.

**5 Subclauses 7(2B), (2C), (2D) and (2E) of Schedule 2**

Repeal the subclauses.

**6 After paragraph 9(1)(c) of Schedule 2**

Insert:

- (ca) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
- (cb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

**7 After paragraph 10(1)(b) of Schedule 2**

Insert:

- (ba) the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
- (bb) the licensee will comply with subsection 130V(1) (which deals with industry standards);

**8 After paragraph 11(1)(b) of Schedule 2**

Insert:

- (ba) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with standards under section 130A (which deals with technical standards for digital transmission);
- (bb) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the licensee will comply with subsection 130V(1) (which deals with industry standards);

**9 Clause 2 of Schedule 4**

Insert:

***HDTV commercial television format standard*** means:

- (a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(8); or
- (b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by commercial television broadcasting licensees in such a licence area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 8(10A).

**10 Clause 2 of Schedule 4**

Insert:

***HDTV national television format standard*** means:

- (a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(8); or
- (b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in HDTV digital mode by national broadcasters in such a coverage area, where the relevant service is not transmitted using a transmitter operated under the authority of a transmitter licence issued as mentioned under subclause 23(10A).

**11 Clause 2 of Schedule 4**

Insert:

***SDTV commercial television format standard*** means:

- (a) if the licence area concerned is not a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area; or
- (b) if the licence area concerned is a remote licence area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by commercial television broadcasting licensees in such a licence area.

**12 Clause 2 of Schedule 4**

Insert:

***SDTV national television format standard*** means:

- (a) if the coverage area concerned is not a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area; or
- (b) if the coverage area concerned is a remote coverage area—a standard under section 130A that relates to the format in which television programs are to be transmitted in SDTV digital mode by national broadcasters in such a coverage area.

**13 Subparagraphs 8(7)(a)(ii) and (iii) of Schedule 4**

Repeal the subparagraphs, substitute:

- (ii) a SDTV commercial television format standard; or
- (iii) a HDTV commercial television format standard; or

**14 Paragraphs 8(10)(c) and (d) of Schedule 4**

Repeal the paragraphs, substitute:

- (c) a SDTV commercial television format standard; or
- (d) a HDTV commercial television format standard; or

**15 Subparagraphs 23(7)(a)(ii) and (iii) of Schedule 4**

Repeal the subparagraphs, substitute:

- (ii) a SDTV national television format standard; or
- (iii) a HDTV national television format standard; or

**16 Paragraphs 23(10)(c) and (d) of Schedule 4**

Repeal the paragraphs, substitute:

- (c) a SDTV national television format standard; or
- (d) a HDTV national television format standard; or

**17 Clause 35A of Schedule 4**

Repeal the clause.

**18 Part 3A of Schedule 4**

Repeal the Part.

**19 Division 1 of Part 4 of Schedule 4**

Repeal the Division.

**20 Division 4 of Part 4 of Schedule 4**

Repeal the Division.

**21 Division 1A of Part 3 of Schedule 6**

Repeal the Division.

**22 Paragraph 24(1)(ca) of Schedule 6**

Omit “regulations made for the purposes of clause 36B of Schedule 4”, substitute “standards under section 130A (which deals with technical standards for digital transmission)”.

**23 Paragraph 24(1)(g) of Schedule 6**

Repeal the paragraph, substitute:

- (g) the licensee will comply with subsection 130V(1) (which deals with industry standards);

**24 Paragraph 46(e) of Schedule 6**

Omit “or clause 60 of this Schedule”.

**25 Paragraph 52(1)(c) of Schedule 6**

Omit “20B,”.

**26 Subclauses 54(2) and (3) of Schedule 6**

Omit “20B,”.

**27 Part 10 of Schedule 6**

Repeal the Part.

***Radiocommunications Act 1992*****28 Paragraph 109A(1)(fa)**

Repeal the paragraph.

**29 After paragraph 109A(1)(ga)**

Insert:

- (gb) a condition that the licensee, or a person so authorised, will comply with any standards under section 130A of the *Broadcasting Services Act 1992* (which deals with technical standards for digital transmission);
- (gc) a condition that the licensee, or a person so authorised, will comply with subsection 130V(1) of the *Broadcasting Services Act 1992* (which deals with industry standards);

Schedule 2, page 42 (after line 24), after item 92, insert:

**92QA Before paragraph 109A(1)(j)**

Insert:

- (ij) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4A in relation to the licence;

**92UA After Division 4 of Part 3.3 of Chapter 3**

Insert:

**Division 4A—Access to channel B datacasting transmitter licences****118A Access to channel B datacasting transmitter licences**

A reference in this Division to *access* to a channel B datacasting transmitter licence is a reference to access to services that enable or facilitate the transmission of one or more content services under the licence, where the access is provided for the purpose of enabling one or more content service providers to provide one or more content services.

Note: *Content service provider* and *content service* are defined in section 118M.

**118B Applicant for channel B datacasting transmitter licences must give the ACCC an access undertaking**

- (1) A person is not eligible to apply for a channel B datacasting transmitter licence unless:
    - (a) the person has given the ACCC a written undertaking that, in the event that the licence is issued to the person, each of the following persons:
      - (i) the first holder of the licence;
      - (ii) any person authorised by the first holder of the licence to operate radiocommunications transmitters under the licence;
      - (iii) any future holder of the licence;
      - (iv) any person authorised by a future holder of the licence to operate radiocommunications transmitters under the licence;
- will:
- (v) comply with such obligations in relation to access to the licence as are ascertained in accordance with the undertaking; and

- (vi) do so on such terms and conditions as are agreed with the holder of the licence (or the person so authorised) or, failing agreement, on such terms and conditions as are ascertained in accordance with the undertaking; and
- (b) the ACCC has accepted the undertaking.
- (2) The undertaking must be in a form approved in writing by the ACCC.
- (3) The undertaking must be accompanied by the fee (if any) specified in the Procedural Rules. The amount of the fee must not be such as to amount to taxation.
- (4) The undertaking may be without limitations or may be subject to such limitations as are specified in the undertaking.
- (5) The Procedural Rules may make provision for or in relation to a time limit for giving the undertaking.

**118C Further information about access undertaking**

- (1) This section applies if a person gives an access undertaking to the ACCC.
- (2) The ACCC may request the person to give the ACCC further information about the access undertaking.
- (3) If:
  - (a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and
  - (b) the person does not give the ACCC the information within the time limit allowed by the Procedural Rules;
 the ACCC may, by written notice given to the person, reject the access undertaking.
- (4) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the ACCC may refuse to consider the access undertaking until the person gives the ACCC the information.
- (5) The ACCC may withdraw its request for further information, in whole or in part.
- (6) Information obtained by the ACCC under this section is taken to be protected Part XIB or XIC information for the purposes of section 155AB of the *Trade Practices Act 1974*.

**118D ACCC to accept or reject access undertaking**

- (1) This section applies if a person gives an access undertaking to the ACCC.
 

*Decision to accept or reject access undertaking*
- (2) After considering the access undertaking, the ACCC must:
  - (a) accept the access undertaking; or
  - (b) reject the access undertaking.
- (3) If the ACCC rejects the access undertaking, the ACCC may give the person a written notice advising the person that, if the person:
  - (a) makes such alterations to the access undertaking as are specified in the notice; and



- (b) gives the altered access undertaking to the ACCC within the time limit allowed by the Procedural Rules;

the ACCC will accept the altered access undertaking.

*Notice of decision*

- (4) If the ACCC accepts the access undertaking, the ACCC must give the person a written notice stating that the access undertaking has been accepted.
- (5) If the ACCC rejects the access undertaking, the ACCC must give the person a written notice:
  - (a) stating that the access undertaking has been rejected; and
  - (b) setting out the reasons for the rejection.

**118E Duration of access undertaking etc.**

- (1) If:
  - (a) a person gives an access undertaking to the ACCC in relation to a channel B datacasting transmitter licence; and
  - (b) the ACCC accepts the access undertaking; and
  - (c) the licence is issued to the person;
 the access undertaking:
  - (d) comes into force when the licence is issued; and
  - (e) remains in force while the licence is in force; and
  - (f) is suspended while the licence is suspended.
- (2) To avoid doubt, if:
  - (a) an access undertaking is in force in relation to a channel B datacasting transmitter licence; and
  - (b) the licence is transferred;
 then:
  - (c) the transfer does not result in the lapse of the access undertaking; and
  - (d) the transferee, and any person authorised by the transferee to operate radiocommunications transmitters under the licence, is bound by the access undertaking.
- (3) If:
  - (a) a channel B datacasting transmitter licence is renewed; and
  - (b) immediately before the expiry of the original licence, an access undertaking was in force in relation to the original licence;
 the access undertaking:
  - (c) remains in force while the new licence is in force, as if:
    - (i) it were an access undertaking in relation to the new licence; and
    - (ii) each reference in the access undertaking to a holder of the original licence were a reference to a holder of the new licence; and
  - (d) is suspended while the new licence is suspended.

**118F Variation of access undertakings**

- (1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.

- (2) The licensee may give the ACCC a variation of the access undertaking.

*Decision to accept or reject variation*

- (3) After considering the variation, the ACCC must decide to:
- (a) accept the variation; or
  - (b) reject the variation.
- (4) If the ACCC rejects the variation, the ACCC may give the person a written notice advising the person that, if the person:
- (a) makes such alterations to the variation as are specified in the notice; and
  - (b) gives the altered variation to the ACCC within the time limit allowed by the Procedural Rules;
- the ACCC will accept the altered variation.

*Notice of decision*

- (5) If the ACCC accepts the variation, the ACCC must give the licensee a written notice:
- (a) stating that the variation has been accepted; and
  - (b) setting out the terms of the variation.
- (6) If the ACCC rejects the variation, the ACCC must give the licensee a written notice:
- (a) stating that the variation has been rejected; and
  - (b) setting out the reasons for the rejection.

**118G Further information about variation of access undertaking**

- (1) This section applies if the licensee of a channel B datacasting transmitter licence gives the ACCC a variation of an access undertaking.
- (2) The ACCC may request the licensee to give the ACCC further information about the variation.
- (3) If:
- (a) the Procedural Rules make provision for or in relation to a time limit for giving the information; and
  - (b) the licensee does not give the ACCC the information within the time limit allowed by the Procedural Rules;
- the ACCC may, by written notice given to the licensee, reject the variation.
- (4) If the Procedural Rules do not make provision for or in relation to a time limit for giving the information, the ACCC may refuse to consider the variation until the licensee gives the ACCC the information.
- (5) The ACCC may withdraw its request for further information, in whole or in part.
- (6) Information obtained by the ACCC under this section is taken to be protected Part XIB or XIC information for the purposes of section 155AB of the *Trade Practices Act 1974*.

**118H Decision-making criteria**

*Acceptance of access undertaking*

- (1) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept access undertakings.
- (2) In deciding whether to accept access undertakings, the ACCC must apply criteria determined under subsection (1).  
*Acceptance of variation of access undertaking*
- (3) The ACCC may, by legislative instrument, determine criteria to be applied by the ACCC in deciding whether to accept variations of access undertakings.
- (4) In deciding whether to accept variations of access undertakings, the ACCC must apply criteria determined under subsection (3).

**118J Register of access undertakings**

- (1) The ACCC is to maintain a Register in which the ACCC includes all access undertakings that are in force.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the Internet.

**118K Enforcement of access undertakings**

- (1) This section applies if an access undertaking is in force in relation to a channel B datacasting transmitter licence.
- (2) If:
  - (a) the ACCC; or
  - (b) any person (the *affected person*) whose interests are affected by the access undertaking;thinks that a person (the *third person*) has breached the access undertaking, the ACCC or affected person may apply to the Federal Court for an order under subsection (3).
- (3) If the Federal Court is satisfied that the third person has breached the access undertaking, the Court may make all or any of the following orders:
  - (a) an order directing the third person to comply with the access undertaking;
  - (b) an order directing the third person to compensate any other person who has suffered loss or damage as a result of the breach;
  - (c) any other order that the Court thinks appropriate.
- (4) The Federal Court may discharge or vary an order granted under this section.

**118L Procedural Rules**

- (1) The ACCC may, by legislative instrument, make rules:
  - (a) making provision for or in relation to the practice and procedure to be followed by the ACCC in performing functions, or exercising powers, under this Division; or
  - (b) making provision for or in relation to all matters and things incidental to any such practice or procedure, or necessary or convenient to be prescribed for the conduct of any business of the ACCC under this Division; or

- (c) prescribing matters required or permitted by any other provision of this Division to be prescribed by the Procedural Rules.
- (2) Rules under subsection (1) are to be known as Procedural Rules.
- (3) The Procedural Rules may make provision for or in relation to any or all of the following:
  - (a) the confidentiality of information or documents given to the ACCC by a person who gave the ACCC an access undertaking or a variation of an access undertaking;
  - (b) the form and content of undertakings, variations or other documents given to the ACCC under this Division;
  - (c) requiring the ACCC to give information to the ACMA about the operation of this Division;
  - (d) requiring the ACMA to give information to the ACCC that is relevant to the operation of this Division.
- (4) The Procedural Rules may make provision for or in relation to a matter by empowering the ACCC to make decisions of an administrative character.
- (5) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking if:
  - (a) the ACCC is satisfied that the access undertaking:
    - (i) is frivolous; or
    - (ii) is vexatious; or
    - (iii) was not given in good faith; or
  - (b) the ACCC has reason to believe that the access undertaking was given for the purpose, or for purposes that include the purpose, of frustrating or undermining the effective administration of this Division.
- (6) The Procedural Rules may provide that the ACCC may refuse to consider an access undertaking given by a person in relation to a channel B datacasting transmitter licence if (apart from section 118B) the person is not eligible to apply for the licence.
- (7) Subsections (3), (4), (5) and (6) do not limit subsection (1).

#### **118M Definitions**

In this Division:

***access*** has the meaning given by section 118A.

***access undertaking*** means an undertaking under section 118B.

***content service*** means a service covered by subparagraph 109A(1)(i)(i) or (ii), but does not include a service covered by subparagraph 109A(1)(ib)(i) or (ii).

***content service provider*** means a company who provides, or proposes to provide, a content service.

***Procedural Rules*** means Procedural Rules made under section 118L.

#### **92VA Paragraph 125(1)(a)**

Before “or (j)”, insert “, (ij)”.

**92WA Subsection 128C(1)**

Before “or (j)”, insert “, (ij)”.

**92XA Section 128D**

Before “or (j)”, insert “, (ij)”.

Question—That Schedule 1, item 18, as amended; Schedule 2, items 15 and 87, as amended; and Schedule 3, item 16, as amended, be agreed to; and Schedule 2, item 8, section 35B stand as printed—put and passed.

The following amendment circulated by the Opposition was negatived:

Schedule 2, page 40 (after line 14), after item 88, insert:

**88A After section 115**

Insert:

**115B Review of high definition multi-channelling by commercial broadcasters**

Before 31 December 2007, the Minister must cause to be conducted a review of high definition multi-channelling by commercial broadcasters in relation to the effectiveness of HDTV multi-channelling in encouraging the take-up of digital TV.

The following amendments circulated by the Australian Democrats were negatived:

Schedule 1, page 9 (after line 22), at the end of the Schedule, add:

**Part 3—Further amendments*****Australian Communications and Media Authority Act 2005*****30 At the end of subsection 20(1)**

Add “, in accordance with the merit selection process set out in section 20A”.

**31 After section 20**

Insert:

**20A Procedures for merit selection of members**

- (1) The Minister must, within 9 months of the commencement of this section, determine a code of practice for selecting a member to be appointed by the Governor-General that must include the following general principles:
  - (a) merit, including but not limited to appropriate subject, research and management experience; and
  - (b) appointment on the recommendation of an independent selection panel established by the Minister; and
  - (c) probity; and
  - (d) openness and transparency.
- (2) The Minister must cause to be tabled in each House of the Parliament a copy of the code of practice within 15 sitting days of that House after determining the code in accordance with subsection (1).
- (3) The Minister must cause to be tabled in each House of the Parliament any amendment of the code of practice within 15 sitting days of that House after the amendment is made.

**20B Audit of procedures**

- (1) The operation of section 20A must be audited by the Public Service Commissioner each financial year.
- (2) The result of an audit conducted in accordance with this section is to be included in the annual report of the Public Service Commissioner.
- (3) An audit conducted pursuant to subsection (1) must examine the code of practice as determined and any appointments made in accordance with the code of practice.

Schedule 2, item 15, page 15 (after line 7), after subsection 40(7), insert:

- (7A) Before forming an opinion in accordance with subsection (7)(b), the Minister must first confer with the Leader of the Opposition in the House of Representatives whether a proposed commercial television broadcasting service is likely to be contrary to the public interest.

Schedule 2, page 17 (after line 11), after item 16, insert:

**16AA At the end of subsection 42(1)**

Add:

- ; and (c) the condition that the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4).

*In respect of the Communications Legislation Amendment (Enforcement Powers) Bill 2006:*

The following amendments circulated by the Government were agreed to:

Schedule 1, item 48, page 25 (line 10), after “136E”, insert “or subclause 49(3) of Schedule 6”.

Schedule 1, item 48, page 25 (line 15), after “136E”, insert “or subclause 49(3) of Schedule 6”.

Schedule 1, item 50, page 32 (line 5), at the end of paragraph 215(1)(b), add “or”.

Schedule 1, item 50, page 32 (after line 5), after paragraph 215(1)(b), insert:

- (c) Part 8 of Schedule 6;

Schedule 1, item 50, page 32 (line 25), at the end of paragraph 215(5)(b), add “or”.

Schedule 1, item 50, page 32 (after line 25), after paragraph 215(5)(b), insert:

- (c) Part 8 of Schedule 6;

Schedule 1, page 32 (after line 31), after item 50, insert:

**50A After paragraph 9(1)(a) of Schedule 6**

Insert:

- (aa) a breach of a civil penalty provision occurring; or

**50B At the end of subclause 9(2) of Schedule 6**

Add:

- ; and (f) whether a civil penalty order has been made against:
  - (i) the first-mentioned person; or
  - (ii) a person referred to in paragraph (c) or (d).

**50C At the end of clause 49 of Schedule 6 (before the notes)**

Add:

- (3) A person must not provide a datacasting service if the person does not have a datacasting licence to provide that service.
- (4) Subclause (3) is a civil penalty provision.
- (5) A person who contravenes subclause (3) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

**50D Clause 50 of Schedule 6**

Repeal the clause, substitute:

**50 Remedial directions—unlicensed datacasting services**

- (1) If the ACMA is satisfied that a person has breached, or is breaching, subclause 49(3), the ACMA may, by written notice given to the person, direct the person to take action directed towards ensuring that the person does not breach that subclause, or is unlikely to breach that subclause, in the future.

Note 1: For exemptions for broadcasters, see clause 51.

Note 2: For exemptions for designated teletext services, see clause 51A.

*Offence*

- (2) A person commits an offence if:
  - (a) the person has been given a notice under subclause (1); and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes a requirement in the notice.

Penalty: 20,000 penalty units.

- (3) A person who contravenes subclause (2) commits a separate offence in respect of each day (including a day of a conviction for the offence or any subsequent day) during which the contravention continues.

*Civil penalty*

- (4) A person must comply with a notice under subclause (1).
- (5) Subclause (4) is a civil penalty provision.
- (6) A person who contravenes subclause (4) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*Definition*

- (7) In this clause:
  - engage in conduct* means:
    - (a) do an act; or
    - (b) omit to perform an act.

**50E After clause 52 of Schedule 6**

Insert:

**52A Civil penalty provision relating to breach of conditions of datacasting licences**

- (1) A datacasting licensee must not breach a condition of the licence set out in clause 14, 16, 21 or 24.
- (2) Subclause (1) is a civil penalty provision.
- (3) A person who contravenes subclause (1) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

**50F At the end of clause 53 of Schedule 6**

Add:

- (6) A person must comply with a notice under subclause (1).
- (7) Subclause (6) is a civil penalty provision.
- (8) A person who contravenes subclause (6) commits a separate contravention of that subclause in respect of each day (including a day of the making of a relevant civil penalty order or any subsequent day) during which the contravention continues.

*In respect of the Television Licence Fees Amendment Bill 2006:*

The following amendments circulated by the Australian Democrats were negatived:

Schedule 1, page 3 (after line 4), before item 1, insert:

**1A After section 2**

Insert:

**2A Application—3 year moratorium**

This Act does not apply to a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service until the later of:

- (a) 3 years after the date on which that service is first broadcast; or
- (b) the date on which a report by the ACMA is presented to both Houses of the Parliament which recommends that the licence fees commence in respect of that service.

Schedule 1, page 3 (after line 4), before item 1, insert:

**1A After section 2**

Insert:

**2A Application—1 year moratorium**

- (1) This Act does not apply to a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service until the expiration of one year after the date on which that service is first broadcast.
- (2) A licensee broadcasting a HDTV multi-channelled commercial television broadcasting service or a SDTV multi-channelled commercial television broadcasting service may apply to the ACMA for an exemption from payment of fees under this Act for up to three years after the date on which the service was first broadcast.
- (3) An application under subsection (2) is to be forwarded with a written recommendation by ACMA to the Minister for consideration.



Schedule 1, page 3 (after line 6), at the end of the bill, add:

**2 After section 7**

Insert:

**7A Review of the licence fees for non-core television broadcasting licences**

- (1) No later than 1 January 2011, the Minister must cause to be conducted a review of the licence fees payable in relation to:
  - (a) a HDTV multi-channelled commercial television broadcasting service; or
  - (b) a SDTV multi-channelled commercial television broadcasting service being operated by a licensee.
- (2) The following matters must be taken into account in conducting a review under subsection (1):
  - (a) the financial viability of the services being offered on the digital terrestrial television platform; and
  - (b) the take-up of digital television in the applicable licence area; and
  - (c) any other relevant matters.
- (3) The Minister must cause to be prepared a report of a review under subsection (1).
- (4) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

---

Question—That the Broadcasting Legislation Amendment (Digital Television) Bill 2006 and the Communications Legislation Amendment (Enforcement Powers) Bill 2006, as amended, and the Television Licence Fees Amendment Bill 2006 be agreed to—put.

The committee divided—

AYES, 36

Senators—

Abetz	Coonan	Johnston	Nash
Adams	Eggleston	Joyce	Parry
Barnett	Ferguson	Kemp	Patterson
Bernardi	Ferris (Teller)	Lightfoot	Payne
Boswell	Fielding	Macdonald, Ian	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Sandy	Scullion
Calvert	Fifield	Mason	Troeth
Chapman	Heffernan	McGauran	Trood
Colbeck	Humphries	Minchin	Watson

## NOES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Faulkner	McEwen	Ray
Bishop	Forshaw	McLucas	Sherry
Brown, Bob	Hogg	Milne	Siewert
Brown, Carol	Hurley	Moore	Stephens
Campbell, George	Hutchins	Murray	Sterle
Carr	Kirk	Nettle	Webber (Teller)
Conroy	Ludwig	O'Brien	Wortley

Question agreed to.

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The Broadcasting Services Amendment (Media Ownership) Bill 2006, the Broadcasting Legislation Amendment (Digital Television) Bill 2006 and the Communications Legislation Amendment (Enforcement Powers) Bill 2006 to be reported with amendments and the Television Licence Fees Amendment Bill 2006 to be reported without requests for amendments.

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The President resumed the chair and the Chair of Committees (Senator Hogg) reported accordingly.

On the motion of Senator Coonan the report from the committee was adopted.

Senator Coonan moved—That these bills be now read a third time.

Question put.

The Senate divided—

## AYES, 36

Senators—

Abetz	Coonan	Johnston	Nash
Adams	Eggleston	Joyce	Parry
Barnett	Ferguson	Kemp	Patterson
Bernardi	Ferris (Teller)	Lightfoot	Payne
Boswell	Fielding	Macdonald, Ian	Ronaldson
Brandis	Fierravanti-Wells	Macdonald, Sandy	Scullion
Calvert	Fifield	Mason	Troeth
Chapman	Heffernan	McGauran	Trood
Colbeck	Humphries	Minchin	Watson

## NOES, 32

Senators—

Allison	Crossin	Lundy	Polley
Bartlett	Faulkner	McEwen	Ray
Bishop	Forshaw	McLucas	Sherry
Brown, Bob	Hogg	Milne	Siewert
Brown, Carol	Hurley	Moore	Stephens
Campbell, George	Hutchins	Murray	Sterle
Carr	Kirk	Nettle	Webber (Teller)
Conroy	Ludwig	O'Brien	Wortley

Question agreed to.

Bills read a third time.

*Suspension of sitting:* On the motion of Senator Coonan the sitting of the Senate was suspended at 1.35 pm till 2 pm.

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At 2 pm—

**19 QUESTIONS**

Questions without notice were answered.

**20 MINISTER FOR THE ENVIRONMENT AND HERITAGE—ANSWERS TO QUESTIONS**

Senator Carr moved—That the Senate take note of the answers given by the Minister for the Environment and Heritage (Senator Ian Campbell) to questions without notice asked today.

Debate ensued.

Question put and passed.

**21 EMPLOYMENT—TRAINING—SKILLS FOR THE FUTURE—MINISTERIAL STATEMENT—DOCUMENT**

The Minister for the Environment and Heritage (Senator Ian Campbell) tabled the following document:

Employment—Training—Skills for the future—Ministerial statement by the Prime Minister (Mr Howard), dated 12 October 2006.

Senator Nettle, by leave, moved—That the Senate take note of the document.

Debate ensued.

Debate adjourned till the next day of sitting, Senator Wong in continuation.

**22 AUDITOR-GENERAL—AUDIT REPORT NO. 6 OF 2006-07—DOCUMENT**

The Deputy President (Senator Hogg) tabled the following document:

Auditor-General—Audit report no. 6 of 2006-07—Performance audit—Recordkeeping including the management of electronic records.

**23 LEGAL AND CONSTITUTIONAL AFFAIRS—STANDING COMMITTEE—REPORT—PRIVACY LEGISLATION AMENDMENT (EMERGENCIES AND DISASTERS) BILL 2006**

Pursuant to order, Senator Ferris, at the request of the Chair of the Legal and Constitutional Affairs Committee (Senator Payne), tabled the following report and documents:

Legal and Constitutional Affairs—Standing Committee—Privacy Legislation Amendment (Emergencies and Disasters) Bill 2006—Report, dated October 2006 and submissions [13].

Report ordered to be printed on the motion of Senator Ferris.

**24 DOCUMENTS**

The following documents were tabled by the Clerk:

[*Legislative instruments are identified by a Federal Register of Legislative Instruments (FRLI) number*]

Class Rulings—

Addendum—CR 2006/7.

CR 2006/99-CR 2006/102.

## Customs Act—Tariff Concession Orders—

0610181 [F2006L03326]\*.  
 0611804 [F2006L03329]\*.  
 0611860 [F2006L03328]\*.  
 0612053 [F2006L03330]\*.  
 0612229 [F2006L03327]\*.  
 0612429 [F2006L03324]\*.

Environment Protection and Biodiversity Conservation Act—Amendment of list of specimens taken to be suitable for live import, dated 25 September 2006 [F2006L03309]\*.

Higher Education Support Act—Higher Education Provider Approval (No. 15 of 2006)—Raffles KvB Institute Pty Ltd [F2006L03350]\*.

## Migration Act—Migration Agents Regulations—MARA Notices—

MN41-06b of 2006—Migration Agents (Continuing Professional Development – Private Study of Audio, Video or Written Material) [F2006L03332]\*.  
 MN41-06c of 2006—Migration Agents (Continuing Professional Development – Attendance at a Seminar, Workshop, Conference or Lecture) [F2006L03333]\*.  
 MN41-06f of 2006—Migration Agents (Continuing Professional Development – Miscellaneous Activities) [F2006L03335]\*.

Product Rulings PR 2006/145-PR 2006/147.

\* Explanatory statement tabled with legislative instrument.

## 25 INDEXED LISTS OF DEPARTMENTAL AND AGENCY FILES—ORDER FOR PRODUCTION OF DOCUMENTS—DOCUMENT

The following document was tabled pursuant to the order of the Senate of 30 May 1996, as amended:

Indexed lists of departmental and agency files for the period 1 January to 30 June 2006—Statement of compliance—Communications, Information Technology and the Arts portfolio agencies.

## 26 COMMITTEES—CHANGES IN MEMBERSHIP

The Deputy President (Senator Hogg) informed the Senate that the President had received letters requesting changes in the membership of committees.

The Minister for the Environment and Heritage (Senator Ian Campbell), by leave, moved—That senators be discharged from and appointed to committees as follows:

### Community Affairs—Standing Committee—

Appointed—Substitute member: Senator Ferris to replace Senator Adams for the committee's inquiry into legislative responses to the Lockhart review on 24 October 2006

### Economics—Standing Committee—

Appointed—Substitute member: Senator Parry to replace Senator Bernardi for the committee's inquiry into petrol pricing in Australia on 13 October 2006

### Legal and Constitutional Affairs—Standing Committee—

Appointed—Participating member: Senator Webber.

Question put and passed.

**27 SUPERANNUATION LEGISLATION AMENDMENT (SUPERANNUATION SAFETY AND OTHER MEASURES) BILL 2005  
PETROLEUM RETAIL LEGISLATION REPEAL BILL 2006**

Messages from the House of Representatives were reported agreeing to the amendments made by the Senate to the following bills:

Message no. 401, dated 11 October 2006—Superannuation Legislation Amendment (Superannuation Safety and Other Measures) Bill 2005.

Message no. 402, dated 11 October 2006—Petroleum Retail Legislation Repeal Bill 2006.

*General business was called on.*

**28 SEXUALITY AND GENDER IDENTITY DISCRIMINATION BILL 2003 [2004]**

Order of the day read for the further consideration of the bill.

Senator Bartlett moved—That this bill be now read a second time.

Debate ensued.

*At 6 pm:* Debate was interrupted while Senator Bernardi was speaking.

**29 GOVERNMENT DOCUMENTS—ORDERS OF THE DAY—CONSIDERATION**

The following orders of the day relating to government documents were considered:

Department of Defence—Report for 2004-05. Motion of Senator Stephens to take note of document agreed to.

Human Rights and Equal Opportunity Commission—Report for 2004-05. Motion of Senator Bartlett to take note of document agreed to.

North Queensland Land Council Aboriginal Corporation—Report for 2004-05. Motion of Senator Bartlett to take note of document agreed to.

Torres Strait Regional Authority—Report for 2004-05. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator McLucas in continuation.

Australian Rail Track Corporation Limited (ARTC)—Report for 2004-05. Motion of Senator Webber to take note of document agreed to.

Natural Heritage Trust—Report for 2004-05. Motion of Senator Milne to take note of document agreed to.

National Rural Advisory Council—Report for 2001-02, including a report on the Rural Adjustment Scheme. Motion of Senator Stott Despoja to take note of document agreed to.

National Rural Advisory Council—Report for 2002-03. Motion of Senator Stott Despoja to take note of document agreed to.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 003/05 to 013/05 and 015/05, 7 February 2006. Motion of Senator Stephens to take note of document agreed to.

National Environment Protection Council and NEPC Service Corporation—Report for 2004-05. Motion of Senator Stephens to take note of document agreed to.

Aboriginal and Torres Strait Islander Social Justice Commissioner—Social justice—Report for 2005. Motion of Senator Crossin to take note of document debated. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

*Native Title Act 1993*—Native title representative bodies—Cape York Land Council Aboriginal Corporation—Report for 2004-05. Motion of Senator Stephens to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Commonwealth Grants Commission—Report—State revenue sharing relativities—2006 update. Motion of Senator Watson to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Report by the Commonwealth Ombudsman—Personal identifier 014/05, 1 December 2005. Motion of Senator Bartlett to take note of document agreed to.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Report by the Commonwealth Ombudsman—Personal identifier 016/05, 1 December 2005. Motion of Senator Bartlett to take note of document agreed to.

*Migration Act 1958*—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 July to 31 October 2005. Motion of Senator Kirk to take note of document agreed to.

*Superannuation (Government Co-contribution for Low Income Earners) Act 2003*—Quarterly report on the Government co-contribution scheme for the period 1 October to 31 December 2005. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

*Australian Meat and Live-stock Industry Act 1997*—Live-stock mortalities for exports by sea—Report for the period 1 July to 31 December 2005. Motion of Senator Kirk to take note of document agreed to.

Queensland Fisheries Joint Authority—Report for 2003-04. Motion of Senator Ian Macdonald to take note of document agreed to.

Indigenous Business Australia—Corporate plan 2006-2008. Motion of Senator Kirk to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

Multilateral treaty—Text, together with national interest analysis and annexures—Agreement Establishing the Pacific Islands Forum, done at Port Moresby on 27 October 2005. Motion of Senator Ian Macdonald to take note of document agreed to.

*Migration Act 1958*—Section 440A—Conduct of Refugee Review Tribunal (RRT) reviews not completed within 90 days—Report for the period 1 July to 31 October 2005. Motion of Senator Kirk to take note of document agreed to.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 017/05 to 019/05 and 020/06 to 048/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

National Rural Advisory Council—Report for 2004-05. Motion of Senator Ian Macdonald to take note of document agreed to.

Wheat Export Authority—Report for 1 October 2004 to 30 September 2005. Motion of Senator Kirk to take note of document agreed to.

Australia-Indonesia Institute—Report for 2004-05. Motion of Senator Stott Despoja to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian Agency for International Development (AusAID)—Australian aid: Promoting growth and stability—White paper. Motion of Senator Stott Despoja to take note of document agreed to.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports 049/06 to 055/06, 9 May 2006. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 049/06 to 055/06. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

*Migration Act 1958*—Section 91Y—Protection visa processing taking more than 90 days—Report for the period 1 November 2005 to 28 February 2006. Motion of Senator Bartlett to take note of document agreed to.

Australian Livestock Export Corporation Limited (LiveCorp)—Report for 2004-05. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

*Superannuation (Government Co-contribution for Low Income Earners) Act 2003*—Quarterly report on the Government co-contribution scheme for the period 1 January to 31 March 2006. Motion of Senator Bartlett to take note of document called on. Debate adjourned till Thursday at general business, Senator Bartlett in continuation.

*Roads to Recovery Act 2000*—Roads to recovery programme—Report for 2004-05 on the operation of the Act. Motion of Senator Bartlett to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Northern Territory Fisheries Joint Authority—Report for 2004-05. Motion of Senator Siewert to take note of document called on. On the motion of Senator Kirk debate was adjourned till Thursday at general business.

Australian National University—Report for 2005. Motion of Senator Kirk to take note of document called on. Debate adjourned till Thursday at general business, Senator Kirk in continuation.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Government response to the Commonwealth Ombudsman's reports—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

*Migration Act 1958*—Section 486O—Assessment of appropriateness of detention arrangements—Reports by the Commonwealth Ombudsman—Personal identifiers 056/06 to 066/06. Motion of Senator Kirk to take note of document called on. On the motion of Senator Bartlett debate was adjourned till Thursday at general business.

Australian Law Reform Commission—Report—No. 104—Fighting words: A review of sedition laws in Australia, July 2006. Motion of Senator Sterle to take note of document debated. Debate adjourned till Thursday at general business, Senator Wortley in continuation.

*General business concluded.*

### 30 COMMITTEE REPORTS AND GOVERNMENT RESPONSES—ORDERS OF THE DAY— CONSIDERATION

The following orders of the day relating to committee reports and government responses were considered:

National Capital and External Territories—Joint Standing Committee—Report—Visit to Norfolk Island: 2-5 August 2006. Motion of the chair of the committee (Senator Lightfoot) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Treaties—Joint Standing Committee—

Report 77—Treaties tabled on 20 June and 8 August 2006

Report 78—Treaty scrutiny: A ten year review—

—Motion of Senator Wortley to take note of reports agreed to.

Migration—Joint Standing Committee—Report—Negotiating the maze: Review of arrangements for overseas skills recognition, upgrading and licensing. Motion of Senator Kirk to take note of report debated. Debate adjourned till the next day of sitting, Senator Kirk in continuation.

Rural and Regional Affairs and Transport References Committee—Interim report—Water policy initiatives. Motion of the chair of the committee (Senator Siewert) to take note of report debated and agreed to.

Rural and Regional Affairs and Transport References Committee—Interim report—Australia's future oil supply and alternative transport fuels. Motion of the chair of the committee (Senator Siewert) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Foreign Affairs, Defence and Trade Legislation Committee—First progress report—Reforms to Australia's military justice system. Motion of the chair of the committee (Senator Johnston) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Community Affairs Legislation Committee—Report—Transparent Advertising and Notification of Pregnancy Counselling Services Bill 2005. Motion of the chair of the committee (Senator Humphries) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.



Rural and Regional Affairs and Transport Legislation Committee—Report—National Animal Welfare Bill 2005. Motion of Senator Bartlett to take note of report called on. Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

Community Affairs References Committee—Report—Beyond petrol sniffing: Renewing hope for Indigenous communities. Motion of the chair of the committee (Senator Moore) to take note of report debated. Debate adjourned till the next day of sitting, Senator Bartlett in continuation.

Foreign Affairs, Defence and Trade—Joint Standing Committee—Report—Australia's defence relations with the United States. Motion of the chair of the committee (Senator Ferguson) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Electoral Matters—Joint Standing Committee—Report—Funding and disclosure: Inquiry into disclosure of donations to political parties and candidates. Motion of Senator Carr to take note of report debated. Debate adjourned till the next day of sitting, Senator Carol Brown in continuation.

Foreign Affairs, Defence and Trade References Committee—Report—China's emergence: Implications for Australia. Motion of the chair of the committee (Senator Hutchins) to take note of report called on. On the motion of Senator Kirk debate was adjourned till the next day of sitting.

Mental Health—Select Committee—First report—A national approach to mental health – from crisis to community. Motion of the chair of the committee (Senator Allison) to take note of report debated. Debate adjourned till the next day of sitting, Senator Webber in continuation.

Legal and Constitutional References Committee—Report—Administration and operation of the *Migration Act 1958*. Motion of the chair of the committee (Senator Crossin) to take note of report debated and agreed to.

Community Affairs References Committee—Reports—Forgotten Australians: A report on Australians who experienced institutional or out-of-home care as children—Protecting vulnerable children: A national challenge: Inquiry into Australians who experienced institutional or out-of-home care—Government responses. Motion of Senator Murray to take note of document called on. On the motion of Senator Bartlett debate was adjourned till the next day of sitting.

### 31 AUDITOR-GENERAL'S REPORTS—ORDERS OF THE DAY—CONSIDERATION

The following orders of the day relating to reports of the Auditor-General were considered:

Auditor-General—Audit report no. 49 of 2005-06—Performance audit—Job placement and matching services: Department of Employment and Workplace Relations. Motion of Senator Moore to take note of document agreed to.

Auditor-General—Audit report no. 2 of 2006-07—Performance audit—Export certification: Australian Quarantine and Inspection Service. Motion of Senator McEwen to take note of document agreed to.

Auditor-General—Report for 2005-06. Motion of Senator McEwen to take note of document agreed to.

Auditor-General—Audit report no. 3 of 2006-07—Performance audit—Management of Army minor capital equipment procurement projects: Department of Defence; Defence Materiel Organisation. Motion of Senator Bishop to take note of document called. On the motion of Senator Webber debate was adjourned till the next day of sitting.

Auditor-General—Audit report no. 4 of 2006-07—Performance audit—Tax agent and business portals: Australian Taxation Office. Motion of Senator McEwen to take note of document agreed to.

Order of the day no. 6 relating to reports of the Auditor-General was called on but no motion was moved.

### 32 ADJOURNMENT

The Acting Deputy President (Senator Hutchins) proposed the question—That the Senate do now adjourn.

Debate ensued.

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*Document:* Senator Bartlett, by leave, tabled the following document:

Foreign affairs—Palestine—Petitioning document from 630 signatories relating to the occupied Palestinian territories.

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Debate continued.

The Senate adjourned at 7.45 pm till Monday, 16 October 2006 at 12.30 pm.

### 33 ATTENDANCE

Present, all senators except Senators Marshall\* and Stott Despoja\* (\* on leave).

**HARRY EVANS**  
Clerk of the Senate