Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020

No. 151, 2020

An Act to amend the *Radiocommunications Act 1992*, and for other purposes

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

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Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020

No. 151, 2020

An Act to amend the *Radiocommunications Act 1992*, and for other purposes

[*Assented to 17 December 2020*]

The Parliament of Australia enacts:

1 Short title

This Act is the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*.

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2 Commencement

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

Column 1	Column 2	Column 3
Provisions	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	17 December 2020
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedules 2 and 3	At the same time as the provisions covered by table item 2.	
4. Schedule 4, Part 1	At the same time as the provisions covered by table item 2.	
5. Schedule 4, Part 2	The later of: (a) immediately after the commencement of the provisions covered by table item 4; and (b) the commencement of the *Federal Circuit and Family Court of Australia Act 2020*. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
6. Schedule 4, Parts 3 and 4	At the same time as the provisions covered by table item 2.	
7. Schedule 5	At the same time as the provisions covered by table item 2.	

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Commencement information		
Column 1	**Column 2**	**Column 3**
Provisions	**Commencement**	**Date/Details**
8. Schedule 6, Parts 1 and 2	At the same time as the provisions covered by table item 2.	
9. Schedule 6, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 8; and (b) the commencement of the *Federal Circuit and Family Court of Australia Act 2020*. However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedule 6, Part 4	At the same time as the provisions covered by table item 2.	
11. Schedule 6, Part 5	The day after this Act receives the Royal Assent.	18 December 2020
12. Schedules 7 to 10	At the same time as the provisions covered by table item 2	
13. Schedule 11	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule

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concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Object

Radiocommunications Act 1992

1 Section 3

Repeal the section, substitute:

3 Object

The object of this Act is to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that:

(a) facilitates the efficient planning, allocation and use of the spectrum; and

(b) facilitates the use of the spectrum for:

(i) commercial purposes; and

(ii) defence purposes, national security purposes and other non-commercial purposes (including public safety and community purposes); and

(c) supports the communications policy objectives of the Commonwealth Government.

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Schedule 2—Policy statements and work program

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

Ministerial policy statement has the meaning given by section 28B.

spectrum management functions, in relation to the ACMA, has the same meaning as in the *Australian Communications and Media Authority Act 2005*.

spectrum management powers, in relation to the ACMA, means the powers conferred on the ACMA by or under:

(a) this Act; or
(b) the *Radiocommunications (Receiver Licence Tax) Act 1983*; or
(c) the *Radiocommunications (Spectrum Licence Tax) Act 1997*; or
(d) the *Radiocommunications Taxes Collection Act 1983*; or
(e) the *Radiocommunications (Transmitter Licence Tax) Act 1983*; or
(f) Part 14AA of the *Broadcasting Services Act 1992*; or
(g) section 12 of the *Australian Communications and Media Authority Act 2005*, to the extent that the powers relate to the performance of the ACMA's spectrum management functions.

2 At the end of Chapter 1

Add:

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Part 1.5—Ministerial policy statements

28A Simplified outline of this Part

- In performing its spectrum management functions, and exercising its spectrum management powers, the ACMA must have regard to any relevant Ministerial policy statements.

28B Ministerial policy statements

(1) The Minister may, by notifiable instrument, specify a policy of the Commonwealth Government that is to apply in relation to:
  (a) the performance of any of the ACMA's spectrum management functions; or
  (b) the exercise of any of the ACMA's spectrum management powers.

(2) An instrument under subsection (1) is to be known as a ***Ministerial policy statement***.

28C The ACMA must have regard to Ministerial policy statements

(1) In performing its spectrum management functions, and exercising its spectrum management powers, the ACMA must have regard to any relevant Ministerial policy statements.

(2) A contravention of subsection (1) does not affect the validity of:
  (a) an instrument made by the ACMA; or
  (b) anything else done by the ACMA;
in the performance of its functions or the exercise of its powers.

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Part 1.6—The ACMA's work program

28D Simplified outline of this Part

- At least once each financial year, the ACMA must determine a work program in relation to its spectrum management functions and its spectrum management powers.
- Before determining a work program, the ACMA must:
  (a) consult the Minister; and
  (b) undertake any other consultation that is appropriate and reasonably practicable.

28E The ACMA's work program

(1) At least once each financial year, the ACMA must determine a work program in relation to its spectrum management functions and its spectrum management powers.

(2) A work program must be for a period of not less than 5 financial years.

(3) If the ACMA has a work program (the ***original work program***), the ACMA may determine a work program (the ***new work program***) that is expressed to replace the original work program. If the ACMA does so, the original work program is taken to be revoked when the new work program comes into force.

(4) The ACMA must publish a work program on the ACMA's website.

(5) A work program is not a legislative instrument.

28F Consultation

(1) Before determining a work program, the ACMA must:
  (a) consult the Minister; and
  (b) undertake any other consultation that is:

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(i) considered by the ACMA to be appropriate to undertake; and

(ii) reasonably practicable to undertake.

(2) A contravention of subsection (1) does not affect the validity of the work program.

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Part 2—Other amendments

Australian Communications and Media Authority Act 2005

3 At the end of section 57

Add:

; and (g) a summary outline of the operation of subsection 28C(1) of the *Radiocommunications Act 1992* during the period; and

(h) if a work program was applicable to the period under section 28E of the *Radiocommunications Act 1992*—a report on the extent to which the ACMA's activities during the period gave effect to the work program.

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Part 3—Application provisions

4 Application—the ACMA's work program

Section 28E of the *Radiocommunications Act 1992* (as amended by this Schedule) does not apply in relation to the financial year in which this item commences.

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Schedule 3—Licences etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Subparagraph 4(a)(ii)

Omit "and conversion plans".

2 Section 5 (definition of *conversion plan*)

Repeal the definition.

3 Section 5

Insert:

direct allocation has the meaning given by section 60A.

public interest statement:

(a) for a spectrum licence—has the meaning given by section 65A; or

(b) for an apparatus licence—has the meaning given by section 103A.

renewal application period:

(a) for a spectrum licence—has the meaning given by section 65A; or

(b) for an apparatus licence—has the meaning given by section 103A.

renewal application period statement:

(a) for a spectrum licence—has the meaning given by section 65A; or

(b) for an apparatus licence—has the meaning given by section 103A.

renewal decision-making period, for a spectrum licence, has the meaning given by section 65A.

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renewal decision-making period statement, for a spectrum licence, has the meaning given by section 65A.

renewal statement:

(a) for a spectrum licence—has the meaning given by section 65A; or

(b) for an apparatus licence—has the meaning given by section 103A.

3A After subsection 27(2)

Insert:

(2A) A determination under subsection (2) may confer a power to make a decision of an administrative character on a person or the ACMA.

4 Paragraph 29(3)(a)

Repeal the paragraph.

4A After subsection 30(2)

Insert:

(2A) A spectrum plan may confer a power to make a decision of an administrative character on the ACMA.

5 Part 2.2 (heading)

Omit "**Conversion plans and marketing**", substitute "**Marketing**".

5A After subsection 32(5)

Insert:

(5A) A frequency band plan may confer a power to make a decision of an administrative character on the ACMA.

6 Section 36

Repeal the section.

7 Section 37

Omit "a conversion plan or".

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8 Section 37

Omit "conversion plan or" (last occurring).

9 Section 38

Repeal the section.

10 Subsections 39(1) and (2)

Repeal the subsections, substitute:

(1) The ACMA may, by legislative instrument, prepare a marketing plan for issuing spectrum licences that authorise the operation of radiocommunications devices:
  (a) at the frequencies specified in the plan; and
  (b) within the area or areas specified in the plan.

(2) If an apparatus licence authorises the operation of radiocommunications devices:
  (a) at one or more frequencies; and
  (b) within one or more areas;

the ACMA must not make a marketing plan that applies to the issue of spectrum licences that authorise the operation of radiocommunications devices:
  (c) at those frequencies; and
  (d) within those areas;

unless the marketing plan provides that one or more spectrum licences are to be allocated by direct allocation to the holder of the apparatus licence.

11 Subsection 39(5)

Repeal the subsection, substitute:

(5) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated:
  (a) by auction; or
  (b) by tender; or
  (c) by allocation for a pre-determined price or a negotiated price; or

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(d) by direct allocation; or
(e) by a combination of any or all of the following:
(i) auction;
(ii) tender;
(iii) allocation for a pre-determined price or a negotiated price;
(iv) direct allocation.

12 At the end of section 39

Add:

(7) A marketing plan must not relate wholly or partly to a part of the spectrum referred to the ACMA under subsection 31(1) or (1A), unless the part, or each of the parts, of the spectrum to which the plan relates is covered by a determination under subsection 31(2).

13 Subsection 39A(1)

Repeal the subsection, substitute:

(1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
(a) by issuing spectrum licences; or
(b) by a combination of:
(i) issuing spectrum licences; and
(ii) issuing apparatus licences.

14 Subsection 39A(7)

Repeal the subsection, substitute:

(7) In indicating the procedures to be followed for issuing spectrum licences, the plan may, for example, indicate whether the licences are to be allocated:
(a) by auction; or
(b) by tender; or
(c) by allocation for a pre-determined price or a negotiated price; or
(d) by direct allocation; or
(e) by a combination of any or all of the following:

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(i) auction;
(ii) tender;
(iii) allocation for a pre-determined price or a negotiated price;
(iv) direct allocation.

15 Section 41 (heading)

After "**preparing**", insert "**marketing**".

16 Subsection 41(1)

Omit "a conversion plan or".

17 Subsection 41(2)

Omit "38,".

18 Section 42 (heading)

Before "**plans**", insert "**marketing**".

19 Subsections 42(1) and (2)

Omit "a conversion plan or".

20 Section 44

Omit "a conversion plan or".

20A After subsection 44A(4)

Insert:

(4A) A digital radio channel plan may confer a power to make a decision of an administrative character on the ACMA.

20B Subsections 48(1) and (2)

Repeal the subsections, substitute:

(1) For the purposes of section 47, if:
(a) at a particular time, a person has a radiocommunications device in the person's possession, otherwise than for the purpose of supplying the radiocommunications device to another person; and

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(b) the radiocommunications device can be operated;

it must be presumed that the person has the radiocommunications device in the person's possession for the purpose of operating the radiocommunications device, unless the person adduces or points to evidence that suggests a reasonable possibility that, at that time, the person did not have the radiocommunications device in the person's possession for the purpose of operating the radiocommunications device.

(2) For the purposes of subsection (1), it is immaterial whether the radiocommunications device can be operated:

(a) immediately; or

(b) after taking one or more steps (for example, the connection of the radiocommunications device to a power supply).

21 Paragraph 51(2)(a)

Repeal the paragraph.

22 Subsection 51(5)

Repeal the subsection, substitute:

(5) Division 3A is about renewing spectrum licences.

(5A) Division 4 is about issuing further spectrum licences (otherwise than by way of renewal).

23 Subdivision A of Division 1 of Part 3.2

Repeal the Subdivision.

24 At the end of subsection 60(1)

Add:

; or (d) by direct allocation; or

(e) by a combination of any or all of the following:

(i) auction;

(ii) tender;

(iii) allocation for a pre-determined price or a negotiated price;

(iv) direct allocation.

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25 Subsection 60(2)

Omit "procedures for", substitute "procedures, so far as they deal with".

26 After paragraph 60(2)(c)

Insert:

(ca) eligibility requirements (if any) for participation in auctions;

(cb) credits (if any) for prospective bidders;

27 Subsection 60(3)

Omit "procedures for", substitute "procedures, so far as they deal with".

28 After paragraph 60(3)(c)

Insert:

(ca) eligibility requirements (if any) for submission of a tender;

(cb) credits (if any) for prospective tenderers;

29 Subsection 60(4)

Omit "procedures for", substitute "procedures, so far as they deal with".

30 After paragraph 60(4)(b)

Insert:

(ba) eligibility requirements (if any) for prospective licensees;

(bb) credits (if any) for prospective licensees;

31 Paragraphs 60(5)(a) and (b)

Repeal the paragraphs, substitute:

(a) impose limits on the aggregate of the parts of the spectrum that:

(i) under transmitter licences; and

(ii) under existing spectrum licences; and

(iii) as a result of the allocation of spectrum licences under this Subdivision;

may be used by:

(iv) any one person; or

(v) a specified person; or

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(b) impose limits on the aggregate of the parts of the spectrum that:

(i) under transmitter licences; and

(ii) under existing spectrum licences; and

(iii) as a result of the allocation of spectrum licences under this Subdivision;

may, in total, be used by the members of a specified group of persons.

32 After subsection 60(7)

Insert:

(7A) Procedures determined under subsection (1), so far as they relate to direct allocation of spectrum licences, may provide for the ACMA to have regard to a frequency assignment certificate issued by a person who holds an accreditation of a kind specified in the legislative rules, stating that the operation of a device under such a licence:

(a) on a specified frequency or frequencies, or on a specified frequency channel; and

(b) at a specified constancy; and

(c) at a specified location; and

(d) subject to specified technical conditions;

will satisfy any conditions that are required to be satisfied, in relation to the issue of such a certificate, under a determination made under section 266A.

33 Subsection 60(8)

Omit "(6A) and (7)", substitute "(6A), (7) and (7A)".

34 Subsection 60(9)

Repeal the subsection.

35 After subsection 60(13)

Insert:

(13A) Before determining procedures under subsection (1), the ACMA must consult the ACCC about whether the procedures should

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impose limits as mentioned in subsection (5) and, if so, the nature of those limits.

36 After subsection 60(14)

Insert:

(14A) Procedures determined under subsection (1) may confer a power to make a decision of an administrative character on a person or the ACMA.

37 At the end of section 60

Add:

(16) A determination under subsection (1) is a legislative instrument.

38 After section 60

Insert:

60A Direct allocation of spectrum licences

For the purposes of this Act, ***direct allocation*** of a spectrum licence means the allocation of the licence to:

(a) a person specified in procedures determined under section 60; or

(b) a person ascertained in accordance with procedures determined under section 60.

60B Restriction on allocation of spectrum licences

If a spectrum licence authorises the operation of radiocommunications devices:

(a) at one or more frequencies; and

(b) within one or more areas;

the ACMA must not allocate another spectrum licence if the other spectrum licence authorises the operation of radiocommunications devices:

(c) at those frequencies; and

(d) within those areas.

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40 After section 65

Insert:

65A Renewal statements etc.

Renewal statement

(1) A spectrum licence issued after the commencement of this section must include:

(a) a statement to the effect that the licence cannot be renewed; or

(b) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or

(c) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

Note: For transitional exceptions, see subsection (21).

(2) A statement mentioned in paragraph (1)(a), (b) or (c) is to be known as a ***renewal statement***.

(3) Circumstances specified under paragraph (1)(c) may be an act or omission by the ACMA.

(4) Subsection (3) does not limit paragraph (1)(c).

(5) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include one of the following statements:

(a) a statement to the effect that the licence cannot be renewed;

(b) a statement to the effect that the licence may be renewed at the discretion of the ACMA;

(c) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

Note: For transitional exceptions, see subsections (21) and (22).

(6) A statement mentioned in paragraph (5)(a), (b) or (c) is to be known as a ***renewal statement***.

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(7) Circumstances specified under paragraph (5)(c) may be an act or omission by the ACMA.

(8) Subsection (7) does not limit paragraph (5)(c).

(9) A determination under subsection (5) does not apply to a spectrum licence if a renewal statement is included in the licence under subsection (1).

Renewal application period

(10) If a spectrum licence includes:
   (a) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or
   (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist;

   the licence must also include a statement to the effect that a specified period is the ***renewal application period*** for the licence.

(11) A statement mentioned in subsection (10) is to be known as a ***renewal application period statement***.

(12) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include a statement to the effect that a period ascertained in accordance with the determination is the ***renewal application period*** for the licence.

(13) A renewal application period for a spectrum licence must:
   (a) begin at a time when the licence is in force; and
   (b) end before the licence is due to expire.

(14) A determination under subsection (12) does not apply to a spectrum licence if a renewal application period statement is included in the licence under subsection (10).

Renewal decision-making period

(15) A spectrum licence may include a statement to the effect that a specified period is the ***renewal decision-making period*** for the licence.

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(16) A statement mentioned in subsection (15) is to be known as a ***renewal decision-making period statement***.

Public interest statement

(17) If a spectrum licence includes:

(a) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or

(b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist;

the licence may also include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

(18) A statement mentioned in subsection (17) is to be known as a ***public interest statement***.

(19) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

Note: For transitional exceptions, see subsections (21) and (22).

(20) A statement mentioned in subsection (19) is to be known as a ***public interest statement***.

Transitional—exceptions

(21) Subsections (1), (5) and (19) do not apply to a spectrum licence if:

(a) both:

(i) a marketing plan was applicable to the issue of the licence; and

(ii) the marketing plan was prepared before the commencement of this section; or

(b) the licence was issued as the result of an offer under repealed section 56.

(22) Subsections (5) and (19) do not apply to a spectrum licence if the licence was issued under repealed section 82.

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40A Paragraph 68A(2)(b)

Omit "Parts VII and IX", substitute "the remaining provisions of that Act".

40B Paragraph 71A(2)(b)

Omit "Parts VII and IX", substitute "the remaining provisions of that Act".

41 Subsection 71A(3)

Omit "re-issue of a spectrum licence under section 82", substitute "issue of a spectrum licence under section 77C".

42 At the end of section 72

Add:

(3) Subject to subsections (4), (5) and (6), the ACMA may, with the written agreement of the licensee of a spectrum licence, vary the licence by:

(a) varying the renewal statement included in the licence; or

(b) omitting the renewal statement included in the licence and substituting another renewal statement; or

(c) varying the renewal application period statement included in the licence; or

(d) omitting the public interest statement included in the licence; or

(e) omitting the renewal decision-making period statement included in the licence; or

(f) varying the renewal decision-making period statement included in the licence.

(4) If the renewal statement is varied, the statement as varied must comply with the requirements of section 65A.

(5) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 65A.

(6) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 65A.

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43 After subsection 73(2)

Insert:

(3) Subject to subsections (4), (5) and (6), if a spectrum licence includes a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA may, by written notice given to the licensee of the licence, vary the licence by:

(a) varying the circumstances specified in the renewal statement included in the licence; or

(b) omitting the renewal statement included in the licence and substituting another renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

(4) The ACMA must not vary the licence under subsection (3) unless the ACMA is satisfied that exceptional circumstances exist that warrant the variation of the licence.

(5) If the renewal statement is varied, the statement as varied must comply with the requirements of section 65A.

(6) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 65A.

44 After Division 3 of Part 3.2

Insert:

Division 3A—Renewal of spectrum licences

77A Applications for renewal of spectrum licences

(1) A licensee of a spectrum licence may apply to the ACMA for the licence to be renewed.

(2) If there is a renewal application period for the licence, the application must be made within the renewal application period.

(3) If there is no renewal application period for the licence, the application must be made within the 2-year period ending when the licence is due to expire.

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(4) The application must:
(a) be made in a manner approved, in writing, by the ACMA; and
(b) be in a form approved, in writing, by the ACMA; and
(c) be accompanied by such information (if any) as is specified in an instrument under subsection (6); and
(d) be accompanied by such documents (if any) as are specified in an instrument under subsection (7).

(5) The ACMA may approve different forms for different applications.

(6) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (4)(c).

(7) The ACMA may, by legislative instrument, specify documents for the purposes of paragraph (4)(d).

(8) An instrument under paragraph (4)(a) is a notifiable instrument.

(9) An approved form of application may provide for verification by statutory declaration of statements in applications.

Deemed applications

(10) If:
(a) the ACMA gives a person a notice that is expressed to be a licence renewal notice; and
(b) the notice relates to one or more spectrum licences held by the person; and
(c) in response to the notice, the person:
(i) pays to the ACMA (on behalf of the Commonwealth) the amount specified in the notice as the amount due; and
(ii) does so on or before the day specified in the notice as the payment due date;

then:
(d) if the notice relates to a single spectrum licence—the person is taken to have made an application under subsection (1) for the licence to be renewed; and

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(e) if the notice relates to 2 or more spectrum licences—the person is taken to have made separate applications under subsection (1) for each of those licences to be renewed; and

(f) subsection (4) does not apply to that application or those applications, as the case requires.

77B Further information

(1) If an application is made for the renewal of a spectrum licence, the ACMA may, by written notice given to the applicant, require the applicant to give the ACMA, within the period specified in the notice, further information in connection with the application.

(2) If the applicant breaches the requirement, the ACMA may, by written notice given to the applicant:

(a) refuse to consider the application; or

(b) refuse to take any action, or any further action, in relation to the application.

77C Renewal of spectrum licences

(1) When an application is made for the renewal of a spectrum licence, the ACMA may, without following the procedures determined under section 60, renew the licence by issuing to the applicant a new spectrum licence.

(2) Subsection (1) does not imply that the ACMA must renew the licence without the applicant:

(a) paying to the ACMA the spectrum access charge for issuing the new spectrum licence; or

(b) reaching an agreement with the ACMA for payment of that spectrum access charge.

(3) The ACMA must not renew the licence if the licence included a renewal statement to the effect that the licence cannot be renewed.

(4) If the licence included a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA must not renew the licence unless the ACMA is satisfied that the specified circumstances exist.

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(5) The ACMA must not renew the licence by issuing a new spectrum licence that specifies a period for the purposes of subsection 65(2) that is 10 years or longer unless the ACMA is satisfied that it is in the public interest to do so.

(6) If the licence included a public interest statement, the ACMA must not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

(7) In deciding whether to renew the licence, the ACMA must have regard to:
  (a) all matters that it considers relevant; and
  (b) without limiting paragraph (a), the effect on radiocommunications of the proposed operation of the radiocommunications devices that would be authorised under the new spectrum licence.

(8) In deciding whether to renew the licence, the ACMA may have regard to the following matters:
  (a) whether the applicant has an outstanding liability to pay an amount of:
    (i) apparatus licence tax; or
    (ii) spectrum licence tax; or
    (iii) spectrum access charge; or
    (iv) interim tax;
  (b) whether the applicant has contravened a condition of the licence;
  (c) whether the following conditions are satisfied:
    (i) a person authorised by the applicant under section 68 in relation to the licence has contravened a condition of the licence;
    (ii) the applicant was aware, or ought reasonably to have been aware, of the contravention;
    (iii) the applicant failed to take reasonable steps to prevent the contravention;
  (d) whether the applicant held another licence that was cancelled during the previous 2 years (otherwise than under section 87, 128B, 153H or 307).

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(9) The new spectrum licence comes into force, or is taken to have come into force, immediately after the expiration of the licence that it replaces.

(10) The conditions of the new spectrum licence need not be the same as those of the licence that it replaces.

77D Notice of refusal to renew spectrum licence etc.

(1) If the ACMA:

(a) refuses to renew a spectrum licence; or

(b) renews a spectrum licence but not on the same conditions;

the ACMA must give the licensee a written notice stating that fact.

Note: Refusals to renew spectrum licences, and changes to licence conditions on renewal, are reviewable under Part 5.6.

(2) The notice under subsection (1) must state that:

(a) the licensee may request a statement of reasons for the decision; and

(b) a request must be made within 28 days of receipt of the notice.

(3) A person receiving a notice under subsection (1) may request a statement of reasons for the decision within 28 days of receiving the notice.

(4) If the ACMA receives a request in accordance with subsection (3), it must give the person a statement of reasons within 28 days of receipt of the request.

77E Application of other provisions

Subdivisions C and D of Division 1 apply to a spectrum licence issued under this Division in the same way that those Subdivisions apply to spectrum licences issued under Division 1.

45 Division 4 of Part 3.2 (heading)

Repeal the heading, substitute:

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Division 4—Issuing further spectrum licences (otherwise than by way of renewal)

46 Section 78 (heading)

Repeal the heading, substitute:

78 Notice of spectrum licences that are about to expire

47 Section 79 (heading)

Repeal the heading, substitute:

79 Preparation of draft further spectrum licences

48 Section 80

Before "The", insert "(1)".

49 At the end of section 80

Add:

(2) To avoid doubt, subsection (1) of this section does not prevent or limit the variation, in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*, of procedures determined under section 60 of this Act.

50 Section 81 (heading)

Repeal the heading, substitute:

81 Issue of further spectrum licences

51 Section 82

Repeal the section.

51A At the end of section 88

Add:

(3) The rules may confer a power to make a decision of an administrative character on the ACMA.

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52 Subsection 96(2)

Omit "types", substitute "kinds".

53 Division 1 of Part 3.3 (heading)

Omit "**Types**", substitute "**Kinds**".

54 Subsections 97(2) and (3)

Repeal the subsections, substitute:

(2) A transmitter licence authorises:

(a) the person specified in the licence as the licensee; and

(b) subject to Division 4, any person authorised by that person under section 114;

to operate:

(c) specified radiocommunications transmitters; or

(d) radiocommunications transmitters of a specified kind; or

(e) if neither paragraph (c) nor (d) applies—radiocommunications transmitters of any kind.

(3) A receiver licence authorises:

(a) the person specified in the licence as the licensee; and

(b) subject to Division 4, any person authorised by that person under section 114;

to operate:

(c) specified radiocommunications receivers; or

(d) radiocommunications receivers of a specified kind; or

(e) if neither paragraph (c) nor (d) applies—radiocommunications receivers of any kind.

55 Subsection 98(2)

Repeal the subsection, substitute:

(2) Subsection (1) does not prevent the ACMA from issuing an apparatus licence that is not a transmitter licence or receiver licence of a type so determined.

56 Subsection 99(1)

Omit "in writing".

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57 Subsection 99(1)

Omit "of the type specified in the application".

58 After subsection 99(1)

Insert:

(1A) The application must be made in a manner approved, in writing, by the ACMA.

59 Subsection 99(2)

After "approved", insert ", in writing,".

60 Subsection 99(3)

Repeal the subsection, substitute:

(3) The ACMA may approve different forms for different applications.

61 At the end of section 99

Add:

(4) An instrument under subsection (1A) is a notifiable instrument.

62 Subsection 100(1)

Omit "of the type applied for".

63 Before subsection 100(5)

Insert:

(4C) In deciding whether to issue an apparatus licence, the ACMA may also have regard to the aggregate of the parts of the spectrum that, under transmitter licences or spectrum licences, may be used by the applicant.

64 After section 102F

Insert:

102G Limits on use of the spectrum

(1) The ACMA may, by legislative instrument:

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(a) impose limits on the aggregate of the parts of the spectrum that:
  (i) under spectrum licences; and
  (ii) under existing transmitter licences; and
  (iii) as a result of the allocation or issue of transmitter licences;
  may be used by:
  (iv) any one person; or
  (v) a specified person; or
(b) impose limits on the aggregate of the parts of the spectrum that:
  (i) under spectrum licences; and
  (ii) under existing transmitter licences; and
  (iii) as a result of the allocation or issue of transmitter licences;
  may, in total, be used by the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.

(2) A limit imposed as mentioned in subsection (1) may be expressed to apply in relation to any or all of the following:
(a) a specified part of the spectrum;
(b) a specified area;
(c) a specified population reach.

For example, a limit might specify an aggregate limit of 15 MHz per person in the band between 1800 MHz and 1900 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (1).

(3) An instrument that imposes limits as mentioned in subsection (1) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.

(4) The Minister may, by notifiable instrument, give written directions to the ACMA in relation to the exercise of the power conferred by subsection (1).

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(5) The ACMA must exercise its power under subsection (1) in a manner consistent with any directions given by the Minister under subsection (4).

(6) Before making an instrument under subsection (1), the ACMA must consult the ACCC about whether the instrument should impose limits and, if so, the nature of the limits.

(7) This section does not apply to:
  (a) an apparatus licence issued under section 101A or 102; or
  (b) a digital radio multiplex transmitter licence.

65 After section 103

Insert:

103A Renewal statements etc.

Renewal statement

(1) An apparatus licence issued after the commencement of this section may include:
  (a) a statement to the effect that the licence cannot be renewed; or
  (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

(2) A statement mentioned in paragraph (1)(a) or (b) is to be known as a ***renewal statement***.

(3) Circumstances specified under paragraph (1)(b) may be an act or omission by the ACMA.

(4) Subsection (3) does not limit paragraph (1)(b).

(5) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one of the following statements:
  (a) a statement to the effect that the licence cannot be renewed;

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(b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.

(6) A statement mentioned in paragraph (5)(a) or (b) is to be known as a ***renewal statement***.

(7) Circumstances specified under paragraph (5)(b) may be an act or omission by the ACMA.

(8) Subsection (7) does not limit paragraph (5)(b).

(9) A determination under subsection (5) does not apply to an apparatus licence if a renewal statement is included in the licence under subsection (1).

Renewal application period

(10) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence must also include a statement to the effect that a specified period is the ***renewal application period*** for the licence.

(11) A statement mentioned in subsection (10) is to be known as a ***renewal application period statement***.

(12) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that a period ascertained in accordance with the determination is the ***renewal application period*** for the licence.

(13) A renewal application period for an apparatus licence must:
(a) begin at a time when the licence is in force; and
(b) end not later than 60 days after the licence is due to expire.

(14) A determination under subsection (12) does not apply to an apparatus licence if a renewal application period statement is included in the licence under subsection (10).

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Public interest statement

(15) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence may also include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

(16) A statement mentioned in subsection (15) is to be known as a ***public interest statement***.

(17) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

(18) A statement mentioned in subsection (17) is to be known as a ***public interest statement***.

Exceptions

(19) This section does not apply to:
(a) a transmitter licence issued under section 101A or 102; or
(b) a digital radio multiplex transmitter licence.

(20) Subsections (5) and (17) do not apply to a licence issued before the commencement of this section.

103B Variation of renewal statements etc. with agreement

(1) Subject to subsections (2), (3) and (4), the ACMA may, with the written agreement of the licensee of an apparatus licence, vary the licence by:
(a) varying the renewal statement included in the licence; or
(b) omitting the renewal statement included in the licence and substituting another renewal statement; or
(c) omitting the renewal statement included in the licence; or
(d) including a renewal statement in the licence; or

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(e) varying the renewal application period statement included in the licence; or

(f) including a renewal application period statement in the licence; or

(g) omitting the public interest statement included in the licence.

(2) If the renewal statement is varied, the statement as varied must comply with the requirements of section 103A.

(3) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 103A.

(4) If a renewal statement is included in the licence, the statement must comply with the requirements of section 103A.

(5) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 103A.

(6) If a renewal application period statement is included in the licence, the statement must comply with the requirements of section 103A.

103C Variation of renewal statements etc. without agreement

(1) Subject to subsections (2), (3) and (4), the ACMA may, by written notice given to the licensee of an apparatus licence, vary the licence by:

(a) varying the renewal statement included in the licence; or

(b) omitting the renewal statement included in the licence and substituting another renewal statement; or

(c) omitting the renewal statement included in the licence; or

(d) including a renewal statement in the licence; or

(e) varying the renewal application period statement included in the licence; or

(f) including a renewal application period statement in the licence; or

(g) omitting the public interest statement included in the licence.

(2) If the renewal statement is varied, the statement as varied must comply with the requirements of section 103A.

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(3) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 103A.

(4) If a renewal statement is included in the licence, the statement must comply with the requirements of section 103A.

(5) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 103A.

(6) If a renewal application period statement is included in the licence, the statement must comply with the requirements of section 103A.

66 Section 105

Repeal the section, substitute:

105 Restrictions on issuing apparatus licences

(1) Subject to subsection (3), if a spectrum licence authorises the operation of radiocommunications devices:

(a) at one or more frequencies; and

(b) within one or more areas;

the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:

(c) at those frequencies; and

(d) within those areas.

(2) Subject to subsection (3), if a marketing plan is in force in relation to the issue of a spectrum licence that authorises the operation of radiocommunications devices:

(a) at one or more frequencies; and

(b) within one or more areas;

the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:

(c) at those frequencies; and

(d) within those areas.

(3) The ACMA may issue an apparatus licence mentioned in subsection (1) or (2):

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(a) to a body or person covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body or person; or

(b) if it is satisfied that the special circumstances of the particular case justify the issuing of the licence.

105A Notice of apparatus licences that are about to expire

The ACMA may publish on its website a notice that:

(a) states where information may be obtained about:

(i) the apparatus licences that are included in a specified class and that will expire during a specified period; and

(ii) the parts of the spectrum to which the licences relate; and

(b) invites applications from persons who wish to have issued to them apparatus licences relating to those parts of the spectrum.

67 After paragraph 106(2)(b)

Insert:

(ba) may provide for eligibility requirements (if any) for prospective licensees; and

(bb) may provide for credits (if any) for prospective licensees; and

68 Subsections 106(3) and (4)

Repeal the subsections, substitute:

(3) A system so determined may:

(a) impose limits on the aggregate of the parts of the spectrum that:

(i) under spectrum licences; and

(ii) under existing transmitter licences; and

(iii) as a result of the allocation or issue of transmitter licences;

may be used by:

(iv) any one person; or

(v) a specified person; or

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(b) impose limits on the aggregate of the parts of the spectrum that:

(i) under spectrum licences; and

(ii) under existing transmitter licences; and

(iii) as a result of the allocation or issue of transmitter licences;

may, in total, be used by the members of a specified group of persons.

Note: Persons or groups may be specified by name, by inclusion in a specified class or in any other way.

(4) A limit imposed as mentioned in subsection (3) may be expressed to apply in relation to any or all of the following:

(a) a specified part of the spectrum;

(b) a specified area;

(c) a specified population reach.

For example, a system might specify an aggregate limit of 15 MHz per person in the band between 1800 MHz and 1900 MHz (inclusive) for a particular area. This subsection does not, by implication, limit subsection (3).

(4A) A system that imposes limits as mentioned in subsection (3) may impose limits of nil in relation to specified persons or to the members of specified groups of persons.

69 Subsection 106(8)

Repeal the subsection.

70 Subsection 106(11)

After "with", insert "any".

71 After subsection 106(11)

Insert:

(11A) Before determining a price-based allocation system under subsection (1), the ACMA must consult the ACCC about whether the system should impose limits as mentioned in subsection (3) and, if so, the nature of those limits.

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72 After subsection 106(12)

Insert:

(12A) A price-based allocation system determined under subsection (1) may confer a power to make a decision of an administrative character on a person or the ACMA.

73 At the end of section 106

Add:

(18) A determination under subsection (1) is a legislative instrument.

73A Paragraph 106A(2)(b)

Omit "Parts VII and IX", substitute "the remaining provisions of that Act".

73B Paragraph 114A(2)(b)

Omit "Parts VII and IX", substitute "the remaining provisions of that Act".

73C Section 115

Before "The ACMA", insert "(1)".

73D At the end of section 115

Add:

(2) A determination under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.

73E Section 119

Before "The ACMA", insert "(1)".

73F At the end of section 119

Add:

(2) A determination under subsection (1) may confer a power to make a decision of an administrative character on a person.

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74 Section 129

Repeal the section, substitute:

129 Applications for renewal of apparatus licences

(1) A licensee of an apparatus licence (other than a transmitter licence issued under section 101A or 102 or a non-foundation digital radio multiplex transmitter licence) may apply to the ACMA for the licence to be renewed.

(2) If there is a renewal application period for the licence, the application must be made within the renewal application period.

(3) If there is no renewal application period for the licence, the application must be made within the period:
  (a) beginning 6 months before the licence is due to expire; and
  (b) ending 60 days after the licence expires.

(4) The application must:
  (a) be made in a manner approved, in writing, by the ACMA; and
  (b) be in a form approved, in writing, by the ACMA; and
  (c) be accompanied by such information (if any) as is specified in an instrument under subsection (6); and
  (d) be accompanied by such documents (if any) as are specified in an instrument under subsection (7).

(5) The ACMA may approve different forms for different applications.

(6) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (4)(c).

(7) The ACMA may, by legislative instrument, specify documents for the purposes of paragraph (4)(d).

(8) An instrument under paragraph (4)(a) is a notifiable instrument.

(9) An approved form of application may provide for verification by statutory declaration of statements in applications.

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Deemed applications

(10) If:

(a) the ACMA gives a person a notice that is expressed to be a licence renewal notice; and

(b) the notice relates to one or more apparatus licences held by the person; and

(c) in response to the notice, the person:

(i) pays to the ACMA (on behalf of the Commonwealth) the amount specified in the notice as the amount due; and

(ii) does so on or before the day specified in the notice as the payment due date;

then:

(d) if the notice relates to a single apparatus licence—the person is taken to have made an application under subsection (1) for the licence to be renewed; and

(e) if the notice relates to 2 or more apparatus licences—the person is taken to have made separate applications under subsection (1) for each of those licences to be renewed; and

(f) subsection (4) does not apply to that application or those applications, as the case requires.

129A Further information

(1) If an application is made for the renewal of an apparatus licence, the ACMA may, by written notice given to the applicant, require the applicant to give the ACMA, within the period specified in the notice, further information in connection with the application.

(2) If the applicant breaches the requirement, the ACMA may, by written notice given to the applicant:

(a) refuse to consider the application; or

(b) refuse to take any action, or any further action, in relation to the application.

75 Subsection 130(1)

After "made", insert "for the renewal of an apparatus licence".

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76 After subsection 130(2B)

Insert:

(2C) The ACMA must not renew the licence if the licence included a renewal statement to the effect that the licence cannot be renewed.

(2D) If the licence included a renewal statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the ACMA must not renew the licence unless the ACMA is satisfied that the specified circumstances exist.

(2E) The ACMA must not renew the licence by issuing a new apparatus licence that specifies a period for the purposes of subsection 103(2) that is 10 years or longer unless the ACMA is satisfied that it is in the public interest to do so.

(2F) If the licence included a public interest statement, the ACMA must not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.

77 Paragraph 130(3)(b)

Omit "subsection 100(5)", substitute "subsections 100(4C) and (5)".

78 After subsection 130(3)

Insert:

(3A) In deciding whether to renew the licence, the ACMA may have regard to the following matters:

(a) whether the applicant has an outstanding liability to pay an amount of:

(i) apparatus licence tax; or

(ii) spectrum licence tax; or

(iii) spectrum access charge; or

(iv) interim tax;

(b) whether the applicant has contravened a condition of the licence;

(c) whether the following conditions are satisfied:

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(i) a person authorised by the applicant under section 114 in relation to the licence has contravened a condition of the licence;

(ii) the applicant was aware, or ought reasonably to have been aware, of the contravention;

(iii) the applicant failed to take reasonable steps to prevent the contravention;

(d) whether the applicant held another licence that was cancelled during the previous 2 years (otherwise than under section 87, 128B, 153H or 307).

79 Subsection 131AA(3)

Repeal the subsection, substitute:

(3) The ACMA may approve different forms for different applications.

79A Section 131AC

Before "The ACMA", insert "(1)".

79B At the end of section 131AC

Add:

(2) A determination under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.

79C At the end of section 133

Add:

(3) A condition included in a class licence may confer a power to make a decision of an administrative character on a person or the ACMA.

80 Subsection 138(1)

Repeal the subsection, substitute:

(1) If a spectrum licence authorises the operation of radiocommunications devices:

(a) at one or more frequencies; and

(b) within one or more areas;

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the ACMA must not issue a class licence that authorises the operation of radiocommunications devices:

(c) at those frequencies; and

(d) within those areas;

unless subsection (2) is satisfied.

(1A) If a marketing plan is in force in relation to the issue of a spectrum licence that authorises the operation of radiocommunications devices:

(a) at one or more frequencies; and

(b) within one or more areas;

the ACMA must not issue a class licence that authorises the operation of radiocommunications devices:

(c) at those frequencies; and

(d) within those areas;

unless subsection (2) is satisfied.

81 Subsection 138(2)

After "a class licence", insert "to which subsection (1) or (1A) applies".

82 Subsection 153A(2)

Omit "Minister", substitute "ACMA".

83 At the end of subsection 153A(3)

Add:

; or (c) by a combination of:

(i) issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); and

(ii) issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).

84 Subsection 153B(1)

Omit "Minister", substitute "ACMA".

85 Subsection 153B(4)

Repeal the subsection, substitute:

(4) The re-allocation period must:

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(a) begin at a time specified in the declaration; and
(b) run for at least 12 months.

(4A) The re-allocation period must not begin before the commencement of the declaration.

86 Subsection 153B(5)

Omit "That time must be at least 12 months before the end of the re-allocation period.", substitute "That time must not be later than the end of the re-allocation period.".

87 At the end of subsection 153B(6)

Add:

; or (c) by a combination of:

(i) issuing spectrum licences under Subdivision B of Division 1 of Part 3.2 (see section 153L); and
(ii) issuing apparatus licences under Division 2 of Part 3.3 (see section 153M).

88 At the end of section 153B

Add:

(10) A spectrum re-allocation declaration is a legislative instrument.

89 Section 153C

Repeal the section.

90 Sections 153E, 153F and 153G

Repeal the sections.

91 Subsections 153J(1) and (2)

Omit "Minister", substitute "ACMA".

92 After subsection 153J(2)

Insert:

(2A) Subsection (2) does not prevent the ACMA from varying a spectrum re-allocation declaration if the ACMA considers that there are exceptional circumstances that warrant the variation.

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93 Subsection 153J(4)

Repeal the subsection, substitute:

(4) This section does not, by implication, limit the ACMA's power to vary a spectrum re-allocation declaration in accordance with subsection 33(3) of the *Acts Interpretation Act 1901*.

94 Subsection 153K(5)

Omit "Minister's", substitute "ACMA's".

95 Subsection 153L(1)

Repeal the subsection, substitute:

(1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
  (a) by issuing spectrum licences; or
  (b) by a combination of:
    (i) issuing spectrum licences; and
    (ii) issuing apparatus licences.

96 Subsection 153L(2)

After "The", insert "spectrum".

97 Subsection 153M(1)

Repeal the subsection, substitute:

(1) This section applies if a spectrum re-allocation declaration states that a part or parts of the spectrum should be re-allocated:
  (a) by issuing apparatus licences; or
  (b) by a combination of:
    (i) issuing spectrum licences; and
    (ii) issuing apparatus licences.

98 Subsection 153M(2)

After "The", insert "apparatus".

99 Subsection 153N(1)

Omit "Minister", substitute "ACMA".

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100 Subsection 153P(3)

Repeal the subsection.

101 Paragraph 285(d)

Repeal the paragraph, substitute:

(d) refusal to renew a spectrum licence, or renewal of a spectrum licence with different conditions, under section 77C;

102 Before paragraph 285(f)

Insert:

(ec) variation of an apparatus licence under section 103C;

103 Subsection 286(1)

After "this Act", insert "(other than section 77A)".

104 After paragraph 286(1)(a)

Insert:

(aa) in the case of an application under section 129 where the ACMA has, within those 90 days, given the applicant a notice under section 129A requiring the applicant to give the ACMA further information in connection with the application—within 90 days after receiving that further information; or

105 Paragraph 286(1)(b)

Omit "if", substitute "in the case of an application not made under section 129 where".

106 Subsection 286(2)

After "application", insert "mentioned in subsection (1)".

107 At the end of section 286

Add:

(3) If a renewal decision-making period statement is included in a spectrum licence, the ACMA must make a decision under section 77C in response to an application for the renewal of the spectrum licence:

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(a) before the end of the renewal decision-making period specified in the statement; or

(b) if the ACMA has, within that period, given the applicant a notice under section 77B requiring the applicant to give the ACMA further information in connection with the application—within that period, as extended by one day for each day in the period:

(i) beginning when the notice was given; and

(ii) ending when that further information was received.

(4) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application mentioned in subsection (3) if the ACMA has not informed the applicant of its decision before the end of the period within which the ACMA was required, under that subsection, to make the decision.

(5) If subsection (4) applies, the ACMA must:

(a) prepare a written statement explaining why it was unable to make its decision before the end of the period within which the ACMA was required, under subsection (3), to make the decision; and

(b) give the statement to the applicant as soon as practicable after the end of that period.

(6) If a renewal decision-making period statement is not included in a spectrum licence, the ACMA must make a decision under section 77C in response to an application for the renewal of the spectrum licence:

(a) within 6 months after receiving the application; or

(b) if the ACMA has, within that 6 months, given the applicant a notice under section 77B requiring the applicant to give the ACMA further information in connection with the application—within 6 months after receiving that further information.

(7) The ACMA is taken, for the purposes of this Part, to have made a decision to refuse the application mentioned in subsection (6) if the ACMA has not informed the applicant of its decision before the end of the relevant period of 6 months.

(8) If subsection (7) applies, the ACMA must:

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(a) prepare a written statement explaining why it was unable to make its decision before the end of the relevant period of 6 months; and
(b) give the statement to the applicant as soon as practicable after the end of the relevant period of 6 months.

108 Section 304

Repeal the section, substitute:

304 Applications in electronic form

(1) If a provision of this Act provides that an application must be made in a manner approved, in writing, by the ACMA, a manner approved by the ACMA may have the effect of requiring an application to be in an electronic form (for example, requiring an application to be made using an online system).

(2) Subsection (1) has effect despite anything in the *Electronic Transactions Act 1999*.

304A Service of notices and instruments by electronic means

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

(a) this Act; or
(b) a legislative instrument made under this Act; or
(c) the Regulatory Powers Act, so far as that Act relates to this Act.

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

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Part 2—Application and transitional provisions

109 Transitional—marketing plans

Scope

(1) This item applies to a marketing plan if:

(a) the plan was in force immediately before the commencement of this item; and

(b) the plan was prepared under:

(i) subsection 39(1) of the *Radiocommunications Act 1992*; or

(ii) subsections 39(1) and 39A(2) of the *Radiocommunications Act 1992*.

Effect of plan etc.

(2) The plan, so far as it was prepared under subsection 39(1) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been prepared under subsection 39(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the preparation of the plan (including a requirement about the form of words) had been satisfied; and

(c) a reference in the plan to a particular notice under subsection 36(1) of the *Radiocommunications Act 1992* were a reference to the notice as in force immediately before the commencement of this item.

(3) Subsection 39(2) of the *Radiocommunications Act 1992* (as amended by this Schedule) does not apply to the plan.

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109A Application—section 48 of the *Radiocommunications Act 1992*

The amendments of section 48 of the *Radiocommunications Act 1992* made by this Schedule apply in relation to possession of a radiocommunications device after the commencement of this item.

110 Transitional—paragraphs 60(5)(a) and (b) of the *Radiocommunications Act 1992*

Despite the repeal of paragraphs 60(5)(a) and (b) of the *Radiocommunications Act 1992* by this Schedule, those paragraphs continue to apply, in relation to procedures determined under subsection 60(1) of that Act before the commencement of this item, as if that repeal had not happened.

111 Transitional—spectrum licences issued under Subdivision A of Division 1 of Part 3.2 of the *Radiocommunications Act 1992*

If a spectrum licence was issued under Subdivision A of Division 1 of Part 3.2 of the *Radiocommunications Act 1992* before the commencement of this item, the repeal of that Subdivision by this Schedule does not affect the continuity of the licence.

112 Transitional—issuing spectrum licences under Subdivision A of Division 1 of Part 3.2 of the *Radiocommunications Act 1992*

Scope

(1) This item applies if, before the commencement of this item:

(a) the ACMA gave the licensee of an apparatus licence an offer to issue a spectrum licence to replace the apparatus licence; and

(b) the offer was given under section 56 of the *Radiocommunications Act 1992*; and

(c) the spectrum licence was not issued under Subdivision A of Division 1 of Part 3.2 of the *Radiocommunications Act 1992* before the commencement of this item.

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Issuing spectrum licences etc.

(2) Despite the repeal of Subdivision A of Division 1 of Part 3.2 of the *Radiocommunications Act 1992* by this Schedule, that Subdivision (other than subsection 59(1)) continues to apply, in relation to:

(a) any acceptance, or non-acceptance, of the offer by the licensee; and

(b) the issue of the spectrum licence in response to any acceptance of the offer by the licensee; and

(c) the allocation and issue of the spectrum licence as a consequence of any non-acceptance of the offer by the licensee;

as if that repeal had not happened.

(3) For the purposes of this item, ***non-acceptance*** of the offer by the licensee includes failure by the licensee to accept the offer on or before the day specified in the offer.

113 Transitional—subsection 71A(3) of the *Radiocommunications Act 1992*

Despite the amendment of subsection 71A(3) of the *Radiocommunications Act 1992* made by this Schedule, that subsection continues to apply, in relation to the re-issue of a spectrum licence under repealed section 82 of that Act, as if that amendment had not been made.

114 Transitional—spectrum licences re-issued under section 82 of the *Radiocommunications Act 1992*

If a spectrum licence was re-issued under section 82 of the *Radiocommunications Act 1992* before the commencement of this item, the repeal of that section by this Schedule does not affect the continuity of the licence.

115 Application—section 99 of the *Radiocommunications Act 1992*

The amendments of section 99 of the *Radiocommunications Act 1992* made by this Schedule apply in relation to an application made after the commencement of this item.

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116 Transitional—subsection 99(2) of the *Radiocommunications Act 1992*

The amendment of subsection 99(2) of the *Radiocommunications Act 1992* made by this Schedule does not affect the continuity of a written approval that was:

(a) in force immediately before the commencement of this item; and

(b) given under that subsection.

117 Transitional—subsections 106(3) and (4) of the *Radiocommunications Act 1992*

Despite the repeal of subsections 106(3) and (4) of the *Radiocommunications Act 1992* by this Schedule, those subsections continue to apply, in relation to a system determined under subsection 106(1) of that Act before the commencement of this item, as if that repeal had not happened.

118 Transitional—section 129 of the *Radiocommunications Act 1992*

Despite the repeal of section 129 of the *Radiocommunications Act 1992* by this Schedule, that section continues to apply, in relation to an application made before the commencement of this item, as if that repeal had not happened.

119 Application—section 131AA of the *Radiocommunications Act 1992*

The amendment of section 131AA of the *Radiocommunications Act 1992* made by this Schedule applies in relation to an application made after the commencement of this item.

120 Transitional—spectrum re-allocation declarations

Scope

(1) This item applies to a spectrum re-allocation declaration if:

(a) the declaration was in force immediately before the commencement of this item; and

(b) the declaration was made under subsection 153B(1) of the *Radiocommunications Act 1992*.

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Effect of declaration

(2) The declaration has effect, after the commencement of this item, as if:

(a) it had been made by the ACMA under subsection 153B(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the declaration (including a requirement about the form of words) had been satisfied.

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Schedule 4—Equipment etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Subparagraph 4(d)(i)

Omit "standards", substitute "equipment rules".

2 Section 5 (definition of *apply*)

Repeal the definition.

3 Section 5

Insert:

designated radiocommunications receiver has the meaning given by section 7A.

4 Section 5 (definition of *device*)

Repeal the definition, substitute:

device means an item of equipment.

5 Section 5 (definition of *EMC standard*)

Repeal the definition.

6 Section 5

Insert:

equipment means:

(a) a radiocommunications transmitter; or

(b) a radiocommunications receiver; or

(c) anything designed or intended for radio emission; or

(d) anything, irrespective of its use or function or the purpose of its design, that is capable of radio emission; or

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(e) anything that has a use or function that is capable of being interfered with by radio emission.

equipment rules means rules made under section 156.

7 Section 5 (definition of *interference*)

Repeal the definition, substitute:

interference means:

(a) in relation to radiocommunications—interference to, or with, radiocommunications that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by equipment; or

(b) in relation to the uses or functions of equipment—interference to, or with, those uses or functions that is attributable, whether wholly or partly and whether directly or indirectly, to an emission of electromagnetic energy by equipment.

8 Section 5

Insert:

interim ban has the meaning given by section 167.

9 Section 5 (definition of *label*)

Repeal the definition, substitute:

label includes:

(a) a statement; and

(b) a QR code, or a similar thing, if the relevant link is to information on a website.

10 Section 5

Repeal the following definitions:

(a) definition of ***non-standard device***;

(b) definition of ***non-standard transmitter***.

11 Section 5

Insert:

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offer to supply includes:

(a) make available for supply; and

(b) expose for supply; and

(c) display for supply; and

(d) advertise for supply.

operate:

(a) when used in relation to:

(i) a radiocommunications transmitter; or

(ii) a radiocommunications receiver; or

(iii) a radiocommunications device; or

(iv) a transmitter that is a radiocommunications transmitter; or

(v) equipment that is a radiocommunications transmitter; or

(vi) equipment that is a radiocommunications receiver;

means operate for the purposes of, or in connection with, radiocommunications; or

(b) when used in relation to a transmitter that is not a radiocommunications transmitter—means operate (within the ordinary meaning of that expression); or

(c) when used in relation to equipment that is neither a radiocommunications transmitter nor a radiocommunications receiver—means operate (within the ordinary meaning of that expression).

12 Section 5

Insert:

permanent ban has the meaning given by section 172.

13 Section 5 (definition of *permit*)

Repeal the definition, substitute:

permit means a permit issued by the ACMA under the equipment rules.

14 Section 5

Insert:

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protected symbol has the meaning given by section 166.

15 Section 5

Insert:

recall notice means a notice issued under subsection 183(1), (2), (3) or (4).

16 Section 5 (definition of *Register*)

Omit ", except in section 183,".

17 Section 5 (definition of *standard*)

Repeal the definition.

18 Subsection 6(2)

Omit "a radar device", substitute "radar equipment".

19 After section 7

Insert:

7A Designated radiocommunications receiver

For the purposes of this Act, if the operation of a radiocommunications receiver is not authorised by a class licence, the radiocommunications receiver is a ***designated radiocommunications receiver***.

20 Sections 9 and 9A

Repeal the sections, substitute:

9 Application of labels

For the purposes of this Act, a label is taken to be ***applied*** to a thing if:

(a) the label is affixed to the thing; or

(b) the label is woven in, impressed on, worked into or annexed to the thing; or

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(c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or

(d) the label is woven in, impressed on, worked into or annexed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or

(e) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

21 Paragraph 107(1)(d)

After "it", insert "under the equipment rules".

22 Paragraph 133(2)(e)

After "it", insert "under the equipment rules".

23 Subsection 154(2)

Repeal the subsection, substitute:

(2) Part 4.1 is about equipment rules, protected symbols, equipment bans and equipment recall.

24 Part 4.1

Repeal the Part, substitute:

Part 4.1—Equipment

Division 1—Introduction

155 Simplified outline of this Part

- The ACMA may make equipment rules.
- The equipment rules may prescribe standards for equipment.
- The equipment rules may impose obligations or prohibitions in relation to equipment.

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- An obligation or prohibition may relate to:
  (a) the operation of equipment; or
  (b) the supply of equipment; or
  (c) offers to supply equipment; or
  (d) the possession of equipment; or
  (e) the import of equipment.
- A person must not use or apply a protected symbol unless the use or application is authorised by or under:
  (a) this Act; or
  (b) the equipment rules.
- A protected symbol is a symbol:
  (a) the design of which is determined by the ACMA; and
  (b) the purpose of which is to indicate compliance by equipment with any standards that are prescribed by the equipment rules and that are applicable to the equipment.
- The ACMA may impose interim bans, or permanent bans, on equipment.
- The ACMA may require a supplier to recall equipment.
- If a supplier voluntarily recalls equipment, the supplier must notify the ACMA of the recall.

Division 2—Equipment rules

156 Equipment rules

(1) The ACMA may, by legislative instrument, make rules (***equipment rules***) relating to equipment.

(2) The ACMA may make 2 or more sets of equipment rules.

(3) The equipment rules must be directed towards achieving any or all of the following objectives:
  (a) ensuring the electromagnetic compatibility of equipment;

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(b) containing interference to radiocommunications;
(c) containing interference to any uses or functions of equipment;
(d) establishing for the uses or functions of equipment an adequate level of immunity from electromagnetic disturbances caused by the use of other equipment;
(e) protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters;
(f) ensuring that persons who operate equipment have access to information about the equipment;
(g) ensuring that radiocommunications transmitters are not supplied to persons intending to operate those transmitters unless those persons are authorised by or under this Act to operate those transmitters;
(h) ensuring that designated radiocommunications receivers are not supplied to persons intending to operate those receivers unless those persons are authorised by or under this Act to operate those receivers;
(i) an objective specified in the legislative rules;
(j) an objective that is incidental or ancillary to any of the above objectives.

(4) Before making equipment rules directed towards achieving the objective mentioned in paragraph (3)(e), the ACMA must consult ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency).

157 Constitutional limits

The equipment rules may only be made to the extent that they are supported by one or more of the following provisions of the Constitution:

(a) paragraph 51(i);
(b) paragraph 51(v);
(c) paragraph 51(vi);
(d) paragraph 51(vii);
(e) paragraph 51(viii);

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(f) paragraph 51(xiii);
(g) paragraph 51(xiv);
(h) paragraph 51(xv);
(i) paragraph 51(xx);
(j) paragraph 51(xxix);
(k) paragraph 51(xxxix);
(l) section 52;
(m) section 122.

158 Standards

(1) The equipment rules may prescribe standards for equipment.

(2) Standards may require equipment:
(a) to have particular design features; or
(b) to meet particular performance requirements.

(3) A standard may be of general application or may be limited as provided in the equipment rules. This subsection does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

(4) This section does not, by implication, limit subsection 156(1).

(5) This section has effect subject to subsection 156(3).

159 Obligations, prohibitions and permits

Obligations and prohibitions

(1) The equipment rules may impose obligations or prohibitions in relation to equipment.

(2) The equipment rules may impose obligations:
(a) to ensure that quality assurance programs in relation to equipment are conducted; or
(b) to ensure that tests in relation to equipment are conducted; or
(c) to ensure that labels are applied to equipment; or
(d) to ensure that records are kept or retained; or
(e) to ensure that a thing specified in the legislative rules is done.

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(3) The equipment rules may impose obligations or prohibitions that relate to:
  (a) the operation of equipment; or
  (b) the supply of equipment; or
  (c) offers to supply equipment; or
  (d) the possession of equipment; or
  (e) the import of equipment.

(4) If the equipment rules impose an obligation on a person to cause a thing to be done, the rules may require that the thing be done by another specified person.

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

(5) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person holding an accreditation of a specified kind.

(6) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person who:
  (a) satisfies the conditions specified in the equipment rules; and
  (b) is approved, in writing, by a person holding an accreditation of a specified kind.

(7) If the equipment rules impose an obligation on a person to cause a thing to be done, the equipment rules may require that the thing be done by another person who is approved, in writing, by a person holding an accreditation of a specified kind.

(8) The equipment rules may prohibit a person from:
  (a) supplying; or
  (b) offering to supply;

  a specified kind of equipment unless the person satisfies one or more specified conditions.

(9) The equipment rules may require that, if:
  (a) the supply of equipment to a person; or
  (b) an offer to supply equipment to a person;

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involves the person accessing the supplier's website, the supplier must ensure that, before the equipment is supplied to the person, the person's attention is drawn to material that:

(c) is on the website; and

(d) complies with specified requirements.

(10) The equipment rules may prohibit a person from applying a specified kind of label to equipment unless the person does so in specified circumstances.

(11) The equipment rules may prohibit a person who supplies, or offers to supply, equipment from publishing a specified kind of material about the equipment on the person's website unless the person does so in specified circumstances.

(12) The equipment rules may prohibit a person from doing an act or thing specified in the legislative rules.

Permits

(13) The equipment rules may prohibit the doing of an act or thing by a person unless:

(a) the person holds a permit issued by the ACMA under the equipment rules; and

(b) the permit authorises the person to do that act or thing.

(14) An act or thing is not authorised by a permit if it is not in accordance with the conditions of the permit.

(15) The equipment rules may make provision for:

(a) the issue of permits by the ACMA; and

(b) the inclusion by the ACMA of conditions in a permit; and

(c) the cancellation of permits by the ACMA.

Note 1: Refusals to issue permits are reviewable under Part 5.6.

Note 2: Decisions about permit conditions are reviewable under Part 5.6.

Note 3: Cancellations of permits are reviewable under Part 5.6.

(16) The equipment rules may make provision for ACMA to vary a permit by:

(a) including one or more further conditions; or

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(b) varying any conditions of the permit; or
(c) revoking any conditions of the permit.

Note: Decisions about permit conditions are reviewable under Part 5.6.

Other matters

(17) Subsections (2) to (16) do not limit subsection (1).

(18) Subsections (2) to (16) do not limit each other.

(19) This section does not, by implication, limit subsection 156(1).

(20) This section has effect subject to subsection 156(3).

160 Breach of equipment rules and permit conditions

Offence

(1) A person commits an offence if:
(a) the person is subject to a prohibition imposed by the equipment rules; and
(b) the prohibition does not consist of contravening a condition of a permit; and
(c) the person engages in conduct; and
(d) the person's conduct contravenes the prohibition.

Penalty: 500 penalty units.

(2) A person commits an offence if:
(a) the person is subject to an obligation imposed by the equipment rules; and
(b) the obligation is not an obligation to do an act or thing:
(i) within a particular period; or
(ii) before a particular time; and
(c) the obligation is not an obligation to keep or retain records; and
(d) the obligation is not an obligation to comply with a condition of a permit; and
(e) the person engages in conduct; and
(f) the person's conduct contravenes the obligation.

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Penalty: 500 penalty units.

(3) A person commits an offence if:
(a) the person is subject to an obligation imposed by the equipment rules; and
(b) the obligation is an obligation to do an act or thing:
(i) within a particular period; or
(ii) before a particular time; and
(c) the obligation is not an obligation to keep or retain records; and
(d) the obligation is not an obligation to comply with a condition of a permit; and
(e) the person engages in conduct; and
(f) the person's conduct contravenes the obligation.

Penalty: 500 penalty units.

(4) The maximum penalty for each day that an offence against subsection (3) continues is 10% of the maximum penalty that could be imposed in respect of the principal offence.

Civil penalties

(5) If:
(a) a person is subject to a prohibition imposed by the equipment rules; and
(b) the prohibition does not consist of contravening a condition of a permit;
the person must not contravene the prohibition.

Civil penalty: 500 penalty units.

(6) If:
(a) a person is subject to an obligation imposed by the equipment rules; and
(b) the obligation is not an obligation to do an act or thing:
(i) within a particular period; or
(ii) before a particular time; and
(c) the obligation is not an obligation to keep or retain records; and

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(d) the obligation is not an obligation to comply with a condition of a permit;

the person must not contravene the obligation.

Civil penalty: 500 penalty units.

(7) If:

(a) a person is subject to an obligation imposed by the equipment rules; and

(b) the obligation is an obligation to do an act or thing:

(i) within a particular period; or

(ii) before a particular time; and

(c) the obligation is not an obligation to keep or retain records; and

(d) the obligation is not an obligation to comply with a condition of a permit;

the person must not contravene the obligation.

Civil penalty: 500 penalty units.

(8) The maximum civil penalty for each day that a contravention of subsection (7) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (7) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

(9) If:

(a) a person is subject to an obligation imposed by the equipment rules; and

(b) the obligation is an obligation to keep or retain records;

the person must not contravene the obligation.

Civil penalty: 30 penalty units.

(10) If a person is the holder of a permit, the person must not contravene a condition of the permit.

Civil penalty: 100 penalty units.

(11) Subsection (10) does not apply if the person has a reasonable excuse.

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Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

161 Equipment rules may confer powers on the ACMA

The equipment rules may make provision in relation to a matter by conferring a power on the ACMA.

162 Equipment rules may confer powers on accredited persons

(1) The equipment rules may make provision in relation to a matter by conferring a power on a person who holds a specified kind of accreditation.

(2) The equipment rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the equipment rules. A fee must not be such as to amount to taxation.

163 Equipment rules may authorise the charging of fees by certain persons

The equipment rules may authorise a person who is required, under rules made for the purposes of subsection 159(4) or (7), to do a thing, to charge fees in relation to the doing of the thing by the person. A fee must not be such as to amount to taxation.

164 Divisions 4 and 5 do not limit the ACMA's power to make equipment rules

Divisions 4 and 5 do not, by implication, limit the ACMA's power to make equipment rules.

Division 3—Protected symbols

165 Use or application of protected symbols

General prohibition

(1) A person must not:

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(a) use in relation to a business, trade, profession or occupation; or

(b) apply (as a trade mark or otherwise) to goods imported, manufactured, produced, sold, offered for sale or let on hire; or

(c) use in relation to:

(i) goods or services; or

(ii) the promotion (by any means) of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Civil penalty: 50 penalty units.

(2) Nothing in subsection (1) limits anything else in that subsection.

Use or application—corporations power

(3) A constitutional corporation must not:

(a) use in relation to a business, trade, profession or occupation; or

(b) apply (as a trade mark or otherwise) to goods imported, manufactured, produced, sold, offered for sale or let on hire; or

(c) use in relation to:

(i) goods or services; or

(ii) the promotion (by any means) of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it.

Civil penalty: 50 penalty units.

(4) Nothing in subsection (3) limits anything else in that subsection.

Use or application—other legislative powers

(5) A person must not:

(a) use in relation to a business, trade, profession or occupation; or

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(b) apply (as a trade mark or otherwise) to goods imported, manufactured, produced, sold, offered for sale or let on hire; or

(c) use in relation to:

(i) goods or services; or

(ii) the promotion (by any means) of the supply or use of goods or services;

a protected symbol, or a symbol so closely resembling a protected symbol as to be likely to be mistaken for it, if the use or application is in the course of, or in relation to:

(d) trade or commerce between Australia and places outside Australia; or

(e) trade or commerce among the States; or

(f) trade or commerce within a Territory, between a State and a Territory or between 2 Territories; or

(g) the supply of goods or services to:

(i) the Commonwealth; or

(ii) a Territory; or

(iii) an authority or instrumentality of the Commonwealth; or

(iv) an authority or instrumentality of a Territory; or

(h) the defence of Australia; or

(i) the operation of lighthouses, lightships, beacons or buoys; or

(j) astronomical or meteorological observations; or

(k) an activity of a constitutional corporation; or

(l) banking, other than State banking; or

(m) insurance, other than State insurance; or

(n) weighing or measuring.

Civil penalty: 50 penalty units.

(6) Nothing in subsection (5) limits anything else in that subsection.

Exceptions

(7) Subsections (1), (3) and (5) do not apply to a person who uses or applies a protected symbol for the purposes of:

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(a) labelling equipment in accordance with the equipment rules; or

(b) labelling customer equipment (within the meaning of the *Telecommunications Act 1997*) or customer cabling (within the meaning of that Act), in accordance with section 407 of that Act.

(8) Subsections (1), (3) and (5) do not apply to a person who uses or applies a protected symbol for a purpose of a kind specified in a determination under subsection (9).

(9) The ACMA may, by legislative instrument, determine one or more specified kinds of purpose for the purposes of subsection (8).

(10) The equipment rules may provide that subsections (1), (3) and (5) do not apply in relation to a specified use or application of a protected symbol.

166 Protected symbol

(1) For the purposes of this Act, ***protected symbol*** means a symbol:

(a) the design of which is set out in a determination under subsection (2); and

(b) a purpose of which, after the commencement of this section, is to indicate compliance by equipment with any standards that:

(i) are prescribed by the equipment rules; and

(ii) are applicable to the equipment.

(2) The ACMA may, by legislative instrument, determine one or more designs for the purposes of paragraph (1)(a).

Labels applied to equipment

(3) For the purposes of this Act, if:

(a) a label is applied to equipment; and

(b) the label embodies a symbol referred to in subsection (1);

the label is taken to indicate that the equipment meets the requirements of any standards that:

(c) are prescribed by the equipment rules; and

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(d) are applicable to the equipment.

Division 4—Bans on equipment

Subdivision A—Interim bans

167 Interim bans on equipment

(1) The ACMA may, by notifiable instrument, impose an ***interim ban*** on equipment of a specified kind if:

(a) the ACMA has reasonable grounds to believe that equipment of that kind is designed to have an adverse effect on radiocommunications; or

(b) the ACMA has reasonable grounds to believe that a reasonably foreseeable use (including a misuse) of equipment of that kind would be likely to substantially:

(i) interfere with radiocommunications; or

(ii) disrupt or disturb radiocommunications in any other way; or

(c) both:

(i) equipment of that kind consists of radiocommunications transmitters; and

(ii) the ACMA has reasonable grounds to believe that radio emissions resulting from the operation of equipment of that kind would be likely to adversely affect the health or safety of individuals.

Publication

(2) If the ACMA makes a notifiable instrument imposing an interim ban, the ACMA must publish a notice that sets out:

(a) a statement to the effect that the ban has been imposed; and

(b) the time when the ban came, or is to come, into force; and

(c) the kind of equipment to which the ban relates; and

(d) the reason or reasons for imposing the ban.

(3) The following provisions have effect:

(a) the ACMA must publish a notice under subsection (2) on the ACMA's website;

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(b) the legislative rules may provide that the ACMA must also publish a notice under subsection (2) in accordance with the legislative rules.

168 Duration of interim bans

(1) An interim ban imposed by the ACMA:
  (a) comes into force on the day specified in the instrument imposing the ban; and
  (b) subject to this Act, remains in force for 60 days.

(2) If an interim ban is in force, the ACMA may, by notifiable instrument, extend the period for which the ban is in force by a period of up to 30 days.

169 Revocation of interim bans

(1) If an interim ban is in force:
  (a) the ACMA may, by notifiable instrument, revoke the ban; and
  (b) the revocation takes effect on the day specified in the instrument.

(2) If:
  (a) an interim ban on equipment of a particular kind is in force; and
  (b) a permanent ban on equipment of that kind comes into force;

the interim ban is revoked when the permanent ban comes into force.

170 Compliance with interim bans

Supply

(1) A person must not supply equipment of a particular kind to another person if:
  (a) the other person intends to operate the equipment; and
  (b) an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

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Offer to supply

(2) A person must not offer to supply equipment of a particular kind to another person if:

(a) the other person intends to operate the equipment; and

(b) an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

Operation

(3) A person must not operate equipment of a particular kind if an interim ban on equipment of that kind is in force.

Civil penalty: 200 penalty units.

(4) If:

(a) a person contravenes subsection (1), (2) or (3); and

(b) another person suffers loss or damage because of a reasonably foreseeable use (including a misuse) of the equipment;

the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

171 Actions for damages

(1) If:

(a) a person (the ***claimant***) suffers loss or damage because of conduct engaged in by another person; and

(b) the conduct contravened subsection 170(1), (2) or (3);

the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit Court of Australia against:

(c) that other person; or

(d) 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 accrued.

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(3) A reference in this section to a person involved in the contravention is a reference to a person who has:
  (a) aided, abetted, counselled or procured the contravention; or
  (b) induced the contravention, whether through threats or promises or otherwise; or
  (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
  (d) conspired with others to effect the contravention.

Subdivision B—Permanent bans

172 Permanent bans on equipment

(1) The ACMA may, by legislative instrument, impose a ***permanent ban*** on equipment of a specified kind if:
  (a) the ACMA is satisfied that equipment of that kind is designed to have an adverse effect on radiocommunications; or
  (b) the ACMA is satisfied that a reasonably foreseeable use (including a misuse) of equipment of that kind would be likely to substantially:
    (i) interfere with radiocommunications; or
    (ii) disrupt or disturb radiocommunications in any other way; or
  (c) both:
    (i) equipment of that kind consists of radiocommunications transmitters; and
    (ii) the ACMA is satisfied that radio emissions resulting from the operation of equipment of that kind would be likely to adversely affect the health or safety of individuals.

(2) Before imposing a permanent ban on the grounds mentioned in paragraph (1)(c), the ACMA must consult ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency).

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Publication

(3) If the ACMA makes a legislative instrument imposing a permanent ban, the ACMA must publish a notice that sets out:
  (a) a statement to the effect that the ban has been imposed; and
  (b) the time when the ban came, or is to come, into force; and
  (c) the kind of equipment to which the ban relates; and
  (d) the reason or reasons for imposing the ban.

(4) The following provisions have effect:
  (a) the ACMA must publish a notice under subsection (3) on the ACMA's website;
  (b) the legislative rules may provide that the ACMA must also publish a notice under subsection (3) in accordance with the legislative rules.

173 When permanent bans come into force

A permanent ban comes into force on the day specified by the ACMA in the instrument imposing the ban.

174 Revocation of permanent bans

If a permanent ban is in force:
  (a) the ACMA may, by legislative instrument, revoke the ban; and
  (b) the revocation takes effect on the day specified in the instrument.

175 Compliance with permanent bans—offences

Supply

(1) A person commits an offence if:
  (a) the person supplies equipment of a particular kind to another person who intends to operate the equipment; and
  (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

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Offer to supply

(2) A person commits an offence if:
  (a) the person offers to supply equipment of a particular kind to another person who intends to operate the equipment; and
  (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Operation

(3) A person commits an offence if:
  (a) the person operates equipment of a particular kind; and
  (b) a permanent ban on equipment of that kind is in force.

Penalty: Imprisonment for 2 years or 1,000 penalty units, or both.

Possession

(4) A person commits an offence if:
  (a) the person has equipment of a particular kind in the person's possession; and
  (b) the possession is for the purpose of:
    (i) operating the equipment; or
    (ii) supplying the equipment to another person who intends to operate the equipment; and
  (c) a permanent ban on equipment of that kind is in force.

Penalty for contravention of this subsection: Imprisonment for 2 years or 1,000 penalty units, or both.

176 Compliance with permanent bans—civil penalties

Supply

(1) A person must not supply equipment of a particular kind to another person if:
  (a) the other person intends to operate the equipment; and
  (b) a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

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Offer to supply

(2) A person must not offer to supply equipment of a particular kind to another person if:

(a) the other person intends to operate the equipment; and

(b) a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

Operation

(3) A person must not operate equipment of a particular kind if a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

Possession

(4) A person must not have equipment of a particular kind in the person's possession if:

(a) a permanent ban on equipment of that kind is in force; and

(b) the possession is for the purpose of:

(i) operating the equipment; or

(ii) supplying the equipment to another person who intends to operate the equipment.

Civil penalty: 1,000 penalty units.

(5) If:

(a) a person contravenes subsection (1), (2), (3) or (4); and

(b) another person suffers loss or damage because of a reasonably foreseeable use (including a misuse) of the equipment;

the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

177 Actions for damages

(1) If:

(a) a person (the ***claimant***) suffers loss or damage because of conduct engaged in by another person; and

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(b) the conduct contravened subsection 176(1), (2), (3) or (4);

the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit Court of Australia against:

(c) that other person; or

(d) 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 accrued.

(3) A reference in this section to a person involved in the contravention is a reference to a person who has:

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

Subdivision C—Presumptions

178 Presumptions

Presumption relating to supply or offer to supply

(1) For the purposes of subsections 170(1) and (2), 175(1) and (2) and 176(1) and (2), if:

(a) at a particular time, a person (the ***first person***) supplies, or offers to supply, equipment to another person; and

(b) the equipment can be operated;

it must be presumed that the other person intends to operate the equipment, unless the first person adduces or points to evidence that suggests a reasonable possibility that, at that time, the other person did not intend to operate the equipment.

Presumptions relating to possession

(2) For the purposes of subsections 175(4) and 176(4), if:

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(a) at a particular time, a person has equipment in the person's possession, otherwise than for the purpose of supplying the equipment to another person; and

(b) the equipment can be operated;

it must be presumed that the person has the equipment in the person's possession for the purpose of operating the equipment, unless the person adduces or points to evidence that suggests a reasonable possibility that, at that time, the person did not have the equipment in the person's possession for the purpose of operating the equipment.

(3) For the purposes of subsections 175(4) and 176(4), if:

(a) at a particular time, a person (the ***first person***) has equipment in the person's possession for the purpose of supplying the equipment to another person; and

(b) the equipment can be operated;

it must be presumed that the other person intends to operate the equipment, unless the first person adduces or points to evidence that suggests a reasonable possibility that, at that time, the other person did not intend to operate the equipment.

When equipment can be operated

(4) For the purposes of paragraphs (1)(b), (2)(b) and (3)(b), it is immaterial whether the equipment can be operated:

(a) immediately; or

(b) after taking one or more steps (for example, the connection of the equipment to a power supply).

Subdivision D—Amnesty for banned equipment

179 Amnesty for banned equipment

Amnesty period

(1) The ACMA may, by notifiable instrument, declare that, for the purposes of subsection (2), a specified period is an amnesty period for a specified permanent ban.

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Amnesty

(2) If:

(a) a permanent ban on equipment of a particular kind is in force; and

(b) an amnesty period has been declared under subsection (1) for the ban;

then:

(c) the owner of equipment of that kind may, during the amnesty period for the ban, agree with the ACMA (on behalf of the Commonwealth) to forfeit the equipment to the Commonwealth; and

(d) if the owner does so—subsections 175(4) and 176(4), to the extent to which they relate to the ban, do not apply, and are taken never to have applied, to the possession of the equipment by:

(i) the owner; or

(ii) any other person.

180 The ACMA may take possession of equipment

(1) If the owner of equipment agrees, in accordance with section 179, to forfeit the equipment to the Commonwealth:

(a) the ACMA may take possession of the equipment; and

(b) if the ACMA does so—the ACMA must give the owner a receipt for the equipment taken into possession.

(2) If:

(a) the ACMA has purported to take possession of equipment under subsection (1); and

(b) the ACMA was not entitled to take possession of the equipment under that subsection;

the ACMA must take all reasonable steps to return the equipment to the owner of the equipment.

181 Forfeiture of equipment to the Commonwealth

(1) If:

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(a) the ACMA has taken possession of equipment under subsection 180(1); and

(b) at least 90 days have passed since the ACMA gave the owner a receipt under paragraph 180(1)(b) for the equipment;

the ACMA may declare, in writing, that the equipment is forfeited to the Commonwealth.

(2) The ACMA must give a copy of the declaration to the owner of the equipment.

Deemed forfeiture

(3) If:

(a) the owner of equipment agrees, in accordance with section 179, to forfeit the equipment to the Commonwealth; and

(b) the ACMA has taken possession of the equipment under subsection 180(1); and

(c) the ACMA has not, within the 120-day period beginning at the start of the day when the ACMA gave the owner a receipt under paragraph 180(1)(b) for the equipment, made a declaration under subsection (1) of this section that the equipment is forfeited to the Commonwealth;

then, at the end of the 120-day period, the equipment is forfeited to the Commonwealth.

182 Forfeited equipment may be sold, destroyed or otherwise disposed of

Equipment forfeited under section 181:

(a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and

(b) pending such directions, must be kept in such custody as the ACMA directs.

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Division 5—Recall of equipment

Subdivision A—Compulsory recall of equipment

183 Compulsory recall of equipment

Equipment that will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications

(1) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:

(a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and

(b) the ACMA is satisfied that a reasonably foreseeable use (including a misuse) of such equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; and

(c) the ACMA is satisfied that one or more suppliers of such equipment have not taken satisfactory action to prevent that equipment causing substantial disruption, substantial disturbance or substantial interference to radiocommunications.

Equipment designed to have an adverse effect on radiocommunications

(2) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:

(a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and

(b) the ACMA is satisfied that equipment of that kind is designed to have an adverse effect on radiocommunications.

Equipment likely to adversely affect health or safety

(3) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:

(a) equipment of that kind consists of radiocommunications transmitters; and

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(b) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and

(c) the ACMA is satisfied that radio emissions resulting from the operation of equipment of that kind would be likely to adversely affect the health or safety of individuals.

Permanent ban

(4) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:

(a) a person, in trade or commerce, supplies, or has supplied, equipment of that kind; and

(b) a permanent ban on such equipment is in force; and

(c) the ACMA is satisfied that one or more suppliers of such equipment have not taken satisfactory action to recall such equipment so supplied by those suppliers.

Publication

(5) If the ACMA, by legislative instrument, issues a recall notice under subsection (1), (2), (3) or (4), the ACMA must publish a notice that sets out:

(a) a statement to the effect that the recall notice has been issued; and

(b) the time when the recall notice commences, or is to commence; and

(c) the kind of equipment to which the recall notice relates; and

(d) the reason or reasons for issuing the recall notice.

(6) The following provisions have effect:

(a) the ACMA must publish a notice under subsection (5) on the ACMA's website;

(b) the legislative rules may provide that the ACMA must also publish a notice under subsection (5) in accordance with the legislative rules.

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Other matters

(7) It is not necessary, for the purposes of paragraph (1)(a) or (c), (2)(a), (3)(b) or (4)(a) or (c), for the ACMA to know the identities of any of the suppliers of the equipment.

(8) A recall notice for equipment may be issued under subsection (1), (2), (3) or (4) even if the equipment has become fixtures since the time the equipment was supplied.

184 Contents of a recall notice

(1) A recall notice for equipment may require one or more suppliers of the equipment to take one or more of the following actions:
  (a) recall the equipment;
  (b) disclose to the public, or to a class of persons specified in the notice, the reasons for the issue of the recall notice;
  (c) inform the public, or a class of persons specified in the notice, that the supplier undertakes to do whichever of the following the supplier thinks is appropriate:
    (i) repair or modify the equipment;
    (ii) replace the equipment;
    (iii) refund to a person to whom the equipment was supplied (whether by the supplier or by another person), and who returns the equipment, the price paid for the equipment;
  (d) if an undertaking is given by a supplier in accordance with paragraph (c):
    (i) comply with the undertaking; and
    (ii) comply with section 185 in relation to the undertaking;
  (e) disclose to the public, or to a class of persons specified in the notice, procedures as specified in the notice for disposing of the equipment.

(2) The recall notice may specify:
  (a) the manner in which the action required to be taken by the notice must be taken; and
  (b) the period within which the action must be taken.

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(3) If the recall notice requires a supplier of the equipment to take action of a kind referred to in paragraph (1)(c), the ACMA may specify in the notice that, if:

(a) the supplier undertakes to refund the price paid for equipment; and

(b) a period of more than 12 months has elapsed since a person (whether or not the person to whom the refund is to be made) acquired the equipment from the supplier;

the amount of a refund may be reduced by the supplier by an amount, calculated in a manner specified in the notice, that is attributable to the use which a person has had of the equipment.

185 Obligations of a supplier in relation to a recall notice

Scope

(1) This section applies if a recall notice for equipment requires a supplier to take action of a kind referred to in paragraph 184(1)(c).

Obligations—repair or modify

(2) If:

(a) the recall notice was issued under subsection 183(1); and

(b) the supplier undertakes to repair or modify the equipment;

the supplier must cause the equipment to be repaired or modified so that:

(c) a reasonably foreseeable use or misuse of the equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; and

(d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

(3) If:

(a) the recall notice was issued under subsection 183(2); and

(b) the supplier undertakes to repair or modify the equipment;

the supplier must cause the equipment to be repaired or modified so that:

(c) the equipment would not be likely to have an adverse effect on radiocommunications; and

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(d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

(4) If:

(a) the recall notice was issued under subsection 183(3); and

(b) the supplier undertakes to repair or modify the equipment;

the supplier must cause the equipment to be repaired or modified so that:

(c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the equipment would not be likely to adversely affect the health or safety of individuals; and

(d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

Obligations—replacement

(5) If:

(a) the recall notice was issued under subsection 183(1); and

(b) the supplier undertakes to replace the equipment;

the supplier must replace the equipment with similar equipment that satisfies the following conditions:

(c) a reasonably foreseeable use or misuse of the similar equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications;

(d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(6) If:

(a) the recall notice was issued under subsection 183(2); and

(b) the supplier undertakes to replace the equipment;

the supplier must replace the equipment with similar equipment that satisfies the following conditions:

(c) the similar equipment would not be likely to have an adverse effect on radiocommunications;

(d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(7) If:

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(a) the recall notice was issued under subsection 183(3); and
(b) the supplier undertakes to replace the equipment;

the supplier must replace the equipment with similar equipment that satisfies the following conditions:

(c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the similar equipment would not be likely to adversely affect the health or safety of individuals;
(d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(8) If the supplier undertakes:

(a) to repair or modify the equipment; or
(b) to replace the equipment;

the cost of the repair, modification or replacement, including any necessary transportation costs, must be paid by the supplier.

186 Compliance with recall notices

Offence

(1) A person commits an offence if:

(a) a recall notice for equipment is in force; and
(b) the notice requires the person to do one or more things; and
(c) the person engages in conduct; and
(d) the person's conduct contravenes the notice.

Penalty: 1,000 penalty units.

Civil penalty

(2) If:

(a) a recall notice for equipment is in force; and
(b) the notice requires a person to do one or more things;

the person must comply with the notice.

Civil penalty: 1,000 penalty units.

(3) If:

(a) a person contravenes subsection (2) in relation to equipment; and

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(b) another person suffers loss or damage:

(i) because of a reasonably foreseeable use (including a misuse) of the equipment; or

(ii) because, contrary to the recall notice, the other person was not provided with particular information in relation to the equipment;

the other person is taken, for the purposes of this Division, to have suffered the loss or damage because of the contravention.

187 Actions for damages

(1) If:

(a) a person (the ***claimant***) suffers loss or damage because of conduct engaged in by another person; and

(b) the conduct contravened subsection 186(2);

the claimant may recover the amount of the loss or damage by action in the Federal Court or the Federal Circuit Court of Australia against:

(c) that other person; or

(d) 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 accrued.

(3) A reference in this section to a person involved in the contravention is a reference to a person who has:

(a) aided, abetted, counselled or procured the contravention; or

(b) induced the contravention, whether through threats or promises or otherwise; or

(c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or

(d) conspired with others to effect the contravention.

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Subdivision B—Voluntary recall of equipment

188 Notification requirements for a voluntary recall of equipment

Scope

(1) This section applies if a person voluntarily takes action to recall equipment of a particular kind (including equipment that has become fixtures since being supplied) because:

(a) a reasonably foreseeable use (including a misuse) of such equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; or

(b) such equipment would be likely to have an adverse effect on radiocommunications; or

(c) in a case where such equipment consists of radiocommunications transmitters—radio emissions resulting from a reasonably foreseeable use (including a misuse) of such equipment would be likely to adversely affect the health or safety of individuals; or

(d) a permanent ban on such equipment is in force.

Notifying the ACMA

(2) The person must, within 2 days after taking the action, give the ACMA a written notice that complies with subsection (4).

Civil penalty: 20 penalty units.

(3) The following provisions have effect:

(a) the ACMA must publish a copy of the notice on the ACMA's website;

(b) the legislative rules may provide that the ACMA must also publish a copy of the notice in accordance with the legislative rules.

Requirements for notice

(4) A notice under subsection (2) must:

(a) state that the equipment is subject to recall; and

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(b) if a reasonably foreseeable use or misuse of the equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications—set out the circumstances of that use or misuse; and

(c) if the equipment would be likely to have an adverse effect on radiocommunications—set out that adverse effect; and

(d) if:

(i) the equipment consists of radiocommunications transmitters; and

(ii) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the equipment would be likely to adversely affect the health or safety of individuals;

set out:

(iii) the circumstances of that use (including misuse); and

(iv) the way in which the health or safety of individuals is likely to be adversely affected by that use (including misuse); and

(e) if a permanent ban on the equipment is in force—state that fact.

Continuing contravention of civil penalty provision

(5) The maximum civil penalty for each day that a contravention of subsection (2) continues is 10% of the maximum civil penalty that can be imposed in respect of a contravention of that subsection.

Note: Subsection (2) is a continuing civil penalty provision under section 93 of the Regulatory Powers Act.

25 Subsection 238(2)

Omit "or to make standards under Part 4.1".

26 Paragraph 262(2)(a)

Omit "standards may be made under Part 4.1", substitute "equipment rules may be made".

27 Paragraph 279(1)(d)

Omit "300; and", substitute "300.".

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28 Paragraph 279(1)(e)

Repeal the paragraph.

29 Paragraphs 285(p) to (s)

Repeal the paragraphs, substitute:

(p) refusal to issue a permit under the equipment rules;

(q) a decision under the equipment rules about the conditions of a permit;

(r) cancellation of a permit under the equipment rules;

(s) a decision of the ACMA:

(i) made under the equipment rules; and

(ii) declared by the equipment rules to be a decision to which this section applies;

(sa) a decision to impose an interim ban under section 167;

30 Subsection 300(4) (penalty)

Omit "Penalty", substitute "Civil penalty".

31 After section 300

Insert:

300A Transitional—failure to comply with requirements to be met after a label has been applied to a device

General rule

(1) If:

(a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and

(b) the notice specified requirements to be met after a label has been applied to a device;

a manufacturer or importer must comply with those requirements in relation to a label that was applied to a device before the commencement of this section.

Civil penalty: 20 penalty units.

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(2) Subsection (1) does not apply if the manufacturer or importer has a reasonable excuse.

Corporations power

(3) If:

(a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and

(b) the notice specified requirements to be met after a label has been applied to a device; and

(c) a manufacturer or importer is a constitutional corporation;

the manufacturer or importer must comply with those requirements in relation to a label that was applied to a device before the commencement of this section.

Civil penalty: 20 penalty units.

(4) Subsection (3) does not apply if the manufacturer or importer has a reasonable excuse.

Other legislative powers

(5) If:

(a) before the commencement of this section, the ACMA gave a notice under repealed subsection 182(1); and

(b) the notice specified requirements to be met after a label has been applied to a device; and

(c) before the commencement of this section, a manufacturer or importer manufactured or imported a device for the purposes of supply:

(i) in the course of, or in relation to, constitutional trade or commerce; or

(ii) to the Commonwealth; or

(iii) to a Territory; or

(iv) to an authority or instrumentality of the Commonwealth; or

(v) to an authority or instrumentality of a Territory;

the manufacturer or importer must comply with those requirements in relation to a label that was applied to the device before the commencement of this section.

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Civil penalty: 20 penalty units.

(6) Subsection (5) does not apply if the manufacturer or importer has a reasonable excuse.

Constitutional trade or commerce

(7) For the purposes of this section, ***constitutional trade or commerce*** means:

(a) trade or commerce between Australia and places outside Australia; or

(b) trade or commerce among the States; or

(c) trade or commerce within a Territory, between a State and a Territory or between 2 Territories.

Transitional

(8) If:

(a) a notice was in force under repealed section 182 immediately before the commencement of this section; and

(b) the notice specified requirements to be met after a label has been applied to a device;

then, despite the repeal of that section by the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*, the notice, so far as it specified those requirements, continues in force, in relation to a label applied to a device before the commencement of this section, as if that section had not been repealed.

300B Transitional—general powers of inspectors

(1) An inspector may:

(a) if the inspector suspects a person on reasonable grounds of having recorded particulars relating to the supply of a radiocommunications device in a document under repealed section 301—require the person to produce that document; or

(b) require a person who has been required to retain records by a notice under repealed subsection 182(1) for a specified period to produce such records at any time during that period.

(2) A person must comply with a requirement under subsection (1).

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Civil penalty: 20 penalty units.

(3) Subsection (2) does not apply if the person has a reasonable excuse.

300C Transitional—retention of records of the supply of radiocommunications devices

If:

(a) a person supplied a radiocommunications device during the 2-year period ending at the commencement of this section; and

(b) the person was required by repealed section 301 to cause particulars relating to the supply of the device to be recorded in a document;

the person must retain the document for at least 2 years after the supply.

Civil penalty: 20 penalty units.

32 Section 301

Repeal the section.

33 Subsection 305(5) (definition of *radiocommunications instrument*)

Repeal the definition, substitute:

radiocommunications instrument means:

(a) a licence; or

(b) a permit; or

(c) a certificate.

34 Subparagraph 314(3)(b)(i)

Omit "standards", substitute "legislative rules, equipment rules".

35 Subsection 314A(6) (after paragraph (a) of the definition of *instrument under this Act*)

Insert:

(aa) the legislative rules; or

(ab) the equipment rules; or

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Part 2—Amendments contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2020

Radiocommunications Act 1992

36 Subsections 171(1), 177(1) and 187(1)

Omit "Federal Circuit Court of Australia", substitute "Federal Circuit and Family Court of Australia".

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Part 3—Other amendments

Australian Communications and Media Authority Act 2005

37 Subsection 66(5)

Omit "or section 182 of the *Radiocommunications Act 1992*", substitute "or equipment rules made under the *Radiocommunications Act 1992*".

Telecommunications Act 1997

38 Subsection 417(6)

Omit all the words after "407".

39 After subsection 417(6)

Insert:

(6A) This section does not apply to a person who uses or applies a protected symbol for the purposes of labelling equipment in accordance with equipment rules made under the *Radiocommunications Act 1992*.

Trans-Tasman Mutual Recognition Act 1997

40 Clause 3 of Schedule 2 (table item dealing with radiocommunications devices)

Repeal the item.

41 Clause 3 of Schedule 2 (before the table item dealing with road vehicles)

Insert:

Radiocommunications

Radiocommunications Act 1992 and rules made under that Act, except to the extent to which that Act, or those rules, deal with applying labels (within the meaning of that Act) to equipment (within the meaning of that Act)

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Part 4—Application and transitional provisions

42 Transitional—standards

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under subsection 162(1) of the *Radiocommunications Act 1992*.

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and

(c) in a case where the instrument has a paragraph of an explanatory note that:

(i) is about the expression "device"; and

(ii) includes the words "and subsection 9(1)";

those words were omitted from that paragraph; and

(d) in a case where the instrument includes:

(i) the words "For paragraph 162(1)(a) of the Act"; or

(ii) the words "for paragraph 162(1)(a) of the Act"; or

(iii) the words "for the purposes of paragraph 162(1)(a) of the Act"; or

(iv) the words "for the purpose of paragraph 162(1)(a) of the Act";

those words were omitted from the instrument; and

(e) in a case where the instrument includes:

(i) the words "another standard made under section 162 of the Act"; or

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(ii) the words "another standard under section 162 of the Act";

those words were omitted from the instrument and the words "another standard prescribed by the equipment rules" were substituted; and

(f) in a case where the instrument has one or more explanatory notes that relate to the definition of ***non-standard device***—each of those notes were omitted from the instrument.

Note: Subsection 158(1) of the *Radiocommunications Act 1992* provides that the equipment rules may prescribe standards for equipment.

43 Transitional—*Radiocommunications (Compliance Labelling—Devices) Notice 2014*

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was given under subsection 182(1) of the *Radiocommunications Act 1992*; and

(c) the instrument was known as the *Radiocommunications (Compliance Labelling—Devices) Notice 2014*.

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and

(c) the words "for Division 7 of Part 4.1 of the Act" in:

(i) the definition of ***agent*** in subsection 4(1) of the instrument; and

(ii) paragraph 8(2)(c) of the instrument;

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were omitted and the words "for the provisions of the equipment rules that relate to obligations to apply labels to devices" were substituted; and

(d) the note to the definition of ***applicable standard*** in subsection 4(1) of the instrument were omitted; and

(e) the reference to subsection 267(1) of the *Radiocommunications Act 1992* in paragraph (a) of the definition of ***authorised officer*** in subsection 4(1) of the instrument were a reference to subsection 284(1) of that Act; and

(f) the reference to subsection 9(1) of the *Radiocommunications Act 1992* in the note to subsection 4(1) of the instrument were a reference to section 5 of that Act; and

(g) the words "**instruments made under section 182 of the Act**" were omitted from the heading to section 7 of the instrument and the words "**another set of equipment rules**" were substituted; and

(h) the words "another notice made under section 182 of the Act" were omitted from section 7 of the instrument and the words "another set of equipment rules" were substituted; and

(i) the words "that notice" were omitted from section 7 of the instrument and the words "that set of equipment rules" were substituted; and

(j) the words "other notice made under section 182 of the Act" were omitted from the note to section 7 of the instrument and the words "other set of equipment rules" were substituted; and

(k) the note were omitted from subsection 11(1) of the instrument; and

(l) all the words after "requirement." were omitted from note 1 to the definition of ***officer of the supplier*** in subsection 11A(4) of the instrument; and

(m) the note were omitted from Part 1 of Schedule 1 to the instrument; and

(n) the note were omitted from Part 2 of Schedule 1 to the instrument.

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44 Transitional—*Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was given under subsection 182(1) of the *Radiocommunications Act 1992*; and

(c) the instrument was known as the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*.

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and

(c) the words "for Division 7 of Part 4.1 of the Act" in the definition of ***agent*** in subsection 1.5(1) of the instrument were omitted and the words "for the provisions of the equipment rules that relate to obligations to apply labels to devices" were substituted; and

(d) the reference to subsection 267(1) of the *Radiocommunications Act 1992* in paragraph (a) of the definition of ***authorised officer*** in subsection 1.5(1) of the instrument were a reference to subsection 284(1) of that Act; and

(e) the words "accredited by NATA under subsection 183(3) of the Act" were omitted from the definition of ***competent body*** in subsection 1.5(1) of the instrument and the words "determined under subitem 44(3) of Schedule 4 to the *Radiocommunications Legislation Amendment (Reform and Modernisation) Act 2020*" were substituted; and

(f) the words "and subsection 9(1)" were omitted from note 1 to subsection 1.5(1) of the instrument; and

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(g) the reference to section 267 of the *Radiocommunications Act 1992* in note 1 to subsection 1.5(1) of the instrument were a reference to subsection 284(1) of that Act; and

(h) the words "**labelling notice made under the Act**" were omitted from the heading to section 2.5 of the instrument and the words "**set of equipment rules**" were substituted; and

(i) the words "another notice made under subsection 182(1) of the Act" were omitted from section 2.5 of the instrument and the words "another set of equipment rules" were substituted; and

(j) the words "other notice made under subsection 182(1) of the Act" were omitted from the note to section 2.5 of the instrument and the words "other set of equipment rules" were substituted; and

(k) the note to section 4.2 of the instrument were omitted; and

(l) the words "Under section 187A of the Act, a supplier that fails to comply with a specific requirement that must be met after a label has been applied to a device may commit an offence." were omitted from:

(i) note 1 to section 4.2A of the instrument; and

(ii) the note to subsection 6.2(2) of the instrument; and

(m) the words "knowingly or recklessly causing substantial" were omitted from the note at the start of Schedule 2 to the instrument and the words "engaging in conduct that will result, or is likely to result, in" were substituted; and

(n) the words "The RCM is a protected symbol for section 188A of the Act." were omitted from the note to Schedule 3 to the instrument.

Competent body

(3) The National Association of Testing Authorities Australia (ACN 004 379 748) may, by writing, determine that a specified body is a ***competent body*** for the purposes of the instrument.

(4) Subject to subitem (5), if, immediately before the commencement of this item, a body was the subject of a determination under subsection 183(3) of the *Radiocommunications Act 1992*, subitem (3) has effect, after the commencement of this item, as if the body were the subject of a determination under that subitem.

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(5) The National Association of Testing Authorities Australia (ACN 004 379 748) may, by writing, determine that subitem (3) ceases to apply to a specified body.

(6) A determination under subitem (3) or (5) is a notifiable instrument.

45 Transitional—*Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014*

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was given under subsection 182(1) of the *Radiocommunications Act 1992*; and

(c) the instrument was known as the *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014*.

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:

(a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and

(c) the words "for Division 7 of Part 4.1 of the Act" in the definition of ***agent*** in subsection 4(1) of the instrument were omitted and the words "for the provisions of the equipment rules that relate to obligations to apply labels to devices" were substituted; and

(d) the reference to subsection 267(1) of the *Radiocommunications Act 1992* in paragraph (a) of the definition of ***authorised officer*** in subsection 4(1) of the instrument were a reference to subsection 284(1) of that Act; and

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(e) the words "a notice made by the ACMA under section 182 of the Act" in paragraph (b) of the definition of ***supplier code number*** in subsection 4(1) of the instrument were omitted and the words "the equipment rules" were substituted; and

(f) the words "**labelling notice made under the Radiocommunications Act 1992**" were omitted from the heading to section 8A of the instrument and the words "**set of equipment rules**" were substituted; and

(g) the words "another notice made under subsection 182(1) of the Act, as in force from time to time," were omitted from section 8A of the instrument and the words "another set of equipment rules" were substituted; and

(h) the words "other notice made under subsection 182(1) of the Act" were omitted from the note to section 8A of the instrument and the words "other set of equipment rules" were substituted; and

(i) the note to subsection 10(1) of the instrument were omitted; and

(j) the words "Under section 187A of the Act, a supplier that fails to comply with a specific requirement that must be met after a label has been applied to a device may be subject to a pecuniary penalty." were omitted from note 1 to section 10A of the instrument; and

(k) the note were omitted from Part 1 of Schedule 1 to the instrument; and

(l) the note were omitted from Part 2 of Schedule 1 to the instrument.

46 Transitional—*Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under subsection 407(1) of the *Telecommunications Act 1997*; and

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(c) the instrument was known as the *Telecommunications (Labelling Notice for Customer Equipment and Customer Cabling) Instrument 2015*.

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:

(a) the words "a notice made by the ACMA under section 182 of the *Radiocommunications Act 1992*" in paragraph (b) of the definition of ***supplier code number*** in subsection 4(1) of the instrument were omitted and the words "the equipment rules (within the meaning of the *Radiocommunications Act 1992*)" were substituted; and

(b) the words "a notice under section 182 of the *Radiocommunications Act 1992*" were omitted from note 2 to section 7 of the instrument and the words "a set of equipment rules (within the meaning of the *Radiocommunications Act 1992*)" were substituted; and

(c) the words "that notice" (whether occurring) were omitted from note 2 to section 7 of the instrument and the words "that set of equipment rules" were substituted.

47 Transitional—permits

Scope

(1) This item applies to a permit if:

(a) the permit was in force immediately before the commencement of this item; and

(b) the permit was issued under subsection 167(2) of the *Radiocommunications Act 1992*.

Effect of permit

(2) The permit has effect, after the commencement of this item, as if:

(a) it had been issued by the ACMA under equipment rules made for the purposes of subsection 159(15) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the equipment rules in relation to the issue of the permit (including a requirement about the form of words) had been satisfied; and

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(c) any reference in the permit to a non-standard device were a reference to a device that:

(i) if the device has not been altered or modified in a material respect after its manufacture or, if it has been imported, after its importation—does not comply with a standard that was applicable to it when it was manufactured or imported, as the case may be; or

(ii) if the device was so altered or modified—does not comply with a standard that was applicable to it when it was so altered or modified; and

(d) any reference in the permit to non-standard devices were a reference to devices that:

(i) if the devices have not been altered or modified in a material respect after their manufacture or, if they have been imported, after their importation—do not comply with a standard that was applicable to them when they were manufactured or imported, as the case may be; or

(ii) if the devices were so altered or modified—do not comply with a standard that was applicable to them when they were so altered or modified.

(3) For the purposes of paragraphs (2)(c) and (d), the standard that was applicable to a device at a particular time is:

(a) if that time occurred before the commencement of this item—the standard that:

(i) was made under section 162 of the *Radiocommunications Act 1992* before the commencement of this item; and

(ii) was applicable to the device at that time; or

(b) if that time occurred at or after the commencement of this item—the standard that:

(i) was prescribed by the equipment rules; and

(ii) was applicable to the device at that time.

(4) If the permit authorises radio emission, the permit remains in force until the end of the day of expiration specified in the permit.

(5) If the permit does not authorise radio emission, the permit remains in force:

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(a) if the permit specifies a day of expiration—until the end of that day; or
(b) otherwise—indefinitely.

(6) Subitems (4) and (5) have effect subject to:
(a) the provisions of the equipment rules relating to cancellation of permits; and
(b) section 307 of the *Radiocommunications Act 1992*.

(7) Despite the repeal of subsection 169(6) of the *Radiocommunications Act 1992* by this Schedule, if a declaration made under that subsection in relation to the permit was in force immediately before the commencement of this item, the declaration continues to apply in relation to the permit, after the commencement of this item, as if the repeal had not happened.

48 Transitional—*Protected Symbols Determination 2013*

Scope

(1) This item applies to a determination if:
(a) the determination was in force immediately before the commencement of this item; and
(b) the determination was made under section 188A of the *Radiocommunications Act 1992* and section 417 of the *Telecommunications Act 1997*; and
(c) the determination was known as the *Protected Symbols Determination 2013*.

Effect of determination

(2) The determination, so far as it was made under subsection 188A(7) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
(a) it had been made under subsection 165(9) of the *Radiocommunications Act 1992*; and
(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

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(3) The determination, so far as it was made under subparagraph 188A(8)(a)(i) or (b)(i) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been made under subsection 166(2) of the *Radiocommunications Act 1992*; and

(b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

(4) The determination has effect, after the commencement of this item, as if:

(a) the words "standard made under section 162 of the Radiocommunications Act" in the definition of ***applicable standard*** in section 4 of the determination were omitted and the words "standard prescribed by equipment rules made under the Radiocommunications Act" were substituted; and

(b) the words "a notice made under section 182 of the Radiocommunications Act" in paragraph 5(2)(b) of the determination were omitted and the words "equipment rules made under the Radiocommunications Act" were substituted; and

(c) a reference to subsection 188A(7) of the *Radiocommunications Act 1992* in sections 5 and 8 of the determination were a reference to subsection 165(8) of that Act; and

(d) the reference to subparagraph 188A(8)(b)(i) of the *Radiocommunications Act 1992* in subsection 6(1) of the determination were a reference to subsection 166(2) of that Act; and

(e) the reference to subparagraph 188A(8)(a)(i) of the *Radiocommunications Act 1992* in subsection 6(2) of the determination were a reference to subsection 166(2) of that Act.

49 Transitional—permanent bans

Scope

(1) This item applies to an instrument if:

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(a) the instrument was in force immediately before the commencement of this item; and
(b) the instrument was made under subsection 190(1) of the *Radiocommunications Act 1992*; and
(c) the instrument declares that operation or supply, or possession for the purpose of operation or supply, of a specified kind of device is prohibited (for this purpose, it is immaterial whether the word "kind", or a similar word, is used in the instrument); and
(d) a device of that kind was covered by paragraph 190(2)(a) or (b) of the *Radiocommunications Act 1992* as in force immediately before the commencement of this item; and
(e) a device of that kind is equipment (within the meaning of the *Radiocommunications Act 1992*).

Effect of instrument

(2) The instrument has effect, after the commencement of this item, as if:
(a) it had been made under subsection 172(1) of the *Radiocommunications Act 1992*; and
(b) the instrument had imposed a permanent ban on equipment of that kind; and
(c) the instrument had not made the declaration mentioned in paragraph (1)(c); and
(d) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

50 Transitional and application—protected names and protected symbols

(1) Despite the amendment of subsection 66(5) of the *Australian Communications and Media Authority Act 2005* by this Schedule, that subsection continues to apply, in relation to anything done in accordance with repealed section 182 of the *Radiocommunications Act 1992*, as if that amendment had not been made.

(2) Despite the amendment of subsection 417(6) of the *Telecommunications Act 1997* by this Schedule, that subsection continues to apply, in

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relation to anything done in accordance with repealed section 182 of the *Radiocommunications Act 1992*, as if that amendment had not been made.

(3) Subsections 165(1), (3) and (5) of the *Radiocommunications Act 1992* do not apply to a person who uses or applies a protected symbol for the purposes of labelling equipment in accordance with repealed section 182 of the *Radiocommunications Act 1992*.

51 Transitional—recall of equipment

For the purposes of subsection 183(1), (2), (3) or (4) of the *Radiocommunications Act 1992*, it is immaterial whether the supply of equipment occurred before, at or after the commencement of this item.

52 Application—section 305 of the *Radiocommunications Act 1992*

The amendment of section 305 of the *Radiocommunications Act 1992* made by this Schedule applies in relation to a certificate issued under that section after the commencement of this item.

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Schedule 5—Accreditation etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

accreditation means an accreditation given under section 263.

accreditation rules means rules made under section 266.

2 Section 5 (definition of *conciliator*)

Repeal the definition, substitute:

conciliator has the meaning given by section 202.

4 At the end of section 71

Add:

(3) A condition included in a spectrum licence under subsection (1) may confer a power to make a decision of an administrative character on the ACMA.

(4) A condition included in a spectrum licence under subsection (1) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

(5) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition included in a spectrum licence under subsection (1). A fee must not be such as to amount to taxation.

4A At the end of Division 2 of Part 3.2

Add:

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73A Conditions included in a spectrum licence—decision-making powers

(1) A condition included in a spectrum licence under subsection 72(1) or 73(1) may confer a power to make a decision of an administrative character on the ACMA.

(2) A condition included in a spectrum licence under subsection 72(1) or 73(1) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

(3) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition included in a spectrum licence under subsection 72(1) or 73(1). A fee must not be such as to amount to taxation.

5 Subsection 100(4A)

Omit "a person accredited under section 263 to issue such certificates for the purposes of this section", substitute "a person who holds an accreditation of a kind specified in the legislative rules".

6 After subsection 100(4A)

Insert:

(4B) The legislative rules may authorise a person who holds a kind of accreditation mentioned in subsection (4A) to charge fees in relation to the issue of frequency assignment certificates under subsection (4A). A fee must not be such as to amount to taxation.

7 Paragraph 107(1)(f)

Repeal the paragraph.

8 Subsection 107(2)

Omit "(1)(f) or (g)", substitute "(1)(g)".

9 Paragraph 108A(1)(e)

Repeal the paragraph.

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10 After section 110

Insert:

110A Conditions determined by the ACMA

(1) The ACMA may, by legislative instrument, determine that each apparatus licence is taken to include one or more specified conditions.

(2) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one or more specified conditions.

(3) The ACMA's power under subsection (1) or (2) is not limited by sections 107 to 109D.

(4) Conditions determined under this section are in addition to the conditions in sections 107 to 109D.

(5) A determination under subsection (1) or (2) may confer a power to make a decision of an administrative character on a person or the ACMA.

(6) A determination under subsection (1) or (2) may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

(7) A determination under subsection (1) or (2) may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the determination. A fee must not be such as to amount to taxation.

11 After section 111

Insert:

111A Licence conditions may confer powers on the ACMA or a person who holds an accreditation

Scope

(1) This section applies to:

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(a) a condition specified under paragraph 107(1)(g), 108A(1)(f), 109(1)(f), 109A(1)(k) or 109B(1)(t); or
(b) a condition imposed under paragraph 111(1)(a).

The ACMA

(2) A condition may confer a power to make a decision of an administrative character on the ACMA.

Person who holds an accreditation

(3) A condition may confer a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

(4) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by a condition. A fee must not be such as to amount to taxation.

12 Subsection 145(3)

Omit "a person accredited under section 263 to issue certificates for the purposes of this section", substitute "a person who holds an accreditation of a kind specified in the legislative rules".

13 After subsection 145(3)

Insert:

(3A) The legislative rules may authorise a person who holds a kind of accreditation mentioned in subsection (3) to charge fees in relation to the issue of certificates under subsection (3). A fee must not be such as to amount to taxation.

14 Sections 202 to 204

Repeal the sections, substitute:

202 Conciliator

For the purposes of this Act, ***conciliator*** means a person who holds an accreditation of a kind specified in the legislative rules.

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15 Sections 263 and 264

Repeal the sections, substitute:

263 ACMA may accredit persons

(1) The ACMA may, by written notice, give a person an accreditation of a particular kind.

(2) An accreditation is to be given in accordance with the accreditation rules.

(3) An accreditation comes into force on the day specified in the notice of accreditation.

Note: A decision to refuse to give an accreditation is reviewable under Part 5.6.

264 Conditions of accreditation

An accreditation of a particular kind is subject to:

(a) such conditions relating to accreditations of that kind as are specified in the accreditation rules; and

(b) such conditions (if any) as the ACMA specifies in the instrument of accreditation.

Note: A decision to specify a condition in an instrument of accreditation is reviewable under Part 5.6.

264A Withdrawal of accreditation

Scope

(1) This section applies if an accreditation given to a person is in force.

Withdrawal

(2) The ACMA may, by written notice given to the person, withdraw the accreditation if the ACMA is satisfied that:

(a) the accreditation is no longer in accordance with the accreditation rules, as in force at the time the notice is given (whether or not the accreditation rules have been amended since the accreditation was given); or

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(b) the person has contravened a condition of the accreditation.

Note: A decision to withdraw an accreditation is reviewable under Part 5.6.

(3) A notice under subsection (2) must set out the reasons for withdrawing the accreditation.

(4) In deciding whether to withdraw the accreditation, the ACMA must comply with the accreditation rules.

16 Section 266

Repeal the section, substitute:

266 Accreditation rules

(1) The ACMA may, by legislative instrument, make rules (***accreditation rules***) prescribing matters required or permitted by this Act to be prescribed by the accreditation rules.

(2) The accreditation rules may deal with the accreditation process.

(3) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to accredit persons.

(4) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to withdraw the accreditation of persons.

(5) The accreditation rules may provide for:
(a) the kinds of accreditation; and
(b) in respect of each kind of accreditation—the qualifications and other requirements required before a person can be given that kind of accreditation.

(6) The accreditation rules may make provision in relation to a matter by conferring a power on the ACMA.

Example: The power to approve a form.

17 After paragraph 285(v)

Insert:

(va) a decision under paragraph 264(b) to specify a condition in an instrument of accreditation;

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18 Paragraph 285(w)

Omit "264", substitute "264A".

19 After paragraph 285(w)

Insert:

(waa) a decision of the ACMA:

(i) made under the accreditation rules; and

(ii) declared by the accreditation rules to be a decision to which this section applies;

20 Section 298A

Repeal the section, substitute:

298A Fees imposed by bodies or organisations

(1) The ACMA may, by notifiable instrument, determine that a specified body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2) may charge fees for performing its functions under this Act.

(2) Such a fee must not be such as to amount to taxation.

21 Paragraph 308(b)

Omit "264", substitute "264A".

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Part 2—Application and transitional provisions

22 Definitions

In this Part:

transitional accreditation rules means rules made under item 29.

23 Application—frequency assignment certificates

The amendments of section 100 of the *Radiocommunications Act 1992* made by this Schedule apply in relation to a certificate issued after the commencement of this item.

24 Transitional—conditions of apparatus licences

Scope

(1) This item applies to a determination if:

(a) the determination was in force immediately before the commencement of this item; and

(b) the determination was made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*.

Effect of determination

(2) The determination has effect, after the commencement of this item, as if:

(a) it had been made under subsection 110A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and

(b) it were expressed not to apply to:

(i) transmitter licences issued under section 101A or 102; or

(ii) digital radio multiplex transmitter licences; and

(c) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

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25 Transitional—conditions of transmitter licences for temporary community broadcasters

Scope

(1) This item applies to a determination if:

(a) the determination was in force immediately before the commencement of this item; and

(b) the determination was made under paragraph 108A(1)(e) of the *Radiocommunications Act 1992*.

Effect of determination

(2) The determination has effect, after the commencement of this item, as if:

(a) it had been made under subsection 110A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and

(b) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

26 Transitional—accreditation

Scope

(1) This item applies to an accreditation if:

(a) the accreditation was in force immediately before the commencement of this item; and

(b) the accreditation was given under subsection 263(1) of the *Radiocommunications Act 1992*; and

(c) under the transitional accreditation rules, the accreditation is taken, for the purposes of this item, to correspond to an accreditation of a specified kind that could be given under subsection 263(1) of the *Radiocommunications Act 1992* (as amended by this Schedule).

Effect of accreditation

(2) The accreditation has effect, after the commencement of this item, as if:

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(a) it were an accreditation of that kind; and
(b) it had been given under subsection 263(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
(c) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the giving of the accreditation (including a requirement about the form of words) had been satisfied.

27 Transitional—fees determination

Scope

(1) This item applies to a determination if:
(a) the determination was in force immediately before the commencement of this item; and
(b) the determination was made under subsection 298A(1) of the *Radiocommunications Act 1992*.

Effect of determination

(2) Subject to subitem (3), the determination, so far as it relates to a body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
(a) it had been made under subsection 298A(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
(b) its operation was expressly confined to fees for performing a function after the commencement of this item; and
(c) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

(3) The determination continues to apply, in relation to fees for performing a function before the commencement of this item, as if section 298A of the *Radiocommunications Act 1992* had not been repealed by this Schedule.

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28 Transitional—no compensation for withdrawal of accreditation

Despite the amendment of section 308 of the *Radiocommunications Act 1992* by this Schedule, that section continues to apply, in relation to a withdrawal that occurred before the commencement of this item, as if that amendment had not been made.

29 Transitional—accreditation rules

The Australian Communications and Media Authority may, by legislative instrument, make rules (***transitional accreditation rules***) prescribing matters required or permitted by this Part to be prescribed by the transitional accreditation rules.

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Schedule 6—Compliance and enforcement

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

designated forfeiture officer has the meaning given by section 283.

forfeiture notice means a notice under section 274.

2 Section 5 (definition of *inspector*)

Omit "section 267", substitute "section 284".

3 Section 5

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

transmitter access warrant means a warrant issued under section 284KB.

4 Subsection 11(1)

Omit "section 6 of the *Crimes Act 1914*, or an ancillary offence (within the meaning of the *Criminal Code*),", substitute "the *Crimes Act 1914* or the *Criminal Code*".

5 Subsection 11(1A)

Repeal the subsection.

6 Paragraph 11(2)(b)

Repeal the paragraph, substitute:

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(b) payment of the amount stated in an infringement notice given under Part 5 of the Regulatory Powers Act, so far as it applies to the provision mentioned in subsection 270(1) of this Act that creates the offence.

7 Division 1 of Part 3.1 (at the end of the heading)

Add "**and civil penalties**".

8 Before subsection 46(1)

Insert:

Offence

9 At the end of section 46

Add:

Civil penalty

(3) Subject to section 49, a person must not operate a radiocommunications device otherwise than as authorised by:

(a) a spectrum licence; or

(b) an apparatus licence; or

(c) a class licence.

Civil penalty:

(a) if the radiocommunications device is a radiocommunications transmitter—300 penalty units; or

(b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

10 Before subsection 47(1)

Insert:

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Offence

11 At the end of section 47

Add:

Civil penalty

(3) Subject to section 49, a person must not have a radiocommunications device in the person's possession for the purpose of operating the device otherwise than as authorised by:

(a) a spectrum licence; or

(b) an apparatus licence; or

(c) a class licence.

Civil penalty:

(a) if the radiocommunications device is a radiocommunications transmitter—300 penalty units; or

(b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.

(4) Subsection (3) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

12 Subsection 49(2)

Omit "section 46 or 47", substitute "subsection 46(1) or 47(1)".

13 After subsection 49(2)

Insert:

(2A) In proceedings for a civil penalty order for a contravention of subsection 46(3) or 47(3), the burden of proving any of the matters referred to in subsection (1) of this section lies on the defendant.

14 Section 113

Repeal the section, substitute:

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113 Contravention of conditions

(1) If a person:

(a) is the holder of an apparatus licence; or

(b) has been authorised under section 114 in relation to an apparatus licence;

the person must not contravene a condition of the licence.

Civil penalty: 100 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

15 At the end of subsection 116(3)

Add:

Civil penalty: 30 penalty units.

16 At the end of subsection 116(4)

Add:

Civil penalty: 30 penalty units.

17 Subsection 117(1)

Omit "(1)".

18 Subsection 117(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 20 penalty units.

19 Subsection 117(2)

Repeal the subsection (including the note).

20 Subsection 118(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 20 penalty units.

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21 Subsection 118(1A)

Repeal the subsection.

22 Subsection 124(4)

Omit "fail to return the certificate to the ACMA, either by hand or by certified mail, within 7 days after receiving notification of the cancellation", substitute "falsely represent that the person holds the certificate".

23 Subsection 124(4) (penalty)

Repeal the penalty, substitute:

Civil penalty: 20 penalty units.

24 Subsections 124(5) and (6)

Repeal the subsections.

25 Subsection 195(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 300 penalty units.

26 Subsection 196(2)

Omit "193, 194 or 195", substitute "193 or 194".

27 At the end of section 196

Add:

(3) In proceedings for a civil penalty order for a contravention of subsection 195(1), the burden of proving any of the matters referred to in subsection (1) of this section lies on the defendant.

28 Section 197

Repeal the section, substitute:

197 Causing interference etc.

A person must not engage in conduct that will result, or is likely to result, in:

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(a) substantial interference; or
(b) substantial disruption; or
(c) substantial disturbance;

to radiocommunications:

(d) within Australia; or
(e) between a place in Australia and a place outside Australia.

Civil penalty: 500 penalty units.

29 Subsection 231(6)

Repeal the subsection, substitute:

(6) Part 5.5 deals with matters relating to the enforcement of this Act.

30 Subsection 231(9)

Repeal the subsection.

31 Part 5.5

Repeal the Part, substitute:

Part 5.5—Enforcement

Division 1—Introduction

267 Simplified outline of this Part

- If a person has contravened, or is contravening, a civil penalty provision of this Act, the ACMA may give the person a remedial direction.
- A civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.
- Infringement notices may be given under Part 5 of the Regulatory Powers Act for alleged contraventions of certain provisions of this Act.

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- The ACMA may accept an enforceable undertaking under Part 6 of the Regulatory Powers Act that relates to a provision of this Act.
- Injunctions may be granted under Part 7 of the Regulatory Powers Act in relation to contraventions of certain provisions of this Act.
- Forfeiture notices may be given for alleged contraventions of certain provisions of this Act.
- A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
  (a) an offence against Part 4.1 of this Act; or
  (b) a civil penalty provision of this Act; or
  (c) an offence against subsection 284J(8) of this Act.
- Information given in compliance, or purported compliance, with subsection 284J(8) or a provision of Part 4.1 is subject to monitoring under Part 2 of the Regulatory Powers Act.
- An offence against this Act, or a civil penalty provision of this Act, is subject to investigation under Part 3 of the Regulatory Powers Act.
- Inspectors appointed under this Act have the following additional powers:
  (a) the power to give directions to a holder of an apparatus licence or a spectrum licence in relation to managing interference with radiocommunications;
  (b) the power to enter premises to adjust transmitters in emergencies;
  (c) the power to direct a person to operate a transmitter;
  (d) the power to require a person to produce an apparatus licence, a spectrum licence, a third party authorisation, a certificate or a permit;
  (e) the power to require a person to produce a copy of a record of an authorisation;

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(f) the power to require a person to produce a record the retention of which is required by the equipment rules.

- A court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in:
  (a) the commission of an offence against this Act; or
  (b) a contravention of a civil penalty provision of this Act.
- The ACMA may issue a public warning notice.

Note: Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014* (see section 5).

Division 2—Enforcement

268 Remedial directions—breach of civil penalty provision

Scope

(1) This section applies if a person has contravened, or is contravening, a civil penalty provision of this Act.

Remedial direction

(2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene the provision, or is unlikely to contravene the provision, in the future.

Note: A decision to give a direction is reviewable under Part 5.6.

(3) The following are examples of the kinds of direction that may be given to a person under subsection (2):
  (a) a direction that the person implement effective administrative systems for monitoring compliance with a civil penalty provision of this Act;
  (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a civil penalty provision of this Act, in so far as those

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requirements affect the employees, agents or contractors concerned.

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

Civil penalty: 50 penalty units.

269 Civil penalty provisions—enforcement

Enforceable civil penalty provision

(1) Each civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the ACMA is an authorised applicant in relation to the civil penalty provisions of this Act.

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions of this Act:
(a) the Federal Court;
(b) the Federal Circuit Court of Australia.

External Territories

(4) Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

(5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 4 of the Regulatory

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Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

Sudden or extraordinary emergency

(6) A person is not liable under Part 4 of the Regulatory Powers Act to have a civil penalty order made against the person for a contravention of a civil penalty provision of this Act if:
  (a) the person carries out the conduct constituting the contravention in response to circumstances of sudden or extraordinary emergency; and
  (b) the person believes on reasonable grounds that:
    (i) circumstances of sudden or extraordinary emergency exist; and
    (ii) contravening the provision is the only reasonable way to deal with the emergency; and
    (iii) the conduct is a reasonable response to the emergency.

Note: A defendant bears an evidential burden in relation to the matter in this subsection (see section 96 of the Regulatory Powers Act).

270 Infringement notices

Provisions subject to an infringement notice

(1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  (a) subsection 46(3);
  (b) subsection 47(3);
  (c) subsection 113(1);
  (d) section 117;
  (e) subsection 118(1);
  (f) subsection 160(5);
  (g) subsection 160(6);
  (h) subsection 160(7);
  (i) subsection 160(9);
  (j) subsection 165(1);
  (k) subsection 170(1);
  (l) subsection 170(2);

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(m) subsection 170(3);
(n) subsection 188(2);
(o) subsection 195(1);
(p) section 197;
(q) subsection 284F(4);
(r) subsection 284S(4);
(s) subsection 300(4);
(t) subsection 300A(1);
(u) subsection 300A(3);
(v) subsection 300A(5);
(w) subsection 300B(2);
(x) section 300C.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, each of the following:
(a) a member of the staff of the ACMA authorised, in writing, by the ACMA for the purposes of this subsection;
(b) the Chair of the ACMA;
is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions mentioned in subsection (1).

(4) The relevant chief executive may, in writing, delegate any or all of the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act to a person who is:
(a) a member of the staff of the ACMA; and
(b) an SES employee or an acting SES employee.

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(5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Withdrawal of notice

(6) For the purposes of Part 5 of the Regulatory Powers Act, as it applies to the provisions mentioned in subsection (1), if:

(a) an infringement notice has been given to a person under that Part, as it applies to those provisions; and

(b) the relevant chief executive is deciding whether or not to withdraw the infringement notice;

section 106 of that Act has effect as if it provided that, when so deciding, the relevant chief executive may (in addition to the matters set out in paragraph 106(3)(b) of that Act) take into account whether:

(c) the owner of a thing has agreed, in accordance with a forfeiture notice, to forfeit the thing to the Commonwealth; and

(d) the forfeiture notice relates to a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention in the infringement notice.

Effect of payment of amount

(7) If:

(a) a person is given an infringement notice for an alleged contravention of a civil penalty provision of this Act; and

(b) the person pays the amount stated in the notice before the end of the period referred to in paragraph 104(1)(h) of the Regulatory Powers Act; and

(c) the notice has not been withdrawn;

the person may not be prosecuted in a court for an offence that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute the contravention in the notice.

(8) Subsection (7) has effect in addition to section 107 of the Regulatory Powers Act.

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External Territories

(9) Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

(10) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 5 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

271 Enforceable undertakings

Enforceable provisions

(1) The provisions of this Act are enforceable under Part 6 of the Regulatory Powers Act.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the ACMA is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
  (a) the Federal Court;
  (b) the Federal Circuit Court of Australia.

Publication of undertaking

(4) The following provisions have effect:
  (a) the ACMA must publish an undertaking given in relation to a provision mentioned in subsection (1) on the ACMA's website;
  (b) the legislative rules may provide that the ACMA must also publish an undertaking given in relation to a provision

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mentioned in subsection (1) in accordance with the legislative rules.

External Territories

(5) Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

(6) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

272 Injunctions

Enforceable provisions

(1) The following provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act:
- (a) subsection 46(3);
- (b) subsection 47(3);
- (c) subsection 113(1);
- (d) section 117;
- (e) subsection 160(5);
- (f) subsection 160(6);
- (g) subsection 160(7);
- (h) subsection 160(9);
- (i) subsection 165(1);
- (j) subsection 170(1);
- (k) subsection 170(2);
- (l) subsection 170(3);
- (m) subsection 176(1);
- (n) subsection 176(2);
- (o) subsection 176(3);
- (p) subsection 176(4);
- (q) subsection 186(2);

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(r) subsection 188(2);
(s) subsection 195(1);
(t) section 197;
(u) subsection 227(1);
(v) subsection 284S(4);
(w) subsection 300A(1);
(x) subsection 300A(3);
(y) subsection 300A(5);
(z) subsection 300B(2);
(za) section 300C.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) The ACMA is an authorised person in relation to the provisions mentioned in subsection (1) for the purposes of Part 7 of the Regulatory Powers Act.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
(a) the Federal Court;
(b) the Federal Circuit Court of Australia.

External Territories

(4) Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

(5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

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Division 3—Forfeiture notices

273 Provisions subject to a forfeiture notice

The following provisions of this Act are subject to a forfeiture notice under this Division:

(a) subsection 46(3);
(b) subsection 47(3);
(c) subsection 160(5);
(d) subsection 160(6);
(e) subsection 160(7);
(f) subsection 165(1);
(g) subsection 170(1);
(h) subsection 170(2);
(i) subsection 170(3);
(j) subsection 176(1);
(k) subsection 176(2);
(l) subsection 176(3);
(m) subsection 176(4);
(n) subsection 195(1);
(o) section 197.

274 When a forfeiture notice may be given

(1) If a designated forfeiture officer believes on reasonable grounds that:

(a) a person has contravened a provision subject to a forfeiture notice under this Division; and
(b) a thing was used, or otherwise involved, in the contravention of the provision;

the designated forfeiture officer may give to the person a forfeiture notice for the alleged contravention.

(2) The forfeiture notice must be expressed to relate to the thing.

(3) The forfeiture notice must be given within 12 months after the day on which the contravention is alleged to have taken place.

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(4) A designated forfeiture officer may give a person a single forfeiture notice relating to multiple alleged contraventions (whether of the same provision or different provisions).

(5) A person must not be given:
  (a) a forfeiture notice; and
  (b) an infringement notice under Part 5 of the Regulatory Powers Act;

that relate to the same alleged contravention.

275 Matters to be included in a forfeiture notice

(1) A forfeiture notice must:
  (a) be identified by a unique number; and
  (b) state the day on which the notice is given; and
  (c) state the name of the person to whom the notice is given; and
  (d) state:
    (i) the name and contact details of the person who gave the notice; and
    (ii) that the person is a designated forfeiture officer; and
  (e) give brief details of the alleged contravention or contraventions to which the notice relates, including:
    (i) the provision or the provisions that were allegedly contravened; and
    (ii) the maximum penalty that a court could impose for each contravention, if the provision or those provisions were contravened; and
    (iii) the time (if known) and day of, and the place of, each alleged contravention; and
  (f) describe the thing to which the notice relates; and
  (g) state that, if, within 28 days after the day the notice is given, the owner of the thing agrees with the ACMA (on behalf of the Commonwealth) to forfeit the thing to the Commonwealth, then (unless the notice is withdrawn) proceedings seeking a civil penalty order or orders will not be brought in relation to the alleged contravention or contraventions; and

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(h) state that agreeing to forfeit the thing to the Commonwealth is not an admission of guilt or liability; and

(i) state that the person to whom the notice is given may apply to the ACMA to have the period specified in the notice extended; and

(j) state that the owner of the thing may choose not to agree to forfeit the thing to the Commonwealth and, if the owner so chooses, proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions; and

(k) set out how the notice can be withdrawn; and

(l) state that if the notice is withdrawn, proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions; and

(m) state that the person to whom the notice is given may make written representations to the ACMA seeking the withdrawal of the notice.

(2) To avoid doubt, the person to whom a forfeiture notice is given may be the owner of the thing to which the notice relates.

(3) If:

(a) a forfeiture notice relating to a thing is given to a person; and

(b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth;

the owner is not entitled to revoke the agreement.

276 Extension of time to agree to forfeit a thing to the Commonwealth

(1) A person to whom a forfeiture notice has been given may apply to the ACMA for an extension of the period referred to in paragraph 275(1)(g).

(2) If the application is made before the end of that period, the ACMA may, in writing, extend that period. The ACMA may do so before or after the end of that period.

(3) If the ACMA extends that period, a reference in this Division, or in a notice or other instrument under this Division, to the period

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referred to in paragraph 275(1)(g) is taken to be a reference to that period so extended.

(4) If the ACMA does not extend that period, a reference in this Division, or in a notice or other instrument under this Division, to the period referred to in paragraph 275(1)(g) is taken to be a reference to the period that ends on the later of the following days:
   (a) the day that is the last day of the period referred to in paragraph 275(1)(g);
   (b) the day that is 7 days after the day the person was given notice of the ACMA's decision not to extend.

(5) The ACMA may extend that period more than once under subsection (2).

277 Withdrawal of a forfeiture notice

Representations seeking withdrawal of notice

(1) A person to whom a forfeiture notice has been given may make written representations to the ACMA seeking the withdrawal of the notice.

Withdrawal of notice

(2) The ACMA may withdraw a forfeiture notice given to a person, so long as the thing to which the notice relates has not been forfeited to the Commonwealth.

Note: For forfeiture, see section 280.

(3) For the purposes of subsection (2), it is immaterial whether the person has made representations seeking the withdrawal of the notice.

(4) In deciding whether or not to withdraw a forfeiture notice (the ***relevant forfeiture notice***), the ACMA:
   (a) must take into account any written representations seeking the withdrawal that were given by the person to the ACMA; and
   (b) may take into account the following:

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(i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to a forfeiture notice under this Division;

(ii) the circumstances of the alleged contravention or contraventions;

(iii) whether the person has paid an amount, stated in an infringement notice under Part 5 of the Regulatory Powers Act, for a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute a contravention in the relevant forfeiture notice;

(iv) whether the owner of the thing has agreed to forfeit another thing to the Commonwealth, in accordance with another forfeiture notice, for a contravention that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute a contravention in the relevant forfeiture notice;

(v) any other matter the ACMA considers relevant.

Notice of withdrawal

(5) Notice of the withdrawal of a forfeiture notice must be given to the person to whom the forfeiture notice was given. The withdrawal notice must state:

(a) the person's name and address; and

(b) the day the forfeiture notice was given; and

(c) the identifying number of the forfeiture notice; and

(d) that the forfeiture notice is withdrawn; and

(e) that proceedings seeking a civil penalty order or orders may be brought in relation to the alleged contravention or contraventions.

278 Effect of agreeing to forfeit a thing to the Commonwealth

If:

(a) a person is given a forfeiture notice for:

(i) an alleged contravention; or

(ii) multiple alleged contraventions; and

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(b) the owner of the thing to which the notice relates agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(c) the notice has not been withdrawn;

then:

(d) any liability of the person for the alleged contravention or contraventions is discharged; and

(e) proceedings seeking a civil penalty order or orders may not be brought in relation to the alleged contravention or contraventions; and

(f) the person is not regarded as having admitted guilt or liability for the alleged contravention or contraventions; and

(g) the person may not be prosecuted in a court for an offence that is constituted by conduct that is the same, or substantially the same, as the conduct alleged to constitute a contravention in the notice.

279 The ACMA may take possession of a thing

(1) If:

(a) a forfeiture notice relating to a thing is given to a person; and

(b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(c) the notice has not been withdrawn;

then:

(d) the ACMA may take possession of the thing; and

(e) if the ACMA does so—the ACMA must give the owner a receipt for the thing taken into possession.

(2) If:

(a) the ACMA withdraws a forfeiture notice relating to a thing; and

(b) the owner of the thing has already agreed, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(c) the ACMA has taken possession of the thing under subsection (1);

then:

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(d) the ACMA must take all reasonable steps to return the thing to the owner; and

(e) the agreement ceases to have effect.

(3) If:

(a) a forfeiture notice relating to a thing is given to a person; and

(b) the owner of the thing does not have possession of the thing when the notice is given; and

(c) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(d) the owner of the thing takes possession of the thing so as to enable the ACMA to take possession of the thing under subsection (1); and

(e) at the time when the owner takes possession of the thing, the notice had not been withdrawn;

sections 47 and 160 and subsections 175(4) and 176(4) do not apply to the owner's possession of the thing until whichever of the following events happens first:

(f) the ACMA takes possession of the thing under subsection (1);

(g) the notice is withdrawn.

(4) If:

(a) the ACMA has purported to take possession of a thing under subsection (1); and

(b) the ACMA was not entitled to take possession of the thing under that subsection;

the ACMA must take all reasonable steps to return the thing to the owner of the thing.

280 Forfeiture of a thing to the Commonwealth

(1) If:

(a) a forfeiture notice relating to a thing is given to a person; and

(b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(c) the notice has not been withdrawn; and

(d) the ACMA has taken possession of the thing under subsection 279(1); and

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(e) at least 90 days have passed since the ACMA gave the owner a receipt under paragraph 279(1)(e) for the thing;

the ACMA may declare, in writing, that the thing is forfeited to the Commonwealth.

(2) The ACMA must give a copy of the declaration to the owner of the thing.

Deemed forfeiture

(3) If:

(a) a forfeiture notice relating to a thing is given to a person; and

(b) the owner of the thing agrees, in accordance with the notice, to forfeit the thing to the Commonwealth; and

(c) the ACMA has taken possession of the thing under subsection 279(1); and

(d) the ACMA has not, within the 120-day period beginning at the start of the day when the ACMA gave the owner a receipt under paragraph 279(1)(e) for the thing, made a declaration under subsection (1) of this section that the thing is forfeited to the Commonwealth; and

(e) the notice has not been withdrawn before the end of the 120-day period;

then, at the end of the 120-day period, the thing is forfeited to the Commonwealth.

281 Forfeited things may be sold, destroyed or otherwise disposed of

A thing forfeited under section 280:

(a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and

(b) pending such directions, must be kept in such custody as the ACMA directs.

282 Effect of this Division

This Division does not:

(a) require a forfeiture notice to be given to a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division; or

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(b) affect the liability of a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division if:

(i) the person does not comply with a forfeiture notice given to the person for those contraventions; or

(ii) a forfeiture notice is not given to the person for those contraventions; or

(iii) a forfeiture notice is given to the person for those contraventions and is subsequently withdrawn; or

(c) prevent the giving of 2 or more forfeiture notices to a person for one or more alleged contraventions of one or more provisions subject to a forfeiture notice under this Division; or

(d) limit a court's discretion to order the forfeiture to the Commonwealth of a thing used, or otherwise involved, in the contravention of a provision subject to a forfeiture notice under this Division.

283 Designated forfeiture officer

A person is a ***designated forfeiture officer*** for the purposes of this Act if the person is:

(a) a member of the staff of the ACMA authorised, in writing, by the ACMA for the purposes of this section; or

(b) the Chair of the ACMA.

Division 4—Inspectors

284 Inspectors

(1) A person is an ***inspector*** for the purposes of this Act if the person is:

(a) a Commonwealth officer appointed by the ACMA, by written instrument, to be an inspector for the purposes of this Act; or

(b) a Commonwealth officer included in a class of Commonwealth officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or

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(c) an eligible State officer appointed by the ACMA, by written instrument, to be an inspector for the purposes of this Act; or

(d) an eligible State officer included in a class of eligible State officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or

(e) a member (other than a special member) of the Australian Federal Police.

(2) Subsection (1) has effect subject to subsection (3).

(3) An instrument under paragraph (1)(a), (b), (c) or (d) may specify provisions of this Act or the Regulatory Powers Act in relation to which appointments made by the instrument are to apply, and any such limitation has effect accordingly.

Eligible State officer

(4) For the purposes of this section, ***eligible State officer*** means a person who, whether on a full-time or part-time basis, and whether in a permanent capacity or otherwise:

(a) is in the service or employment of an eligible State or an authority of an eligible State; or

(b) holds or performs the duties of any office or position established by or under a law of an eligible State;

and includes a member of the police force of an eligible State.

Eligible State

(5) A State may, by written notice given to the ACMA, consent to be treated as an eligible State for the purposes of this section.

(6) A notice under subsection (5) may be given on behalf of a State by a Minister of the State.

(7) If a State consents under subsection (5) to be treated as an eligible State for the purposes of this section, the ACMA must, by notifiable instrument, declare that the State is an ***eligible State*** for the purposes of this section.

State

(8) For the purposes of this section, ***State*** includes:

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(a) the Australian Capital Territory; and
(b) the Northern Territory.

Division 5—Monitoring and investigation powers

284A Monitoring powers

Provisions subject to monitoring

(1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
(a) an offence against a provision of Part 4.1 of this Act; or
(b) a civil penalty provision of Part 4.1 of this Act; or
(c) an offence against subsection 284J(8) of this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with:
(a) a provision of Part 4.1; or
(b) subsection 284J(8);
is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Authorised applicant

(3) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:
(a) is covered by paragraph 284(1)(a), (b), (c) or (d); and
(b) is not a member of the police force of a State or Territory;
is an authorised applicant in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

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Authorised person

(4) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:

(a) is covered by paragraph 284(1)(a), (b), (c) or (d); and

(b) is not a member of the police force of a State or Territory;

is an authorised person in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

Issuing officer

(5) For the purposes of Part 2 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):

(a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(b) if a Judge of the Federal Circuit Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(c) a magistrate.

Relevant chief executive

(6) For the purposes of Part 2 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2).

(7) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (8) to a person who is:

(a) a member of the staff of the ACMA; and

(b) an SES employee or an acting SES employee.

(8) The powers and functions that may be delegated are:

(a) powers under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2); and

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(b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a).

(9) A person exercising powers or performing functions under a delegation under subsection (7) must comply with any directions of the relevant chief executive.

Relevant court

(10) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):

(a) the Federal Court;

(b) the Federal Circuit Court of Australia.

Premises

(11) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), each of the following is taken to be premises:

(a) a vessel;

(b) an aircraft;

(c) a space object.

(12) An authorised person must not enter premises under Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), if the premises are used solely or primarily as a residence.

Person assisting

(13) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2).

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Use of force in executing a warrant

(14) In executing a monitoring warrant:
  (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

External Territories

(15) Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), extends to every external Territory.

Geographical application

(16) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

284B Investigation powers—general

Provisions subject to investigation

(1) A provision is subject to investigation under Part 3 of the Regulatory Powers Act if it is:
  (a) an offence provision of this Act; or
  (b) a civil penalty provision of this Act.

Note: ***Offence against this Act*** has an extended meaning (see section 11).

Authorised applicant

(2) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised applicant in relation to evidential material that relates to a provision mentioned in subsection (1).

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Authorised person

(3) For the purposes of Part 3 of the Regulatory Powers Act, an inspector is an authorised person in relation to evidential material that relates to a provision mentioned in subsection (1).

Issuing officer

(4) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(b) if a Judge of the Federal Circuit Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(c) a magistrate.

Relevant chief executive

(5) For the purposes of Part 3 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).

(6) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (7) to a person who is:

(a) a member of the staff of the ACMA; and

(b) an SES employee or an acting SES employee.

(7) The powers and functions that may be delegated are:

(a) powers under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and

(b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a).

(8) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the relevant chief executive.

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Relevant court

(9) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
  (a) the Federal Court;
  (b) the Federal Circuit Court of Australia.

Premises

(10) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), each of the following is taken to be premises:
  (a) a vessel;
  (b) an aircraft;
  (c) a space object.

Person assisting

(11) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Disposal

(12) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), has effect as if a reference in section 68 of that Act to the disposal of a thing included a reference to the disposal of a thing by way of destruction.

Use of force in executing a warrant

(13) In executing an investigation warrant:
  (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
  (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

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External Territories

(14) Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1), extends to every external Territory.

Geographical application

(15) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

284C Identity card

(1) Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 284B(1) of this Act, has effect as if a reference in paragraphs 55(6)(b) and 56(1)(b) of the Regulatory Powers Act to an identity card, when used in relation to an authorised person who is:

(a) a member of the Australian Federal Police; or

(b) a member of the police force of an eligible State (within the meaning of section 284 of this Act);

were a reference to written evidence of the fact that the authorised person is such a member.

(2) Section 76 of the Regulatory Powers Act, so far as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, does not apply to an authorised person who is:

(a) a member of the Australian Federal Police; or

(b) a member of the police force of an eligible State (within the meaning of section 284 of this Act).

284D Retention of thing seized etc.

(1) Section 66 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect subject to subsections (2), (3) and (4) of this section.

(2) If:

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(a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and

(b) proceedings for an offence against this Act are instituted within the period of 60 days after the seizure; and

(c) the thing may have been used, or otherwise involved, in the alleged commission of the offence;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

Note: ***Offence against this Act*** has an extended meaning (see section 11).

(3) If:

(a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and

(b) proceedings under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision of this Act are instituted within the period of 60 days after the seizure; and

(c) the thing may have been used, or otherwise involved, in the alleged contravention of the civil penalty provision;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

(4) If:

(a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act; and

(b) proceedings under subsection 284L(3) of this Act in relation to a contravention of a civil penalty provision of this Act are instituted within the period of 60 days after the seizure; and

(c) the thing may have been used, or otherwise involved, in the alleged contravention of the civil penalty provision;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

(5) The ACMA may, by written instrument, authorise a thing seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, to be

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released to the owner, or to the person from whom it was seized, either:

(a) unconditionally; or

(b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 284L of this Act.

284E Securing evidential material

(1) If:

(a) an authorised person (within the meaning of Part 3 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act) enters premises under that Part as it applies in relation to such a provision; and

(b) the occupier of the premises has consented to the authorised person entering the premises; and

(c) a thing is found during the exercise of the investigation powers on the premises; and

(d) the authorised person believes on reasonable grounds that the thing is evidential material (within the meaning of Part 3 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act);

the thing may be secured, for a period not exceeding 24 hours, by locking it up, placing a guard or any other means.

Extensions

(2) The authorised person may apply to an issuing officer (within the meaning of Part 3 of the Regulatory Powers Act as it applies in relation to a provision mentioned in subsection 284B(1) of this Act) for an extension of the 24-hour period if the authorised person believes on reasonable grounds that the thing needs to be secured for longer than that period.

(3) Before making the application, the authorised person must give notice to the occupier of the premises, or another person who apparently represents the occupier, of the authorised person's intention to apply for an extension. The occupier or other person is entitled to be heard in relation to that application.

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(4) The 24-hour period may be extended more than once.

Note: For the process by which an issuing officer may extend the period, see section 74 of the Regulatory Powers Act.

(5) Section 74 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect as if a reference in that section to an application under subsection 51(5) of that Act included a reference to an application under subsection (2) of this section.

284F Directions to licensees—managing interference with radiocommunications

(1) An inspector may give a written direction to the holder of an apparatus licence or a spectrum licence in relation to either or both of the following:

(a) the installation, maintenance or operation of a radiocommunications device that is, or is to be, operated under the licence;

(b) anything that is, or is to be, installed or used in connection with a radiocommunications device that is, or is to be, operated under the licence;

if the direction is for the purpose of avoiding, minimising or reducing interference with radiocommunications.

(2) A direction given under this section to the holder of an apparatus licence applies to the holder of the licence, and may also be expressed to apply to:

(a) all persons authorised under section 114 in relation to the licence; or

(b) a specified class of persons authorised under section 114 in relation to the licence; or

(c) a specified person authorised under section 114 in relation to the licence.

(3) A direction given under this section to the holder of a spectrum licence applies to the holder of the licence, and may also be expressed to apply to:

(a) all persons authorised under section 68 in relation to the licence; or

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(b) a specified class of persons authorised under section 68 in relation to the licence; or

(c) a specified person authorised under section 68 in relation to the licence.

(4) A person who is:

(a) the holder of an apparatus licence; or

(b) authorised under section 114 in relation to an apparatus licence; or

(c) the holder of a spectrum licence; or

(d) authorised under section 68 in relation to a spectrum licence;

must comply with a direction under this section.

Civil penalty: 30 penalty units.

(5) A direction given under this section is not a legislative instrument.

284H Powers of inspectors to require operation of transmitters

(1) If an inspector believes on reasonable grounds that a transmitter has been, is being, or may be, operated so as to cause interference with radiocommunications, the inspector may, for the purpose of investigating:

(a) interference with radiocommunications; or

(b) risk of interference with radiocommunications;

direct a person to operate the transmitter.

(2) An inspector must not direct that a transmitter be operated if that operation is likely to:

(a) endanger the safety of a person; or

(b) cause damage to property.

(3) The operation of a transmitter in accordance with a direction does not give rise to:

(a) an offence against this Act; or

(b) a contravention of a civil penalty provision of this Act.

Note: ***Offence against this Act*** has an extended meaning (see section 11).

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Offence

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

Penalty: 30 penalty units.

284J General powers of inspectors

(1) If an inspector suspects on reasonable grounds that a person has done an act in respect of which the person is required to hold:
  (a) an apparatus licence; or
  (b) an authorisation under section 114; or
  (c) a spectrum licence; or
  (d) an authorisation under section 68; or
  (e) a certificate of proficiency; or
  (f) a permit;

the inspector may, by written notice given to the person, require the person to:
  (g) produce:
    (i) the licence, authorisation, certificate or permit; or
    (ii) evidence of its existence and contents; and
  (h) do so within the period, and in the manner, specified in the notice.

(2) If an inspector suspects on reasonable grounds that the holder of an apparatus licence has given an authorisation under section 114, the inspector may, by written notice given to the holder, require the holder to:
  (a) produce a copy of a record of that authorisation; and
  (b) do so within the period, and in the manner, specified in the notice.

(3) If an inspector suspects on reasonable grounds that the holder of a spectrum licence has given an authorisation under section 68, the inspector may, by written notice given to the holder, require the holder to:

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(a) produce a copy of a record of that authorisation; and
(b) do so within the period, and in the manner, specified in the notice.

(4) If an inspector suspects on reasonable grounds that a person is required by the equipment rules to retain a record, the inspector may, by written notice given to the person, require the person to:
(a) produce the record; and
(b) do so within the period, and in the manner, specified in the notice.

(5) An inspector may, by written notice given to a person, require the person to:
(a) produce evidence of having applied a label to a transmitter in accordance with an obligation imposed on the person under section 300; and
(b) do so within the period, and in the manner, specified in the notice.

(6) A period specified under subsection (1), (2), (3), (4) or (5) must not be shorter than 14 days.

Offences

(7) A person commits an offence if:
(a) the person is subject to:
(i) a requirement under subsection (1) (other than a requirement that relates to a permit); or
(ii) a requirement under subsection (2), (3) or (5); and
(b) the person engages in conduct; and
(c) the person's conduct contravenes the requirement.

Penalty: 30 penalty units.

(8) A person commits an offence if:
(a) the person is subject to:
(i) a requirement under subsection (1) that relates to a permit; or
(ii) a requirement under subsection (4); and
(b) the person engages in conduct; and

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(c) the person's conduct contravenes the requirement.

Penalty: 30 penalty units.

284K Self-incrimination etc.

(1) An individual is not excused from producing a document under section 284J on the ground that the production of the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

(2) However:

(a) the document produced; or

(b) producing the document; or

(c) any information, document or thing obtained as a direct or indirect consequence of producing the document;

is not admissible in evidence against the individual:

(d) in civil proceedings for the recovery of a penalty; or

(e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to section 284J of this Act).

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to producing a document under section 284J, the individual is not excused from producing a document under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

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Division 6—Power of inspectors to enter premises and adjust transmitters in emergencies

Subdivision A—Powers of inspectors

284KA Power of inspectors to enter premises and adjust transmitters in emergencies

Interference with radiocommunications that are essential to the safety of human life

(1) If an inspector believes on reasonable grounds that:

(a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and

(b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and

(c) the operation of the transmitter is interfering with radiocommunications that are essential to the safety of human life;

the inspector may:

(d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (c); and

(e) take such action as the inspector considers necessary to cause the transmitter to:

(i) cease operating; or

(ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (c).

(2) In exercising a power conferred by paragraph (1)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the consequence set out in paragraph (1)(c).

Substantial loss or damage

(3) If an inspector believes on reasonable grounds that:

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(a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and

(b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and

(c) the operation of the transmitter is causing substantial loss or damage;

the inspector may:

(d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (c); and

(e) take such action as the inspector considers necessary to cause the transmitter to:

(i) cease operating; or

(ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (c).

(4) However, an inspector is not authorised to enter the land, premises, vessel, aircraft, space object or vehicle under subsection (3) unless the entry is made under a transmitter access warrant.

(5) In exercising a power conferred by paragraph (3)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the consequence set out in paragraph (3)(c).

Notification of the owner of the transmitter

(6) If an inspector has, under a power conferred by this section:

(a) entered any land, premises, vessel, aircraft, space object or vehicle; and

(b) taken any action in respect of a transmitter;

the inspector must, as soon as practicable, take all reasonable steps to notify the owner of the transmitter that the action has been taken.

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Subdivision B—Investigation warrants

284KB Transmitter access warrants

Application for warrant

(1) An inspector may apply to an issuing officer by telephone, fax or other electronic means for a warrant under this section in relation to land, premises, a vessel, an aircraft, a space object or a vehicle.

Note: For ***issuing officer***, see section 284KD.

(2) The issuing officer:
  (a) may require communication by voice to the extent that it is practicable in the circumstances; and
  (b) may make a recording of the whole or any part of any such communication by voice.

(3) Before applying for the warrant, the inspector must prepare an information that sets out the grounds on which the warrant is sought. If it is necessary to do so, the inspector may apply for the warrant before the information is sworn or affirmed.

Issue of warrant

(4) The issuing officer may issue the warrant if, after considering the terms of the information and receiving such further information (if any) that the issuing officer requires, the issuing officer is satisfied that:
  (a) a transmitter is operating on any land, or on or in the premises, vessel, aircraft, space object or vehicle; and
  (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
  (c) the operation of the transmitter is causing substantial loss or damage.

Content of warrant

(5) The warrant must:
  (a) describe the land, premises, vessel, aircraft, space object or vehicle to which the warrant relates; and

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(b) state that the warrant is issued under this Division; and
(c) name one or more inspectors; and
(d) specify the day (not more than 1 week after the issue of the warrant) on which the warrant ceases to be in force.

(6) The warrant must authorise each inspector named in the warrant to:
(a) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (4)(c); and
(b) take such action as the inspector considers necessary to cause the transmitter to:
(i) cease operating; or
(ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (4)(c).

(7) The warrant must state whether entry is authorised to be made at any time of the day or during specified hours of the day.

Informing inspector

(8) After completing and signing the warrant, the issuing officer must inform the inspector who applied for the warrant, by telephone, fax or other electronic means, of:
(a) the terms of the warrant; and
(b) the day on which, and the time at which, the warrant was signed.

Obligations on inspector

(9) The inspector who applied for the warrant must then do the following:
(a) complete a form of warrant in the same terms as the warrant completed and signed by the issuing officer;
(b) state on the form the following:
(i) the name of the issuing officer;
(ii) the day on which, and the time at which, the warrant was signed;
(c) send the following to the issuing officer:
(i) the form of warrant completed by the inspector;

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(ii) the information referred to in subsection (3), which must have been duly sworn or affirmed.

(10) The inspector who applied for the warrant must comply with paragraph (9)(c) by the end of the day after the earlier of the following:

(a) the day on which the warrant ceases to be in force;

(b) the day on which the warrant is executed.

Issuing officer to attach documents together

(11) The issuing officer must attach the documents provided under paragraph (9)(c) to the warrant signed by the issuing officer.

284KC Offence relating to warrants

An inspector must not:

(a) state in a document that purports to be a form of warrant under section 284KB the name of an issuing officer unless that issuing officer signed the warrant; or

(b) state on a form of warrant under that section a matter that, to the inspector's knowledge, departs in a material particular from the terms of the warrant signed by the issuing officer under that section; or

(c) purport to execute, or present to another person, a document that purports to be a form of warrant under that section that the inspector knows departs in a material particular from the terms of a warrant signed by an issuing officer under that section; or

(d) purport to execute, or present to another person, a document that purports to be a form of warrant under that section where the inspector knows that no warrant in the terms of the form of warrant has been completed and signed by an issuing officer; or

(e) give to an issuing officer a form of warrant under that section that is not the form of warrant that the inspector purported to execute.

Penalty: Imprisonment for 2 years.

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Subdivision C—Issuing officers

284KD Issuing officer

For the purposes of this Division, each of the following persons is an ***issuing officer***:

(a) if a Judge of the Federal Court has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(b) if a Judge of the Federal Circuit Court of Australia has consented to act as an issuing officer for the purposes of this Act and that consent is in force—the Judge;

(c) a magistrate.

284KE Powers of issuing officers

Powers conferred personally

(1) A power conferred on an issuing officer by this Division is conferred on the issuing officer:

(a) in a personal capacity; and

(b) not as a court or a member of a court.

Powers need not be accepted

(2) The issuing officer need not accept the power conferred.

Protection and immunity

(3) An issuing officer exercising a power conferred by this Division has the same protection and immunity as if the issuing officer were exercising the power:

(a) as the court of which the issuing officer is a member; or

(b) as a member of the court of which the issuing officer is a member.

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Division 7—Court-ordered forfeiture

284L Court may order forfeiture

(1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the commission of the offence.

Note: ***Offence against this Act*** has an extended meaning (see section 11).

(2) If a court makes a civil penalty order under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision of this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the contravention of the civil penalty provision.

(3) If the Federal Court or the Federal Circuit Court of Australia is satisfied that a thing was used, or otherwise involved, in a contravention of a civil penalty provision of this Act, the court may, on the application of the ACMA, order the forfeiture to the Commonwealth of that thing.

284M Forfeited goods may be sold, destroyed or otherwise disposed of

A thing forfeited under section 284L:

(a) may be sold, destroyed or otherwise disposed of in accordance with the directions of the ACMA; and

(b) pending such directions, must be kept in such custody as the ACMA directs.

Division 8—Public warning notices

284N Public warning notices

(1) The ACMA may issue to the public, in a way that the ACMA thinks fit, a written notice containing a warning about particular conduct engaged in by a person if:

(a) the ACMA suspects on reasonable grounds that the conduct may constitute a contravention of:

(i) a provision of Part 4.1; or

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(ii) section 192; or
(iii) section 193; or
(iv) section 194; or
(v) section 195; or
(vi) section 197; or
(vii) a provision of the equipment rules; and

(b) the ACMA is satisfied that one or more persons have suffered, or are likely to suffer, detriment as a result of the conduct; and

(c) the ACMA is satisfied that it is in the public interest to issue the notice.

(2) A notice under subsection (1) may be issued to the public by being published on the ACMA's website.

(3) Subsection (2) does not, by implication, limit the ACMA's power to decide a way in which a notice under subsection (1) may be issued to the public.

(4) A notice issued under subsection (1) is not a legislative instrument.

Division 9—Miscellaneous

284P Act not to affect performance of duties by inspectors

Nothing in Chapter 3 or Part 4.1 or 4.2 prohibits the doing of any act or thing by an inspector in the performance of the inspector's duties under this Act or Part 3 of the Regulatory Powers Act.

284Q Inspectors not authorised to enter or search certain land or premises etc. used for defence purposes

Nothing in Division 5 or 6 of this Part, or in Part 3 of the Regulatory Powers Act, authorises an inspector to enter or to search:

(a) land or premises that are:
(i) occupied or used for the purposes of defence; and
(ii) specified in the legislative rules; or

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(b) a vessel, aircraft, space object or vehicle that is in the possession or control of the Defence Force or a part of the Defence Force;

unless:

(c) permission to do so has been given by the person for the time being in charge of those premises or that land, vessel, aircraft, space object or vehicle; or

(d) if it is not reasonably practicable to obtain permission of the kind mentioned in paragraph (c)—the entry and search is supervised by a member of the Defence Force, or an APS employee in the Defence Department, authorised to have access to those premises or that land, vessel, aircraft, space object or vehicle.

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

32 After paragraph 285(w)

Insert:

(wa) a decision under subsection 268(2) to give a direction;

33 Part 5.8

Repeal the Part.

34 Paragraphs 314(2)(d) to (f)

Repeal the paragraphs.

35 Section 315

Repeal the section.

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Part 2—Consequential amendments

Australian Communications and Media Authority Act 2005

36 After section 67

Insert:

67A Liability for damages—public warning notices

None of the following:

(a) the Commonwealth;

(b) the ACMA;

(c) an ACMA official;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter done in good faith in the exercise, or purported exercise, of the ACMA's power under section 284N of the *Radiocommunications Act 1992*.

Note: Section 284N of the *Radiocommunications Act 1992* deals with public warning notices.

Telecommunications (Interception and Access) Act 1979

37 Paragraph 6(2H)(a)

Omit "section 267", substitute "section 284".

38 After subsection 6(2H)

Insert:

(2J) If:

(a) an inspector under section 284 of the *Radiocommunications Act 1992* is lawfully engaged in exercising powers under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to:

(i) a provision mentioned in subsection 284A(1) of the *Radiocommunications Act 1992*; or

(ii) information mentioned in subsection 284A(2) of the *Radiocommunications Act 1992*; and

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(b) while exercising those powers, the inspector incidentally listens to or records a communication passing over a telecommunications system;

the listening or recording does not, for the purposes of this Act, constitute an interception of the communication.

(2K) If:

(a) an inspector under section 284 of the *Radiocommunications Act 1992* is lawfully engaged in exercising powers under Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to a provision mentioned in subsection 284B(1) of the *Radiocommunications Act 1992*; and

(b) while exercising those powers, the inspector incidentally listens to or records a communication passing over a telecommunications system;

the listening or recording does not, for the purposes of this Act, constitute an interception of the communication.

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Part 3—Amendments contingent on the commencement of the Federal Circuit and Family Court of Australia Act 2020

Radiocommunications Act 1992

39 Paragraphs 269(3)(b), 271(3)(b), 272(3)(b), 284A(5)(b) and (10)(b), 284B(4)(b) and (9)(b) and 284KD(b)

Omit "Federal Circuit Court of Australia", substitute "Federal Circuit and Family Court of Australia".

40 Subsection 284L(3)

Omit "Federal Circuit Court of Australia", substitute "Federal Circuit and Family Court of Australia".

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Part 4—Transitional provisions

Division 1—General

41 Transitional—enforcement

(1) Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule), so far as it relates to an offence or alleged offence, does not apply to an offence committed, or allegedly committed, before the commencement of this item.

(2) Despite the repeal by this Schedule of Divisions 1, 2, 3, 5 and 6 of Part 5.5 and paragraph 314(2)(e) of the *Radiocommunications Act 1992*:

(a) those Divisions; and

(b) that paragraph; and

(c) regulations made for the purposes of that paragraph;

continue to apply, in relation to an offence committed, or allegedly committed, before the commencement of this item as if:

(d) those Divisions and that paragraph had not been repealed; and

(e) the definition of ***inspector*** in section 5 of that Act had not been amended by this Schedule; and

(f) the items of this Division (other than this item) had not been enacted.

42 Transitional—appointment of a Commonwealth officer to be an inspector

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under:

(i) paragraph 267(1)(a) of the *Radiocommunications Act 1992*; or

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(ii) paragraph 267(1)(a) of the *Radiocommunications Act 1992* and subsection 533(1) of the *Telecommunications Act 1997*; or

(iii) paragraph 267(1)(a) of the *Radiocommunications Act 1992*, subsection 533(1) of the *Telecommunications Act 1997* and regulation 42 of the *Radiocommunications Regulations 1993*; and

(c) the instrument relates to a particular Commonwealth officer (within the meaning of the *Radiocommunications Act 1992*).

Effect of instrument

(2) The instrument, so far as it was made under paragraph 267(1)(a) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been made under paragraph 284(1)(a) of the *Radiocommunications Act 1992*; and

(b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:

(i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or

(ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and

(c) any requirement imposed by the *Radiocommunications Act 1992* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

43 Transitional—appointment of officers included in a class of Commonwealth officers to be inspectors

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under:

(i) paragraph 267(1)(b) of the *Radiocommunications Act 1992*; or

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(ii) paragraph 267(1)(b) of the *Radiocommunications Act 1992* and subsection 533(1) of the *Telecommunications Act 1997*; and

(c) the instrument relates to a particular class of Commonwealth officers (within the meaning of the *Radiocommunications Act 1992*).

Effect of instrument

(2) The instrument, so far as it was made under paragraph 267(1)(b) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been made under paragraph 284(1)(b) of the *Radiocommunications Act 1992*; and

(b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:

(i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or

(ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and

(c) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

44 Transitional—appointment of a State officer to be an inspector

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under:

(i) paragraph 267(1)(a) of the *Radiocommunications Act 1992*; or

(ii) paragraph 267(1)(a) of the *Radiocommunications Act 1992* and subsection 533(1) of the *Telecommunications Act 1997*; and

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(c) the instrument relates to a particular eligible State officer (within the meaning of section 284 of the *Radiocommunications Act 1992*).

Note: See also Part 5 of this Schedule (eligible States).

Effect of instrument

(2) The instrument, so far as it was made under paragraph 267(1)(a) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been made under paragraph 284(1)(c) of the *Radiocommunications Act 1992*; and

(b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:

(i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or

(ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and

(c) any requirement imposed by the *Radiocommunications Act 1992* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

45 Transitional—appointment of officers included in a class of State officers to be inspectors

Scope

(1) This item applies to an instrument if:

(a) the instrument was in force immediately before the commencement of this item; and

(b) the instrument was made under:

(i) paragraph 267(1)(b) of the *Radiocommunications Act 1992*; or

(ii) paragraph 267(1)(b) of the *Radiocommunications Act 1992* and subsection 533(1) of the *Telecommunications Act 1997*; and

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(c) the instrument relates to a particular class of eligible State officers (within the meaning of section 284 of the *Radiocommunications Act 1992*).

Note: See also Part 5 of this Schedule (eligible States).

Effect of instrument

(2) The instrument, so far as it was made under paragraph 267(1)(b) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:

(a) it had been made under paragraph 284(1)(d) of the *Radiocommunications Act 1992*; and

(b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:

(i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or

(ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and

(c) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

46 Transitional—identity card (monitoring powers)

Scope

(1) This item applies to an identity card if:

(a) the card was issued to a person before the commencement of this item; and

(b) the card was issued under:

(i) subsection 268(1) of the *Radiocommunications Act 1992*; or

(ii) subsection 268(1) of the *Radiocommunications Act 1992* and subsection 534(1) of the *Telecommunications Act 1997*; and

(c) immediately before the commencement of this item, the person:

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(i) was an inspector (within the meaning of that Act); and
(ii) was not a member of a police force; and

(d) the person is an authorised person for the purposes of Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to:
(i) the provisions mentioned in subsection 284A(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
(ii) the information mentioned in subsection 284A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule).

Effect of card

(2) The card, so far as it was issued under subsection 268(1) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
(a) it had been issued to the person under subsection 35(1) of the *Regulatory Powers (Standard Provisions) Act 2014*; and
(b) any requirement imposed by or under subsection 35(2) of that Act in relation to the card had been satisfied.

47 Transitional—identity card (investigation powers)

Scope

(1) This item applies to an identity card if:
(a) the card was issued to a person before the commencement of this item; and
(b) the card was issued under subsection 268(1) of the *Radiocommunications Act 1992*; and
(c) immediately before the commencement of this item, the person;
(i) was an inspector (within the meaning of that Act); and
(ii) was not a member of a police force; and
(d) the person is an authorised person for the purposes of Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to evidential material that relates to a provision mentioned in subsection 284B(1) of the

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Radiocommunications Act 1992 (as amended by this Schedule).

Effect of card

(2) The card has effect, after the commencement of this item, as if:

(a) it had been issued to the person under subsection 76(1) of the *Regulatory Powers (Standard Provisions) Act 2014*; and

(b) any requirement imposed by or under subsection 76(2) of that Act in relation to the card had been satisfied.

Division 2—Infringement notices

48 Transitional—infringement notices

(1) Despite the repeal by this Schedule of paragraph 11(2)(b) of the *Radiocommunications Act 1992*, that paragraph continues to apply, in relation to a payment made in relation to an offence allegedly committed before the commencement of this item, as if that paragraph had not been repealed.

(2) Despite the repeal by this Schedule of section 315 and paragraph 314(2)(d) of the *Radiocommunications Act 1992*:

(a) that section; and

(b) that paragraph; and

(c) regulations made for the purposes of that paragraph;

continue to apply, in relation to an offence allegedly committed before the commencement of this item, as if that section and that paragraph had not been repealed.

Division 3—Enforceable undertakings

49 Transitional—enforceable undertakings

If:

(a) before the commencement of this item:

(i) a person gave an undertaking under section 298C of the *Radiocommunications Act 1992*; and

(ii) the ACMA accepted the undertaking; and

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(b) the undertaking was not withdrawn or cancelled before the commencement of this item;

the undertaking has effect, after the commencement of this item, as if:

(c) it had been given under Part 6 of the Regulatory Powers Act; and

(d) it had been accepted by the ACMA under that Part.

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Part 5—Eligible States

50 Eligible States—consent and declaration

(1) A State may give consent under subsection 284(5) of the *Radiocommunications Act 1992* (as amended by this Schedule) as if subsections 284(5) to (8) of that Act had commenced at same time as the commencement of this item.

(2) If a State gives consent as mentioned in subitem (1):

(a) the consent has effect as if subsections 284(5) to (8) of the *Radiocommunications Act 1992* (as amended by this Schedule) had commenced at same time as the commencement of this item; and

(b) the ACMA may make a declaration in relation to the State under subsection 284(7) of that Act as if subsections 284(5) to (8) of that Act had commenced at same time as the commencement of this item.

(3) If the ACMA makes a declaration as mentioned in paragraph (2)(b) of this item, the declaration takes effect as if subsections 284(5) to (8) of the *Radiocommunications Act 1992* (as amended by this Schedule) had commenced at same time as the commencement of this item.

(4) This item does not, by implication, affect the application of section 4 of the *Acts Interpretation Act 1901* to a power conferred by a provision other than subsection 284(5) or (7) of the *Radiocommunications Act 1992* (as amended by this Schedule).

(5) For the purposes of this item, ***State*** includes:

(a) the Australian Capital Territory; and

(b) the Northern Territory.

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Schedule 7—Information-gathering powers

Part 1—Amendments

Radiocommunications Act 1992

1 Before Part 5.6

Insert:

Part 5.5A—Information-gathering powers

284R Simplified outline of this Part

- The ACMA may require a person to give the ACMA information, or produce to the ACMA a document, that relates to:
  - (a) the supply of radiocommunications devices; or
  - (b) the operation, or proposed operation, of radiocommunications devices; or
  - (c) the unlawful possession of radiocommunications devices; or
  - (d) compliance, or non-compliance, with conditions of an apparatus licence or a spectrum licence.

284S The ACMA may obtain information or documents

Scope

(1) This section applies to a person if:

(a) the ACMA believes on reasonable grounds that:

(i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications devices; and

(ii) the information or document is relevant to the operation of this Act or the equipment rules, so far as this Act

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relates, or the equipment rules relate, to interference with radiocommunications; and

(iii) the information or document would be reasonably likely to assist the ACMA in connection with managing, limiting or preventing interference with radiocommunications; or

(b) the ACMA believes on reasonable grounds that:

(i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications transmitters; and

(ii) the information or document is relevant to the operation of this Act, so far as this Act relates to radio emissions that result from a reasonably foreseeable use (including a misuse) of those radiocommunications transmitters and that would be likely to adversely affect the health or safety of individuals; or

(c) the ACMA believes on reasonable grounds that:

(i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications transmitters; and

(ii) the information or document is relevant to the operation of the equipment rules, so far as the equipment rules are directed towards achieving the objective of protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of those radiocommunications transmitters; or

(d) the ACMA believes on reasonable grounds that the person has information or a document that relates to the operation, or proposed operation, of one or more radiocommunications devices under:

(i) an apparatus licence; or

(ii) a spectrum licence; or

(iii) a class licence; or

(e) the ACMA believes on reasonable grounds that the person has information or a document that relates to the proposed operation of one or more radiocommunications devices under:

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(i) an apparatus licence that might be issued in the future; or

(ii) a spectrum licence that might be issued in the future; or

(iii) a class licence that might be issued in the future; or

(f) the ACMA believes on reasonable grounds that the person has information or a document that relates to compliance or non-compliance with one or more conditions of:

(i) an apparatus licence; or

(ii) a spectrum licence; or

(iii) a class licence; or

(g) the ACMA believes on reasonable grounds that the person has information or a document that relates to the operation, or proposed operation, of one or more radiocommunications devices otherwise than as authorised by:

(i) an apparatus licence; or

(ii) a spectrum licence; or

(iii) a class licence; or

(h) the ACMA believes on reasonable grounds that the person has information or a document that relates to the possession, or proposed possession, of one or more radiocommunications devices for the purpose of operating those devices otherwise than as authorised by:

(i) an apparatus licence; or

(ii) a spectrum licence; or

(iii) a class licence.

Requirement

(2) The ACMA may, by written notice given to the person, require the person:

(a) to give the ACMA, within the period and in the manner and form specified in the notice, any such information; or

(b) to produce to the ACMA, within the period and in the manner specified in the notice, any such documents; or

(c) to make copies of any such documents and to produce to the ACMA, within the period and in the manner specified in the notice, those copies.

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(3) A period specified under subsection (2) must not be shorter than 14 days.

Compliance

(4) A person must comply with a requirement under subsection (2).

Civil penalty: 20 penalty units.

Other provisions not limited

(5) This section does not, by implication, limit:
  (a) any other provision of this Act that requires a person to:
    (i) give information; or
    (ii) produce a document; or
  (b) a power conferred by this Act to make:
    (i) regulations; or
    (ii) rules; or
    (iii) any other legislative instrument.

284T Copying documents—compensation

A person is entitled to be paid by the ACMA, on behalf of the Commonwealth, reasonable compensation for complying with a requirement covered by paragraph 284S(2)(c).

284U Copies of documents

(1) The ACMA may:
  (a) inspect a document or copy produced under subsection 284S(2); and
  (b) make and retain copies of, or take and retain extracts from, such a document.

(2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 284S(2)(c).

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284V ACMA may retain documents

(1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under subsection 284S(2).

(2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.

(3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.

(4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

284W Self-incrimination

(1) An individual is not excused from giving information or producing a document under section 284S on the ground that giving the information or producing the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

(2) However:

(a) the information given or the document produced; or

(b) giving the information or producing the document; or

(c) any information, document or thing obtained as a direct or indirect consequence of giving the information or producing the document;

is not admissible in evidence against the individual:

(d) in civil proceedings for the recovery of a penalty; or

(e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Part).

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a

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penalty for an offence) in relation to giving information or producing a document under section 284S, the individual is not excused from giving information or producing a document under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

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Part 2—Transitional provisions

2 Transitional—section 284S of the *Radiocommunications Act 1992*

Supply, or offer to supply, radiocommunications devices or transmitters

(1) For the purposes of:

(a) subparagraph 284S(1)(a)(i) of the *Radiocommunications Act 1992*; or

(b) subparagraph 284S(1)(b)(i) of the *Radiocommunications Act 1992*; or

(c) subparagraph 284S(1)(c)(i) of the *Radiocommunications Act 1992*;

it is immaterial whether the supply, or the offer to supply, occurs before, at or after the commencement of this item.

Operation, or proposed operation, of radiocommunications devices

(2) For the purposes of paragraph 284S(1)(d) of the *Radiocommunications Act 1992*:

(a) so far as the paragraph relates to the operation of one or more radiocommunications devices—it is immaterial whether the operation occurs before, at or after the commencement of this item; or

(b) so far as the paragraph relates to the proposed operation of one or more radiocommunications devices—it is immaterial whether the operation was or is proposed to occur before, at or after the commencement of this item.

(3) For the purposes of paragraph 284S(1)(g) of the *Radiocommunications Act 1992*:

(a) so far as the paragraph relates to the operation of one or more radiocommunications devices—it is immaterial whether the operation occurs before, at or after the commencement of this item; or

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(b) so far as the paragraph relates to the proposed operation of one or more radiocommunications devices—it is immaterial whether the operation was or is proposed to occur before, at or after the commencement of this item.

Compliance, or non-compliance, with licence conditions

(4) For the purposes of paragraph 284S(1)(f) of the *Radiocommunications Act 1992*, it is immaterial whether the compliance, or non-compliance, occurs before, at or after the commencement of this item.

Possession, or proposed possession, of radiocommunications devices

(5) For the purposes of paragraph 284S(1)(h) of the *Radiocommunications Act 1992*:

(a) so far as the paragraph relates to the possession of one or more radiocommunications devices—it is immaterial whether the possession occurs before, at or after the commencement of this item; or

(b) so far as the paragraph relates to the proposed possession of one or more radiocommunications devices—it is immaterial whether the possession was or is proposed to occur before, at or after the commencement of this item.

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Schedule 8—Miscellaneous

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

authorised defence supplier has the meaning given by section 10B.

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

legislative rules means rules made under section 313B.

member of a civilian component of a visiting force has the meaning given by subsection 5(3) of the *Defence (Visiting Forces) Act 1963*.

member of a visiting force has the meaning given by subsection 5(2) of the *Defence (Visiting Forces) Act 1963*.

1A After section 10A

Insert:

10B Authorised defence supplier

(1) For the purposes of this Act, ***authorised defence supplier*** means a person who:

(a) is a party to a written agreement for the supply of goods or services to the Defence Force or the Defence Department; and

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(b) is approved in writing by a member of the Defence Force or an officer of the Defence Department.

(2) An approval under paragraph (1)(b) is not a legislative instrument.

1B Subsection 24(1)

Repeal the subsection, substitute:

(1) This Act does not apply to anything done or omitted to be done by a member of the Defence Force, or by an officer of the Defence Department, in the performance of the member's or officer's functions or duties as such a member or officer, to the extent that those functions or duties are for a purpose that relates to:

(a) research for purposes connected with defence; or

(b) intelligence.

(1A) This Act does not apply to anything done or omitted to be done by a member of a visiting force, or by a member of a civilian component of a visiting force, in the performance of the member's functions or duties in relation to the defence, security or international relations of:

(a) Australia; or

(b) a foreign country whose military is acting in co-operation with the Defence Force;

to the extent that those functions or duties:

(c) relate to an activity that is approved in writing by a member of the Defence Force or an officer of the Defence Department; and

(d) are for a purpose that relates to:

(i) research for purposes connected with defence; or

(ii) intelligence.

(1B) This Act does not apply to anything done or omitted to be done by an approved defence supplier in the performance of the supplier's functions or duties in relation to the supply of goods or services to the Defence Force or the Defence Department, to the extent that those functions or duties are for a purpose that relates to:

(a) research for purposes connected with defence; or

(b) intelligence.

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1BA At the end of section 24

Add:

(3) An approval under paragraph (1A)(c) is not a legislative instrument.

1C At the end of paragraph 26(1)(b)

Add:

; or (iv) safety; or
(v) security.

1D After subsection 26(1)

Insert:

(1A) Subject to subsection (3), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by a member of a visiting force, or a member of a civilian component of a visiting force, if:

(a) the act or omission takes place in the performance of one of the member's functions or duties in relation to the defence, security or international relations of:
(i) Australia; or
(ii) a foreign country whose military is acting in co-operation with the Defence Force; and

(b) the act or omission relates to an activity that is approved in writing by a member of the Defence Force or an officer of the Defence Department; and

(c) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:
(i) military command and control; or
(ii) intelligence; or
(iii) weapons systems; or
(iv) safety; or
(v) security.

(1B) Subject to subsection (4), Parts 3.1, 4.1 and 4.2 do not apply to anything done or omitted to be done by an authorised defence supplier if:

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(a) the act or omission takes place in the in the performance of one of the supplier's functions or duties in relation to the supply of goods or services to the Defence Force or the Defence Department; and

(b) the function or duty concerned is, under the regulations, taken for the purposes of this subsection to be a function or duty that relates to:

(i) military command and control; or

(ii) intelligence; or

(iii) weapons systems; or

(iv) safety; or

(v) security.

1E At the end of section 26

Add:

(3) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to a member of a visiting force, or a member of a civilian component of a visiting force, in the performance of one of the member's functions or duties as mentioned in subsection (1A).

(4) The regulations may provide for the application, in specified circumstances, of all or any of Parts 3.1, 4.1 or 4.2, or any of the provisions of those Parts, to an authorised defence supplier in the performance of one of the supplier's functions or duties as mentioned in subsection (1B).

(5) An approval under paragraph (1A)(b) is not a legislative instrument.

2 Subparagraph 68(2)(b)(i)

Omit "if applicable,".

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3 Subsection 69A(2)

Omit "an authorised person (see subsection (3)) derives income, profits or gains from allowing third parties to operate radiocommunications devices under the licence,", substitute "a person (the ***authorised person***) authorised under section 68 in relation to the licence derives income, profits or gains from operating radiocommunications devices under the licence,".

4 Subsection 69A(3) (definition of *authorised person*)

Repeal the definition.

5 Subsection 214(1)

Omit "(1)".

6 Subsection 214(2)

Repeal the subsection.

7 Paragraph 226(b)

Omit "section 48 of that Act as applied by section 229 of this Act", substitute "section 42 of the *Legislation Act 2003*".

8 Before paragraph 285(x)

Insert:

(wb) a decision of the ACMA:

(i) made under the legislative rules; and

(ii) declared by the legislative rules to be a decision to which this section applies;

9 Before section 303

Insert:

302 Exemptions from certain compliance provisions

Compliance provision

(1) For the purposes of this section, each of the following is a ***compliance provision***:

(a) subsection 46(1);

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(b) subsection 46(3);
(c) subsection 47(1);
(d) subsection 47(3);
(e) subsection 170(1);
(f) subsection 170(2);
(g) subsection 170(3);
(h) subsection 175(1);
(i) subsection 175(2);
(j) subsection 175(3);
(k) subsection 175(4);
(l) subsection 176(1);
(m) subsection 176(2);
(n) subsection 176(3);
(o) subsection 176(4).

Exemptions

(2) The ACMA may, by legislative instrument, determine either or both of the following:
(a) that one or more specified acts are exempt from one or more specified compliance provisions;
(b) that one or more specified persons are exempt from one or more specified compliance provisions.

(3) A determination under subsection (2) is subject to such conditions (if any) as are specified in the determination.

(4) The ACMA must not determine an exemption under subsection (2) unless the ACMA is satisfied that:
(a) the exemption is in the public interest; or
(b) the exemption is of a kind specified in the legislative rules.

(5) A determination under subsection (2) may confer a power to make a decision of an administrative character on the ACMA.

10 After section 305

Insert:

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305A Computerised decision-making

(1) The ACMA may arrange for the use, under the ACMA's control, of computer programs for any purposes for which the ACMA may, or must, under this Act or under a legislative instrument made under this Act:
  (a) make a decision; or
  (b) exercise any power or comply with any obligation; or
  (c) do anything else related to making a decision or exercising a power or complying with an obligation.

(2) For the purposes of this Act and any legislative instrument made under this Act, the ACMA is taken to have:
  (a) made a decision; or
  (b) exercised a power or complied with an obligation; or
  (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation;
that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

(3) The ACMA must substitute a decision for a decision (the ***initial decision***) made by the operation of a computer program under an arrangement under subsection (1) if the ACMA is satisfied that the initial decision is incorrect.

11 After section 308

Insert:

308A Compensation for acquisition of property

(1) If the operation of this Act, or a legislative instrument under this Act, would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:

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(a) the Federal Court; or

(b) the Supreme Court of a State or Territory;

for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

12 After section 313A

Insert:

313B Legislative rules

(1) The Minister may, by legislative instrument, make rules (***legislative rules***) prescribing matters:

(a) required or permitted by this Act to be prescribed by the legislative rules; or

(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) To avoid doubt, the legislative rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(3) The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on the ACMA.

(4) The legislative rules may make provision in relation to a matter by conferring a power to make a decision of an administrative character on a person who holds a specified kind of accreditation.

(5) The legislative rules may authorise a person who holds a specified kind of accreditation to charge fees in relation to the exercise by the person of a power conferred by the legislative rules. A fee must not be such as to amount to taxation.

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(6) Legislative rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but legislative rules are taken to be consistent with the regulations to the extent that the rules are capable of operating concurrently with the regulations.

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Part 2—Transitional provisions

13 Transitional—spectrum licence condition about third party use

Scope

(1) This item applies to a spectrum licence that:

(a) was in force immediately before the commencement of this item; and

(b) included a condition required by paragraph 68(2)(b) of the *Radiocommunications Act 1992*.

Condition

(2) After the commencement of this item, the spectrum licence has effect as if the expression "if applicable," were omitted from the condition.

14 Transitional—spectrum licence condition about residency etc.

Scope

(1) This item applies to a spectrum licence that was in force immediately before the commencement of this item.

Condition

(2) After the commencement of this item, the spectrum licence:

(a) is taken to include a condition covered by subsection 69A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and

(b) is taken not to include a condition that was covered by subsection 69A(2) of the *Radiocommunications Act 1992*, as in force immediately before the commencement of this item.

15 Constitutional safety net—acquisition of property

(1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a

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person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.

(2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:

(a) the Federal Court of Australia; or

(b) the Supreme Court of a State or Territory;

for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

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Schedule 9—Datacasting

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Repeal the following definitions:

(a) definition of ***channel A datacasting transmitter licence***;
(b) definition of ***channel B datacasting transmitter licence***;
(c) definition of ***community television broadcasting service***;
(d) definition of ***datacasting transmitter licence***;
(e) definition of ***domestic digital television receiver***.

2 Subsection 96(7)

Omit "Divisions 6 and 6A are", substitute "Division 6 is".

3 Sections 98A and 98B

Repeal the sections.

4 Subsection 100(1)

Omit "102B,".

5 Section 102B

Repeal the section.

6 Subsection 103(2)

Omit ", a datacasting transmitter licence".

7 Subsection 103(5)

Repeal the subsection.

8 Subsections 106(5A) and (6A)

Repeal the subsections.

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9 Subsection 106(7)

Omit ", (5A), (6) and (6A)", substitute "and (6)".

10 Subsection 106(9A)

Repeal the subsection.

11 Subsection 106(10)

Omit "or (9A)".

12 Subsection 106(11)

Omit "or (9A)".

13 Paragraph 107(3)(b)

Repeal the paragraph.

14 Paragraph 108(5)(b)

Repeal the paragraph.

15 Subparagraph 108A(1)(b)(i)

Omit "293", substitute "60 of the *Australian Communications and Media Authority Act 2005*".

16 Section 109A

Repeal the section.

17 Section 110

Omit ", 109A(1)(k)".

18 Paragraph 111(1)(c)

Omit ", 109A(1)(k)".

19 Paragraph 111(1)(d)

Omit "or 109A(1)(d)".

20 Subsection 114(1)

Omit ", (3AA), (3A), (3B), (3D) and (3F)", substitute "and (3AA)".

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21 Subsections 114(3A) to (3F)

Repeal the subsections.

22 Paragraph 118(1)(c)

Omit "or 128C(1)".

23 Paragraph 118(1)(d)

Omit ", or section 128D,".

24 Division 4A of Part 3.3

Repeal the Division.

25 Division 6 of Part 3.3 (heading)

Omit "**: general**".

26 Paragraph 125(1)(a)

Omit "(other than a condition set out in paragraph 109A(1)(g), (ga), (ia), (ib), (ic), (id), (ie), (if), (ij) or (j) or subsection 109A(2) or (3))".

27 Division 6A of Part 3.3

Repeal the Division.

28 Subsection 130(2B)

Repeal the subsection.

29 Subsection 131(1)

Omit "(1)".

30 Subsection 131(2)

Repeal the subsection.

31 Subsection 131AB(1)

Omit "sections 131AC and 131ACA", substitute "section 131AC".

32 Paragraph 131AB(3)(a)

Omit "Divisions 6 and 6A", substitute "Division 6".

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33 Section 131ACA

Repeal the section.

34 Paragraph 148(b)

Omit "or 128C".

35 Paragraph 148(c)

Omit "or 128D".

36 Division 1 of Part 5.6 (heading)

Repeal the heading.

37 Paragraph 285(eb)

Repeal the paragraph.

38 Paragraph 285(f)

Omit ", 109A(1)(k)".

39 Paragraph 285(ma)

Omit "otherwise than because of a decision under paragraph 131ACA(b)".

40 Division 2 of Part 5.6

Repeal the Division.

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Part 2—Other amendments

Australian Communications and Media Authority Act 2005

41 Subparagraph 9(h)(i)

Omit "(other than a provision of that Act covered by paragraph 10(1)(p))".

42 Paragraph 10(1)(p)

Repeal the paragraph.

Broadcasting Services Act 1992

43 Subsection 6(1) (note 1 to the definition of *associate*)

Repeal the note.

44 Subsection 6(1) (note 2 to the definition of *associate*)

Omit "2".

45 Subsection 6(1) (definition of *channel B datacasting transmitter licence*)

Repeal the definition.

46 Subsection 6(1) (definitions of *datacasting transmitter licence* and *domestic digital television receiver*)

Repeal the definitions.

47 Subsection 6(1) (definition of *licence*)

Repeal the definition, substitute:

> ***licence*** means a licence allocated by the ACMA under this Act (other than a class licence).

48 Subsection 6(1) (definition of *MDS system*)

Repeal the definition.

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49 Section 7 (note)

Repeal the note.

50 Part 5 (heading)

Repeal the heading, substitute:

Part 5—Control of commercial broadcasting licences

51 Section 51A

Repeal the section.

52 Subdivision A of Division 2 of Part 5 (heading)

Repeal the heading.

53 Subdivision B of Division 2 of Part 5

Repeal the Subdivision.

54 Subdivision A of Division 3 of Part 5 (heading)

Repeal the heading.

55 Subdivision B of Division 3 of Part 5

Repeal the Subdivision.

56 Subsection 63(1)

Omit "a commercial television broadcasting licensee, commercial radio broadcasting licensee or datacasting transmitter licensee", substitute "a commercial television broadcasting licensee or a commercial radio broadcasting licensee".

57 Subsection 63(5) (paragraph (a) of the penalty)

Omit ", a datacasting transmitter licence".

58 Subsection 66(1) (paragraph (e) of the penalty)

Omit "or datacasting transmitter licence".

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59 Section 69 (paragraph (a) of the penalty)

Omit "or datacasting transmitter licence".

60 Section 72 (paragraph (a) of the penalty)

Omit "or datacasting transmitter licence".

61 Paragraphs 74(1)(a) and (b)

Omit "a datacasting transmitter licence,".

62 Subsection 74(2)

Omit "the datacasting transmitter licence,".

63 Subsection 130A(7) (note 6)

Repeal the note.

64 Paragraph 130F(1)(h)

Repeal the paragraph.

65 Subsection 212(2B)

Repeal the subsection.

66 Subclause 1(1) of Schedule 1

Omit "datacasting transmitter licences,".

67 Subclause 1(2) of Schedule 1

Omit "and datacasting industries", substitute "industry".

68 Paragraph 2(1)(b) of Schedule 1

Omit "(other than a datacasting transmitter licence)".

69 Paragraph 2(1)(ba) of Schedule 1

Repeal the paragraph.

70 Subclause 2(2A) of Schedule 1

Repeal the subclause.

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71 Paragraph 4(2)(b) of Schedule 1

Omit "in the case of a licensee other than a datacasting transmitter licensee—".

72 Paragraph 4(2)(ba) of Schedule 1

Repeal the paragraph.

73 Subclause 4(4) of Schedule 1 (paragraph (bb) of the definition of *media company*)

Repeal the paragraph.

74 Clause 1 of Schedule 4

Omit "and datacasters".

75 Clause 42 of Schedule 4

Omit:

> • The owner or operator of a broadcasting transmission tower or a designated associated facility must provide a datacaster with access to the tower or facility.

76 Clause 42 of Schedule 4

Omit:

> • The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the site of the tower.

77 Clause 43 of Schedule 4 (definition of *datacaster*)

Repeal the definition.

78 Clause 43 of Schedule 4 (definition of *datacasting transmitter licence*)

Repeal the definition.

79 Subclauses 45(3) and (4) of Schedule 4

Repeal the subclauses.

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80 Subclause 45(5) of Schedule 4

Omit "or (3)" (wherever occurring).

81 Subclause 45(5) of Schedule 4

Omit ", as the case may be,".

82 Subclause 45(6) of Schedule 4

Omit "or (3)".

83 Subclauses 45A(4) and (5) of Schedule 4

Repeal the subclauses.

84 Subclause 45A(6) of Schedule 4

Omit "or (4)" (wherever occurring).

85 Subclause 45A(6) of Schedule 4

Omit ", as the case may be,".

86 Subclause 45A(7) of Schedule 4

Omit "or (4)".

87 Subclause 45A(9) of Schedule 4

Omit "from subclauses (2) and (4)", substitute "from subclause (2)".

88 Subclauses 46(3) and (4) of Schedule 4

Repeal the subclauses.

89 Subclause 46(5) of Schedule 4

Omit "or (3)" (wherever occurring).

90 Subclause 46(5) of Schedule 4

Omit ", as the case may be,".

91 Subclause 46(6) of Schedule 4

Omit "or (3)".

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92 Subclause 47(1) of Schedule 4

Omit "or (3)".

93 Subclause 47(1A) of Schedule 4

Omit "or (4)".

94 Subclause 47(2) of Schedule 4

Omit "or (3)".

95 Subclause 2(1) of Schedule 6 (definition of *nominated datacaster declaration*)

Repeal the definition.

96 Parts 6 and 7 of Schedule 6

Repeal the Parts.

97 Clause 58 of Schedule 6 (table items 6 and 7)

Repeal the items.

Competition and Consumer Act 2010

98 Subparagraph 155(2)(a)(ii)

Omit "4A or".

99 Paragraph 155(9)(d)

Omit "4A or".

100 Subsection 155AAA(21) (paragraph (d) of the definition of *protected information*)

Omit "118C, 118G,".

Income Tax Assessment Act 1997

101 Paragraph 40-30(2)(g)

Repeal the paragraph.

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102 Paragraph 40-70(2)(d)

Repeal the paragraph.

103 Paragraph 40-72(2)(d)

Repeal the paragraph.

104 Subsection 40-95(7) (table item 10)

Repeal the item.

105 Subsection 995-1(1) (definition of *datacasting transmitter licence*)

Repeal the definition.

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Part 3—Transitional provisions

106 Application—amendments of the *Income Tax Assessment Act 1997*

Despite the amendments of the *Income Tax Assessment Act 1997* made by this Schedule, the *Income Tax Assessment Act 1997* continues to apply, in relation to a datacasting transmitter licence that was in existence before the commencement of this item, as if those amendments had not been made.

107 Transitional—section 155 of the *Competition and Consumer Act 2010*

Section 155 of the *Competition and Consumer Act 2010* has effect, after the commencement of this item, as if:

(a) a matter that constitutes, or may constitute, a contravention of repealed Division 4A of Part 3.3 of the *Radiocommunications Act 1992* were a matter referred to in subsection (2) of that section; and

(b) a reference in that section to a designated communications matter included a reference to the performance of a function, or the exercise of a power, conferred on the Australian Competition and Consumer Commission by or under repealed Division 4A of Part 3.3 of the *Radiocommunications Act 1992*.

108 Transitional—section 155AAA of the *Competition and Consumer Act 2010*

Section 155AAA of the *Competition and Consumer Act 2010* has effect, after the commencement of this item, as if a reference in that section to protected information included a reference to information that was obtained by the Australian Competition and Consumer Commission under repealed section 118C or 118G of the *Radiocommunications Act 1992*.

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Schedule 10—Public inquiries

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Subsection 231(3)

Repeal the subsection.

2 Part 5.2

Repeal the Part.

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Part 2—Other amendments

Australian Communications and Media Authority Act 2005

3 Section 3 (definition of *inquiry*)

Repeal the definition, substitute:

> ***inquiry*** means an inquiry held, or proposed to be held, by the ACMA under Part 25 of the *Telecommunications Act 1997*.

4 Paragraph 4(2)(b)

Repeal the paragraph.

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Schedule 11—Duration of licences

Radiocommunications Act 1992

1 Subsection 65(3)

Omit "15 years", substitute "20 years".

2 Subsection 103(3)

Omit "5 years", substitute "20 years".

[*Minister's second reading speech made in—*
House of Representatives on 27 August 2020
Senate on 12 November 2020]

(101/20)

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