



Communications Legislation Amendment Act (No. 1) 2003

No. 114, 2003

**An Act to amend legislation related to
communications, and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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An Act to amend legislation related to communications, and for related purposes

[Assented to 27 November 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Communications Legislation
Amendment Act (No. 1) 2003*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day after this Act receives the Royal Assent	28 November 2003
2. Schedule 1	The day after this Act receives the Royal Assent	28 November 2003
3. Schedule 2	27 March 2003	27 March 2003
4. Schedule 3	The day after this Act receives the Royal Assent	28 November 2003
5. Schedule 4	The day after this Act receives the Royal Assent	28 November 2003
6. Schedule 5	The day after this Act receives the Royal Assent	28 November 2003

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table is for additional information that is not part of this Act. This information may be included in any published version of this Act.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Australian Communications Authority Act 1997

1 After section 54

Insert:

54A Determinations may define expressions by reference to other instruments

- (1) Without limiting the powers of the ACA to make determinations under subsection 54(1), a determination under that subsection may define an expression used in a specified instrument by applying, adopting or incorporating (with or without modifications) matter contained in any other instrument or writing whatever:
 - (a) as in force or existing at a particular time; or
 - (b) as in force or existing from time to time;even if the other instrument or writing does not yet exist when the determination is made.
- (2) A reference in subsection (1) to any other instrument or writing includes a reference to an instrument or writing:
 - (a) made by any person or body in Australia or elsewhere (including, for example, the Commonwealth, a State or Territory, an officer or authority of the Commonwealth or of a State or Territory or an overseas entity); and
 - (b) whether of a legislative, administrative or other official nature or of any other nature; and
 - (c) whether or not having any legal force or effect;for example:
 - (d) regulations or rules under an Act; or
 - (e) a State Act, a law of a Territory, or regulations or any other instrument made under such an Act or law; or
 - (f) an international technical standard or performance indicator; or
 - (g) a written agreement or arrangement or an instrument or writing made unilaterally.

- (3) Nothing in this section limits the generality of anything else in it.
- (4) Subsection (1) has effect despite anything in the *Acts Interpretation Act 1901*.

Schedule 2—Freedom of Information Act 1982

1 Subsection 4(1)

Insert:

exempt Internet-content document means:

- (a) a document containing information (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that:
 - (i) has been copied from the Internet; and
 - (ii) was offensive Internet content when it was accessible on the Internet; or
- (b) a document that sets out how to access, or that is likely to facilitate access to, offensive Internet content (for example: by setting out the name of an Internet site, an IP address, a URL, a password, or the name of a newsgroup).

2 Subsection 4(1)

Insert:

offensive Internet content means Internet content (within the meaning of Schedule 5 to the *Broadcasting Services Act 1992*) that is:

- (a) prohibited content (within the meaning of that Schedule); or
- (b) potential prohibited content (within the meaning of that Schedule).

3 Division 1 of Part II of Schedule 2 (before the item relating to the Australian Broadcasting Corporation)

Insert:

Australian Broadcasting Authority, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

4 Division 1 of Part II of Schedule 2 (before the item relating to Comcare)

Insert:

Classification Board, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Classification Review Board, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

5 Division 1 of Part II of Schedule 2 (before the item relating to the Reserve Bank of Australia)

Insert:

Office of Film and Literature Classification, in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

Schedule 3—Radiocommunications Act 1992

1 Paragraph 3(b)

Repeal the paragraph, substitute:

- (b) make adequate provision of the spectrum:
 - (i) for use by agencies involved in the defence or national security of Australia, law enforcement or the provision of emergency services; and
 - (ii) for use by other public or community services;

2 After paragraph 27(1)(b)

Insert:

- (ba) one of the following bodies:
 - (i) the Independent Commission Against Corruption established by the *Independent Commission Against Corruption Act 1988* of New South Wales;
 - (ii) the Western Australian Anti-Corruption Commission established by the *Anti-Corruption Commission Act 1988* of Western Australia; or
- (bb) one of the following bodies:
 - (i) the New South Wales Crime Commission established by the *New South Wales Crime Commission Act 1985* of New South Wales;
 - (ii) the Crime and Misconduct Commission established by the *Crime and Misconduct Act 2001* of Queensland; or
- (bc) the National Crime Authority established by the *National Crime Authority Act 1984*; or
- (bd) the New South Wales Police Integrity Commission established by the *Police Integrity Commission Act 1996* of New South Wales; or
- (be) a body that:
 - (i) performs functions related to the investigation, prevention or prosecution of serious crime, or of corruption (whether or not the body also performs other functions); and

- (ii) is covered by a written determination made by the ACA for the purposes of this paragraph; or

Note: The heading to section 27 is replaced by the heading “**Exemption for defence, law enforcement and emergency personnel**”.

3 Subsection 27(2)

Repeal the subsection, substitute:

- (2) The ACA may determine in writing that acts or omissions by members of a class of persons to whom this section applies are exempt from either or both of the following:

- (a) all or any of Parts 3.1, 4.1 and 4.2;
(b) specified provisions of those Parts.

The exemption may be expressed to apply generally or in specified circumstances.

- (3) A determination under paragraph (1)(be) or subsection (2) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) For the purposes of subparagraph (1)(be)(i), *serious crime* is conduct that, if engaged in within, or in connection with, Australia, would constitute an offence against the law of the Commonwealth, a State or a Territory punishable by imprisonment for a period exceeding 12 months.

4 At the end of subsection 104(1)

Add:

- ; or (c) the apparatus licence authorises a body covered by any of paragraphs 27(1)(b) to (be) to operate specified radiocommunications devices, or radiocommunications devices of a specified kind, for the purpose of investigations or operations conducted by the body.

5 Subsections 104(2) and (3)

Omit “The licence”, substitute “An apparatus licence of a kind mentioned in paragraph (1)(a) or (b)”.

6 Subsection 105(2)

Repeal the subsection, substitute:

(2) The ACA may issue such an apparatus licence:

- (a) to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
- (b) if it is satisfied that the special circumstances of the particular case justify the issuing of the licence.

7 After paragraph 153P(2)(d)

Insert:

- (da) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or

8 Subsection 153P(3)

Omit all the words from and including “unless”, substitute:

unless:

- (c) the licence is issued to a body covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body; or
- (d) the ACA is satisfied that the special circumstances of the case justify the issuing of the licence.

Schedule 4—Telecommunications Act 1997

1A At the end of subclause 27(1) of Schedule 3

Add:

; and (g) where the facility is proposed to be located near a community sensitive site, including residential areas, childcare centres, schools, aged care centres, hospitals, playgrounds and regional icons:

- (i) the community has been fully consulted, and wherever possible, has agreed to the facility; and
- (ii) alternative less sensitive sites have been considered; and
- (iv) efforts have been made to minimise electromagnetic radiation exposure to the public.

1 Clause 40 of Schedule 3

Repeal the clause.

Schedule 5—Telecommunications (Consumer Protection and Service Standards) Act 1999

1 Section 94

Insert:

participating person for a levy quarter has the meaning given by section 94A.

2 At the end of Division 1 of Part 3

Add:

94A Who is a *participating person*?

- (1) For the purposes of this Part, a person is a *participating person* for a quarter if:
 - (a) the person was a carrier at any time during the quarter; or
 - (b) the Minister makes a written determination that carriage service providers are participating persons for the quarter and the person was a carriage service provider at any time during the quarter.
- (2) However, a person is not a *participating person* for a quarter if:
 - (a) the person's gross telecommunications revenue for the eligible revenue period to which the most recent eligible revenue assessment relates is less than the amount determined in writing by the Minister for the purposes of this paragraph; or
 - (b) the person is of a kind, determined in writing by the Minister for the purposes of this paragraph, to be exempt from this section.
- (3) A determination made for the purposes of paragraph (1)(b), or paragraph (2)(a) or (b), is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (4) In this section:

gross telecommunications revenue for an eligible revenue period has the meaning given by the determination made for the purposes of paragraph (2)(a).

3 Section 99

Repeal the section, substitute:

99 Persons liable to pay levy (taxpayers)

NRS levy for a levy quarter is payable by each person who:

- (a) is a participating person for the quarter; and
- (b) is covered by the most recent eligible revenue assessment made before the start of the quarter.

Note: The *most recent eligible revenue assessment* is defined in section 101C.

4 After subsection 100(2)

Insert:

(2A) The Minister may, by written determination, modify the formula in subsection (2).

(2B) A determination under subsection (2A) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

5 Subsection 100(3) (definition of *eligible revenue*)

Omit “levy”, substitute “eligible revenue”.

6 Subsection 100(3) (definition of *eligible revenue*, note)

Omit “levy”, substitute “*eligible revenue*”.

7 After section 100

Insert:

100A Variation of taxpayer’s NRS contribution amount

- (1) The ACA may vary a taxpayer’s NRS contribution amount for a quarter by making such alterations and additions as it thinks

necessary, even if NRS levy on the contribution amount has been paid.

- (2) If there has been an overpayment of NRS levy, the overpayment is to be refunded.

8 Section 101C

Omit “*levy*”, substitute “*eligible revenue*”.

Note: The heading to section 101C is altered by omitting “*levy*” and substituting “*eligible revenue*”.

9 Paragraph 101C(c)

Omit “20U”, substitute “20F”.

10 At the end of section 125

Add:

- (5) A revocation or variation of a section 115 standard must be in writing.
- (6) An instrument of revocation or variation of a section 115 standard is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

11 After subsection 128(4)

Insert:

- (4A) An end-user of a carriage service is not liable to pay any fee or charge (however described) to the provider of the carriage service in respect of a complaint made by the end-user about the carriage service.

12 Paragraph 128(6)(a)

After “tariffs”, insert “charged for the supply of carriage services”.

13 Application

The amendments made by items 2 to 9 apply in respect of each levy quarter that begins on or after the date of commencement of this Schedule.

*[Minister's second reading speech made in—
House of Representatives on 27 June 2002
Senate on 13 May 2003]*

(161/02)