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**Council for Trade-Related Aspects
of Intellectual Property Rights**

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**MAIN DEDICATED INTELLECTUAL PROPERTY LAWS AND
REGULATIONS NOTIFIED UNDER ARTICLE 63.2
OF THE AGREEMENT**

AUSTRALIA

This document reproduces the text¹ of the Broadcasting Legislation Amendment (Digital Television) Act 2010, No. 94, 2010 - An Act to amend legislation relating to broadcasting, and for other purposes, as notified by Australia on 22 May 2013 under Article 63.2 of the Agreement (see document IP/N/1/AUS/5).

**Conseil des aspects des droits de propriété
intellectuelle qui touchent au commerce**

**PRINCIPALES LOIS ET RÉGLEMENTATIONS CONSACRÉES À
LA PROPRIÉTÉ INTELLECTUELLE NOTIFIÉES AU TITRE
DE L'ARTICLE 63:2 DE L'ACCORD**

AUSTRALIE

Le présent document contient le texte¹ de la Loi n° 94 de 2010 portant modification de la législation relative à la radiodiffusion (télévision numérique) – Modification de la législation relative à la radiodiffusion et autres objectifs, notifiée par l'Australie le 22 mai 2013 au titre de l'article 63:2 de l'Accord (voir le document IP/N/1/AUS/5).

**Consejo de los Aspectos de los Derechos de Propiedad
Intelectual relacionados con el Comercio**

**PRINCIPALES LEYES Y REGLAMENTOS DEDICADOS A LA
PROPIEDAD INTELECTUAL NOTIFICADOS EN VIRTUD
DEL PÁRRAFO 2 DEL ARTÍCULO 63 DEL ACUERDO**

AUSTRALIA

En el presente documento se reproduce el texto¹ de la Ley de 2010 que modifica la legislación relativa a la radiodifusión (televisión digital), N° 94, 2010 – Ley para modificar la legislación relativa a la radiodifusión y para otros fines, notificado por Australia el 22 de mayo de 2013 en virtud de lo dispuesto en el párrafo 2 del artículo 63 del Acuerdo (véase el documento IP/N/1/AUS/5).

¹ In English only./En anglais seulement./En inglés solamente.

PP 3-122 - Offset (Pdf file attached)
PP 3 à 122 - Offset (fichier Pdf joint)
PP 3-122 - Offset (fichero Pdf adjunto)



Broadcasting Legislation Amendment (Digital Television) Act 2010

No. 94, 2010

**An Act to amend legislation relating to
broadcasting, and for other purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)

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Broadcasting Legislation Amendment (Digital Television) Act 2010

No. 94, 2010

An Act to amend legislation relating to broadcasting, and for other purposes

[Assented to 29 June 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Legislation Amendment
(Digital Television) Act 2010*.

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
Provision(s)	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.	29 June 2010
2. Schedule 1	The day after this Act receives the Royal Assent.	30 June 2010

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

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

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

Schedule 1—Amendments

Broadcasting Services Act 1992

1 Subsection 6(1) (before paragraph (a) of the definition of commercial television broadcasting licence)

Insert:

- (aa) in the case of a licence allocated under section 38C—the commercial television broadcasting services that, under section 41CA, are authorised by the licence; or

2 Subsection 6(1)

Insert:

conditional access scheme means a scheme that sets out rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C.

3 Subsection 6(1) (at the end of the definition of core commercial television broadcasting service)

Add:

Note: There is no core commercial television broadcasting service in relation to a licence allocated on or after 1 January 2009. This is because core commercial television broadcasting services are certain services authorised by licences allocated before 1 January 2009.

4 Subsection 6(1)

Insert:

core/primary commercial television broadcasting service, in relation to a commercial television broadcasting licence, means:

- (a) if a core commercial television broadcasting service is provided under the licence—that service; or
- (b) if a primary commercial television broadcasting service (within the meaning of Schedule 4) is provided under the licence—that service.

4A Subsection 6(1)

Schedule 1 Amendments

Insert:

final digital television switch-over day has the meaning given by section 8AE.

5 Subsection 6(1) (definition of *licence area*)

Repeal the definition, substitute:

licence area means:

- (a) an area designated by the ACMA under section 29, 40 or 92G; or
- (b) an area specified in column 1 of the table in subsection 38C(1).

Note 1: See also section 8AD, which deals with deemed radio broadcasting licence areas.

Note 2: See also section 8 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, which deals with deemed licence areas.

6 Subsection 6(1)

Insert:

reception certificate means a reception certificate issued under a conditional access scheme registered under Part 9C.

7 Subsection 6(1)

Insert:

scheme administrator has the meaning given by subsection 130ZB(8).

7A After section 8AD

Insert:

8AE Final digital television switch-over day

- (1) For the purposes of this Act, the *final digital television switch-over day* is the last switch-over day.
- (2) For the purposes of subsection (1), the last day of a simulcast period is a *switch-over day*.

(3) In this section:

simulcast period has the same meaning as in Schedule 4.

8 Section 14

Before “Commercial broadcasting services”, insert “(1)”.

9 At the end of section 14

Add:

(2) For the purposes of the application of subsection (1) to a broadcasting service provided under a licence allocated under section 38C, assume that there is no conditional access system that relates to the broadcasting service.

10 At the end of section 29

Add:

(3) This section does not apply to a licence allocated under section 38C.

11 Before section 35A

Insert:

Division 1—Allocation of licences

12 Paragraph 37(1)(a)

Omit “formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

13 After paragraph 38A(1)(a)

Insert:

(aa) the parent licence is not a licence allocated under section 38C; and

14 Paragraph 38B(1)(b)

Repeal the paragraph.

15 At the end of paragraph 38B(1)(c)

Schedule 1 Amendments

Add “and”.

16 After paragraph 38B(1)(c)

Insert:

- (ca) the ACMA, by notice published in the *Gazette*, invites:
 - (i) the existing licensees to give the ACMA a joint written notice under paragraph (d); and
 - (ii) each existing licensee to give the ACMA a written notice under paragraph (e);
- during the period specified in the notice;

17 Subsection 38B(1)

Omit “90 days after the designated time for the licence area”, substitute “the period specified in the paragraph (ca) notice”.

18 Subparagraph 38B(1)(d)(iii)

Omit “formed in Australia or an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

19 After subsection 38B(1)

Insert:

(1A) A notice under paragraph (1)(ca) is not a legislative instrument.

20 Subsections 38B(2) and (3)

Omit “designated time for the licence area”, substitute “notice is given”.

21 Paragraphs 38B(7)(b) and (8)(b)

Omit “designated time for the licence area”, substitute “time when the notice is given”.

22 Paragraphs 38B(18)(b) and (c)

After “if”, insert “the licence was allocated before the commencement of section 38C and”.

23 At the end of subsection 38B(19)

Add “before the commencement of section 38C”.

24 After subsection 38B(19)

Insert:

(19A) Paragraphs 7(1)(l) and (m) of Schedule 2 do not apply to an additional licence allocated under this section after the commencement of section 38C.

25 Subsections 38B(26), (27) and (28)

Repeal the subsections.

26 After section 38B

Insert:

38C Commercial television broadcasting licences—services provided with the use of a satellite

(1) The following table has effect:

Licence areas and eligible joint venturers			
	Column 1	Column 2	Column 3
Item	Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section	Description of the licence area	Eligible joint venturers for the licence area
1	South Eastern Australia TV3	The area consisting of New South Wales, Victoria, South Australia, Tasmania, the Australian Capital Territory and the Jervis Bay Territory.	The commercial television broadcasting licensees for the following licence areas: (a) Remote Central and Eastern Australia TV1; (b) Remote Central and Eastern Australia TV2; (c) Mt Isa TV1.
2	Northern Australia TV3	The area consisting of Queensland and the	The commercial television broadcasting

Schedule 1 Amendments

Licence areas and eligible joint venturers			
Item	Column 1	Column 2	Column 3
	Licence area for a commercial television broadcasting licence allocated, or to be allocated, under this section	Description of the licence area	Eligible joint venturers for the licence area
		Northern Territory.	licensees for the following licence areas: (a) Remote Central and Eastern Australia TV1; (b) Remote Central and Eastern Australia TV2; (c) Mt Isa TV1.
3	Western Australia TV3	The area consisting of Western Australia.	The commercial television broadcasting licensees for the following licence areas: (a) Remote and Regional WA TV1; (b) Western Zone TV1; (c) Kalgoorlie TV1; (d) Geraldton TV1; (e) South West and Great Southern TV1.

Joint-venture company

- (2) Two or more of the eligible joint venturers for a licence area specified in column 1 of the table in subsection (1) may, during whichever of the following periods is applicable:
- (a) in the case of the South Eastern Australia TV3 licence area—the 28-day period beginning at the commencement of this section;
 - (b) otherwise—the period:

- (i) beginning at the commencement of this section; and
- (ii) ending 6 months before the start of the earliest applicable terrestrial digital television switch-over date for the licence area;

give the ACMA a joint written notice stating that:

- (c) a company specified in the notice (the **joint-venture company**) will apply under subsection (3) for a commercial television broadcasting licence for the licence area; and
- (d) the joint-venture company is registered as a company under Part 2A.2 of the *Corporations Act 2001* and has a share capital.

Application by joint-venture company

- (3) If a notice is given under subsection (2) in relation to a licence area specified in column 1 of the table in subsection (1), the joint-venture company must:
 - (a) apply in writing to the ACMA for a commercial television broadcasting licence for the licence area; and
 - (b) do so within 28 days after the notice is given.

Allocation of licence to joint-venture company

- (4) If the ACMA receives an application under subsection (3) that relates to a licence area, the ACMA must:
 - (a) allocate a commercial television broadcasting licence to the joint-venture company for the licence area; and
 - (b) do so within 28 days after the application is received.
- (5) Subsection (4) has effect subject to section 37.

Special purpose company

- (6) If no notice is given under subsection (2) in relation to a licence area specified in column 1 of the table in subsection (1), an eligible joint venturer for the licence area may, within 28 days after the end of whichever of the periods mentioned in paragraphs (2)(a) and (b) is applicable, give the ACMA a written notice stating that:
 - (a) a company specified in the notice (the **special purpose company**) will apply under subsection (7) for a commercial television broadcasting licence for the licence area; and

Schedule 1 Amendments

- (b) the special purpose company is a wholly-owned subsidiary of the eligible joint venturer; and
- (c) the special purpose company is registered as a company under Part 2A.2 of the *Corporations Act 2001* and has a share capital.

Application by special purpose company

- (7) If a notice is given under subsection (6), the special purpose company must:
 - (a) apply in writing to the ACMA for a commercial television broadcasting licence for the licence area specified in the notice; and
 - (b) do so within 28 days after the notice is given.

Allocation of licence to special purpose company

- (8) If only one special purpose company makes an application under subsection (7) in relation to a licence area specified in column 1 of the table in subsection (1), the ACMA must:
 - (a) allocate a commercial television broadcasting licence to the special purpose company for the licence area; and
 - (b) do so within 28 days after the application is received.
- (9) If the ACMA receives applications from 2 or more special purpose companies under subsection (7) in relation to a licence area specified in column 1 of the table in subsection (1), the ACMA must allocate a commercial television broadcasting licence to one of those companies for the licence area in accordance with a price-based system determined under subsection (11).
- (10) Subsections (8) and (9) have effect subject to section 37.

Price-based system for allocating licences where 2 or more applications have been received.

- (11) The ACMA may, by written instrument, determine a price-based system for allocating commercial television broadcasting licences under subsection (9).
- (12) A instrument made under subsection (11) is not a legislative instrument.

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- (13) The Minister may, by legislative instrument, give specific directions to the ACMA in relation to the power conferred by subsection (11). Directions may be to include in a determination specified reserve prices for licences, and those reserve prices may be different for licences in different licence areas.
- (14) If a commercial television broadcasting licence is allocated under subsection (9), the ACMA must, unless the price-based allocation system adopted was public, publish in the *Gazette*:
- (a) the name of the successful applicant; and
 - (b) the amount that the applicant agreed to pay to the Commonwealth for the allocation of the licence.

Cancellation of licence—services not provided

- (15) If:
- (a) the licensee of a licence allocated under this section is contravening a licence condition set out in:
 - (i) clause 7B of Schedule 2; or
 - (ii) clause 7C of Schedule 2; and
 - (b) the ACMA is satisfied that the contravention is not due to:
 - (i) technical circumstances that are beyond the licensee's control; or
 - (ii) unforeseen circumstances that are beyond the licensee's control; or
 - (iii) circumstances specified in the regulations; and
 - (c) the ACMA gives the licensee a written notice warning the licensee that, if the contravention continues for 30 days, the licence may be cancelled; and
 - (d) 30 days pass after the notice is given, and the contravention continues;
- the ACMA must, by written notice given to the licensee, cancel the licence.
- (16) The cancellation takes effect:
- (a) when the notice of cancellation is given to the licensee; or
 - (b) if a later time is specified in the notice of cancellation—at that later time.

Schedule 1 Amendments

Allocation of licence after cancellation etc.

- (17) If:
- (a) the ACMA gives a notice under subsection (15) to a licensee, cancelling the licence for a licence area; or
 - (b) both:
 - (i) no notice is given under subsection (2) in relation to a licence area; and
 - (ii) no notice is given under subsection (6) in relation to a licence area; or
 - (c) a joint-venture company for a licence area contravenes subsection (3); or
 - (d) both:
 - (i) there is only one special purpose company for a licence area; and
 - (ii) the special purpose company contravenes subsection (7); or
 - (e) both:
 - (i) there are 2 or more special purpose companies for a licence area; and
 - (ii) each of those special purpose companies contravene subsection (7);
- the ACMA must, within 45 days after:
- (f) if paragraph (a) applies—the giving of the notice; or
 - (g) if paragraph (b) applies—the the last day on which a notice could have been given under subsection (6) in relation to the licence area; or
 - (h) if paragraph (c), (d) or (e) applies—the contravention;
- advertise, in a manner determined by the ACMA, for applications for a licence to be allocated under subsection (23) for the licence area.
- (18) Before commencing to advertise under subsection (17), the ACMA must, by legislative instrument, determine the eligibility requirements that must be met by persons applying for a licence in response to such an advertisement.
- (19) The eligibility requirements determined under subsection (18) must include that the applicant has the capacity to provide the services that the licensee will be required to provide under clauses 7B, 7C
-

and 7D of Schedule 2. This subsection does not limit other eligibility requirements that may be determined under subsection (18).

- (20) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers under subsection (18).
- (21) The ACMA must include in an advertisement under subsection (17):
- (a) a description of the matter mentioned in the applicable paragraph of subsection (17); and
 - (b) the date on or before which applications must be received by the ACMA (the *applications closing date*); and
 - (c) a statement specifying how details of:
 - (i) the licence area for the licence; and
 - (ii) the eligibility requirements; and
 - (iii) the conditions that will apply to the licence; may be obtained.
- (22) The applications closing date must be the 90th day after the day of publication of the first advertisement under subsection (17) that describes the contravention or cancellation concerned.
- (23) If:
- (a) in response to an advertisement under subsection (17), the ACMA receives one or more applications for a licence; and
 - (b) the applications were received on or before the applications closing date specified in the advertisement; and
 - (c) the ACMA is satisfied that one or more of the applicants meets the eligibility requirements;
- the ACMA must:
- (d) allocate the licence to one of the applicants referred to in paragraph (c); and
 - (e) do so within 90 days after the applications closing date.
- (24) Subsection (23) has effect subject to section 37.

Restrictions on transfer of licences

- (25) During the period of 2 years after the date of allocation of a licence under this section, any attempt by any person to transfer the licence is of no effect.

Schedule 1 Amendments

Definitions

(26) In this section:

applicable terrestrial digital television switch-over date has the same meaning as in clause 7H of Schedule 2.

wholly-owned subsidiary has the same meaning as in the *Corporations Act 2001*.

27 After section 41

Insert:

Division 2—Services authorised by licences**28 After subsection 41B(1)**

Insert:

(1A) Subsection (1) does not apply, after the commencement of section 38C, to:

- (a) an eligible parent licence; or
- (b) an eligible section 38A licence.

Note 1: For *eligible parent licence*, see subsection (2E).

Note 2: For *eligible section 38A licence*, see subsection (2E).

Note: The heading to subsection 41B(1) is altered by adding at the end “—*general*”.

29 After subsection 41B(2)

Insert:

(2A) Subsection (2) does not apply, after the commencement of section 38C, to:

- (a) an eligible parent licence; or
- (aa) an eligible section 38A licence; or
- (b) an eligible section 38B licence.

Note 1: For *eligible parent licence*, see subsection (2E).

Note 1A: For *eligible section 38A licence*, see subsection (2E).

Note 2: For *eligible section 38B licence*, see subsection (2E).

Eligible parent licences in force immediately before 1 January 2009

(2B) If:

- (a) an eligible parent licence for a licence area was in force immediately before 1 January 2009; and
- (b) the eligible parent licence authorised the licensee to provide the following 3 services in the licence area:
 - (i) the core commercial television broadcasting service;
 - (ii) a HDTV multi-channelled commercial television broadcasting service;
 - (iii) a SDTV multi-channelled commercial television broadcasting service;

the eligible parent licence is taken to authorise the licensee to provide the following services in the licence area:

- (c) the core commercial television broadcasting service;
- (d) either:
 - (i) a HDTV multi-channelled commercial television broadcasting service and a SDTV multi-channelled commercial television broadcasting service; or
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Note: For *eligible parent licence*, see subsection (2E).

Eligible parent licences allocated on or after 1 January 2009

(2C) If an eligible parent licence for a licence area is allocated on or after 1 January 2009 but before the end of whichever of the following periods is applicable:

- (a) the simulcast period for the licence area;
- (b) the simulcast-equivalent period for the licence area;

the eligible parent licence is taken to authorise the licensee to provide:

- (c) the following services in the licence area:
 - (i) a HDTV multi-channelled commercial television broadcasting service;
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services; or
-

Schedule 1 Amendments

- (d) 3 SDTV multi-channelled commercial television broadcasting services in the licence area;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Note: For *eligible parent licence*, see subsection (2E).

Eligible section 38A licences in force immediately before 1 January 2009

(2CA) If:

- (a) an eligible section 38A licence for a licence area was in force immediately before 1 January 2009; and
- (b) the eligible section 38A licence authorised the licensee to provide the following 3 services in the licence area:
- (i) the core commercial television broadcasting service;
 - (ii) a HDTV multi-channelled commercial television broadcasting service;
 - (iii) a SDTV multi-channelled commercial television broadcasting service;

the eligible section 38A licence is taken to authorise the licensee to provide the following services in the licence area:

- (c) the core commercial television broadcasting service;
- (d) either:
- (i) a HDTV multi-channelled commercial television broadcasting service and a SDTV multi-channelled commercial television broadcasting service; or
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Note: For *eligible section 38A licence*, see subsection (2E).

Eligible section 38A licences allocated on or after 1 January 2009

(2CB) If an eligible section 38A licence for a licence area is allocated on or after 1 January 2009 but before the end of whichever of the following periods is applicable:

- (a) the simulcast period for the licence area;
- (b) the simulcast-equivalent period for the licence area;

the eligible section 38A licence is taken to authorise the licensee to provide:

- (c) the following services in the licence area:
 - (i) a HDTV multi-channelled commercial television broadcasting service;
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services; or
- (d) 3 SDTV multi-channelled commercial television broadcasting services in the licence area;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Note: For *eligible section 38A licence*, see subsection (2E).

Eligible section 38B licences

(2D) If an eligible section 38B licence for a licence area is allocated before the end of whichever of the following periods is applicable:

- (a) the simulcast period for the licence area;
- (b) the simulcast-equivalent period for the licence area;

the eligible section 38B licence authorises the licensee to provide:

- (c) the following services in the licence area:
 - (i) a HDTV multi-channelled commercial television broadcasting service;
 - (ii) 2 SDTV multi-channelled commercial television broadcasting services; or
- (d) 3 SDTV multi-channelled commercial television broadcasting services in the licence area;

during the simulcast period, or the simulcast-equivalent period, as the case may be, for the licence area.

Note: For *eligible section 38B licence*, see subsection (2E).

Eligible parent licence, eligible section 38A licence and eligible section 38B licence

(2E) For the purposes of this section, if:

- (a) a person (the *original licensee*) is or was the licensee of a commercial television broadcasting licence (other than a commercial television broadcasting licence allocated under section 38A or subsection 38B(6), (7), (8) or (9)); and

Schedule 1 Amendments

-
- (b) the original licensee is or was allocated an additional commercial television broadcasting licence under section 38A; and
 - (c) after the commencement of section 38C, the original licensee is allocated an additional commercial television broadcasting licence under subsection 38B(6), (7), (8) or (9); and
 - (d) at a particular time, the licences mentioned in paragraphs (a), (b) and (c) are held by the same person (whether or not that person is the original licensee);

then, at that time:

- (e) the licence mentioned in paragraph (a) is an *eligible parent licence*; and
- (f) the licence mentioned in paragraph (b) is an *eligible section 38A licence*; and
- (g) the licence mentioned in paragraph (c) is an *eligible section 38B licence*.

30 Subsection 41B(3)

After “under”, insert “section 38C or”.

Note: The heading to subsection 41B(3) is altered by inserting “*section 38C or*” after “*under*”.

31 Subsection 41C(3)

After “under”, insert “section 38C or”.

Note: The heading to subsection 41C(3) is altered by inserting “*section 38C or*” after “*under*”.

32 After section 41C

Insert:

41CA Services authorised by commercial television broadcasting licences allocated under section 38C*Authorised services*

- (1) A licence allocated under section 38C authorises the licensee to provide the following commercial television broadcasting services in the licence area:
 - (a) if a commercial television broadcasting licensee (a *related terrestrial licensee*) for a related terrestrial licence area provides a HDTV multi-channelled commercial television

broadcasting service in the related terrestrial licence area—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(b) if:

- (i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and
- (ii) the service is not the core/primary commercial television broadcasting service provided by the related terrestrial licensee;

a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(c) if:

- (i) a commercial television broadcasting licensee (a ***related terrestrial licensee***) for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service in the related terrestrial licence area; and
- (ii) the service is the core/primary commercial television broadcasting service provided by the related terrestrial licensee;

a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the related terrestrial licensee;

(d) if a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service in the metropolitan licence area—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;

(e) if:

Schedule 1 Amendments

- (i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and
 - (ii) the service is not the core/primary commercial television broadcasting service provided by the metropolitan licensee;
a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;
- (f) if:
- (i) a commercial television broadcasting licensee (a ***metropolitan licensee***) for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service in the metropolitan licence area; and
 - (ii) the service is the core/primary commercial television broadcasting service provided by the metropolitan licensee;
a commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the metropolitan licensee;
- (g) one or more SDTV multi-channelled commercial television broadcasting services the program content of which consists wholly or primarily of programs provided, or required to be provided, to the licensee under subsection 43AA(1).

Program content

- (2) In determining, for the purposes of this section, whether the program content of a commercial television broadcasting service provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service:
- (a) ignore the following:
 - (i) advertising or sponsorship material (whether or not of a commercial kind);
 - (ii) a promotion for a television program or a television broadcasting service;
-

- (iii) community information material or community promotional material;
 - (iv) a weather bulletin;
 - (v) any other similar material; and
 - (b) ignore a news program; and
 - (c) ignore any program the broadcasting of which in any jurisdiction in the licence area could result in the licensee:
 - (i) committing an offence; or
 - (ii) becoming liable to a civil penalty; or
 - (iii) breaching an order or direction of a court; or
 - (iv) being in contempt of court; and
 - (d) ignore a program broadcast in circumstances specified in the regulations.
- (3) In determining, for the purposes of:
- (a) paragraph (1)(c); or
 - (b) paragraph (1)(f);
- whether the program content of a commercial television broadcasting service provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service, assume that a program that provides coverage of an anti-siphoning event is the same as a program that provides coverage of another anti-siphoning event.
- (4) Subsection (3) does not limit subsection (2).

SDTV multi-channelled commercial television broadcasting service

- (5) For the purposes of subsection (1), assume that paragraph 5A(1)(d) of Schedule 4 had not been enacted.

Definitions

- (6) In this section:

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

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

- (a) New South Wales; or

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- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

related terrestrial licence area:

- (a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
- (b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
- (c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

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

33 After section 41D

Insert:

Division 3—Licence conditions**34 Paragraph 42(1)(a)**

After “set out in”, insert “Division 1 of”.

35 After subsection 42(1)

Insert:

- (1A) Each commercial television broadcasting licence allocated under section 38C is also subject to the conditions set out in Division 2 of Part 3 of Schedule 2.

41 After section 43A

Insert:

43AA Local news to be provided to section 38C licensees by regional commercial television broadcasting licensees

- (1) A commercial television broadcasting licence for a regional licence area is subject to the condition that, if:
- (a) the licensee broadcasts a local news program in the licence area; and
 - (aa) the licensee has not previously broadcast the program in the licence area; and
 - (b) the licence area is wholly or partly included in the licence area of a licence allocated under section 38C;
- the licensee of the regional commercial television broadcasting licence must:
- (c) provide the local news program to the licensee of the section 38C licence for broadcast by the section 38C licensee; and
 - (d) do so:
 - (i) simultaneously with the broadcast of the program by the licensee of the regional commercial television broadcasting licence; or
 - (ii) as soon as practicable after the broadcast of the program by the licensee of the regional commercial television broadcasting licence.
- (2) A program must be provided under subsection (1) by transmitting it in digital mode (within the meaning of Schedule 4).
- (3) If:
- (a) apart from this subsection, a commercial television broadcasting licensee for a regional licence area (the **regional licensee**) is required by subsection (1) to provide a program to the licensee of a commercial television broadcasting licence allocated under section 38C; and
 - (b) the regional licensee believes, on reasonable grounds, that the broadcasting of a part of the program in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:
 - (i) committing an offence; or
 - (ii) becoming liable to a civil penalty; or

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(iii) breaching an order or direction of a court; or

(iv) being in contempt of court;

subsection (1) has effect as if the program did not include that part of the program.

(3A) If:

(a) apart from this subsection, a commercial television broadcasting licensee for a regional licence area (the ***regional licensee***) is required by subsection (1) to provide a program to the licensee of a commercial television broadcasting licence allocated under section 38C; and

(b) the regional licensee believes, on reasonable grounds, that the broadcasting of the program in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:

(i) committing an offence; or

(ii) becoming liable to a civil penalty; or

(iii) breaching an order or direction of a court; or

(iv) being in contempt of court;

subsection (1) does not apply to the program.

(3B) A commercial television broadcasting licence for a regional licence area is subject to the condition that, if:

(a) the licensee broadcasts a local news program in the licence area on 2 or more occasions; and

(b) the licence area is wholly or partly included in the licence area of a licence allocated under section 38C;

the licensee of the regional commercial television broadcasting licence will take reasonable steps to ensure that the licensee of the regional commercial television broadcasting licence does not, on more than one occasion, provide the program to the section 38C licensee for broadcast by the section 38C licensee.

(6) This section does not apply to a commercial television broadcasting licence allocated under subsection 40(1).

(7) In this section:

local news program means:

(a) a program that consists solely of local news and/or local weather information; or

- (b) a program:
 - (i) that consists primarily of local news and/or local weather information; and
 - (ii) the remainder of which consists of other news and/or other weather information;

but does not include:

- (c) a short segment, or a headline update, that is broadcast for the sole or primary purpose of promoting another program; or
- (d) a short segment, or a headline update, that repeats news content that has previously been broadcast by the licensee concerned.

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

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

regional licence area means a licence area that is not a metropolitan licence area, but does not include:

- (a) the licence area of a commercial television broadcasting licence allocated under section 38C; or
- (b) a licence area specified in column 3 of the table in subsection 38C(1).

43AB Commercial television programs to be provided to section 38C licensees by metropolitan commercial television broadcasting licensees

Programs to be provided by metropolitan licensees

- (1) A commercial television broadcasting licence for a metropolitan licence area is subject to the condition that, if:
 - (a) the licensee (the ***metropolitan licensee***) broadcasts a program in a metropolitan licence area on either of the following services (a ***metropolitan service***):

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-
- (i) a HDTV multi-channelled commercial television broadcasting service;
 - (ii) a SDTV multi-channelled commercial television broadcasting service; and
 - (b) before the program is broadcast, a section 38C licensee requests the metropolitan licensee to provide the section 38C licensee with the programs broadcast on the metropolitan service;
- the metropolitan licensee must:
- (c) provide the program to the section 38C licensee for broadcast by the section 38C licensee; and
 - (d) do so:
 - (i) simultaneously with the broadcast of that program on the metropolitan service; or
 - (ii) as soon as practicable after the broadcast of that program on the metropolitan service.

HDTV digital mode or SDTV digital mode

- (2) A program must be provided under subsection (1) by transmitting it:
 - (a) if subparagraph (1)(a)(i) applies—in HDTV digital mode (within the meaning of Schedule 4); or
 - (b) if subparagraph (1)(a)(ii) applies—in SDTV digital mode (within the meaning of Schedule 4).

SDTV multi-channelled commercial television broadcasting service

- (3) For the purposes of subsection (1), assume that paragraph 5A(1)(d) of Schedule 4 had not been enacted.

Definitions

- (4) In this section:

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

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

- (a) New South Wales; or
-

- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

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

section 38C licensee means the licensee of a commercial television broadcasting licence allocated under section 38C.

43AC Commercial television programs to be provided to section 38C licensees by remote terrestrial licensees

Scope

- (1) This section applies if the licence area of a commercial television broadcasting licence (the ***remote terrestrial licence***) is a related terrestrial licence area of a licence allocated under section 38C.

Programs to be provided by remote terrestrial licensees

- (2) The remote terrestrial licence is subject to the condition that, if the licensee broadcasts a program in the related terrestrial licence area on either of the following services (a ***remote terrestrial service***):
 - (a) a HDTV multi-channelled commercial television broadcasting service;
 - (b) a SDTV multi-channelled commercial television broadcasting service;

the licensee of the remote terrestrial licence must:

- (c) provide the program to the section 38C licensee for broadcast by the section 38C licensee; and
- (d) do so:
 - (i) simultaneously with the broadcast of that program on the remote terrestrial service; or
 - (ii) as soon as practicable after the broadcast of that program on the remote terrestrial service.

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HDTV digital mode or SDTV digital mode

- (3) A program must be provided under subsection (2) by transmitting it:
- (a) if paragraph (2)(a) applies—in HDTV digital mode (within the meaning of Schedule 4); or
 - (b) if paragraph (2)(b) applies—in SDTV digital mode (within the meaning of Schedule 4).

SDTV multi-channelled commercial television broadcasting service

- (4) For the purposes of subsection (2), assume that paragraph 5A(1)(d) of Schedule 4 had not been enacted.

Definitions

- (5) In this section:

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

related terrestrial licence area:

- (a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
- (b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
- (c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

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

section 38C licensee means the licensee of a commercial television broadcasting licence allocated under section 38C.

43AD Compensation for acquisition of property

- (1) If the operation of:
 - (b) section 43AA; or
 - (c) section 43AB; or
 - (d) section 43AC;in relation to the provision of a program to the licensee of a commercial television broadcasting licence would result in an acquisition of property from a person otherwise than on just terms, the licensee is liable to pay a reasonable amount of compensation to the person.
- (2) If the licensee and the person do not agree on the amount of the compensation, the person may institute proceedings in a court of competent jurisdiction for the recovery from the licensee of such reasonable amount of compensation as the court determines.
- (3) In this section:

acquisition of property has the same meaning as in paragraph 51(xxxi) of the Constitution.

just terms has the same meaning as in paragraph 51(xxxi) of the Constitution.

42 After section 44

Insert:

Division 4—General provisions

43 Section 45

Before “Subject to”, insert “(1)”.

44 Section 45

After “commercial television broadcasting licences”, insert “(other than commercial television broadcasting licences allocated under section 38C)”.

45 At the end of section 45

Add:

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(2) A commercial television broadcasting licence allocated under section 38C remains in force for 10 years.

(3) Subsection (2) has effect subject to:

(a) subsection 38C(15); and

(b) Part 10.

46 Section 50A

After “allocated under”, insert “section 38C or”.

Note: The heading to section 50A is altered by inserting “**section 38C or**” after “**allocated under**”.

47 Section 61AA (definition of *core/primary commercial television broadcasting service*)

Repeal the definition.

48 Section 61AA (definition of *primary commercial television broadcasting service*)

Repeal the definition.

49 Paragraph 95(1)(a)

Omit “a company that is formed in Australia or in an external Territory”, substitute “a company that is registered under Part 2A.2 of the *Corporations Act 2001*”.

50 Subsection 98D(2)

After “this Act”, insert “(other than section 43AA, section 43AB or section 43AC)”.

51 Paragraphs 121FB(1)(a) and (2)(a)

Omit “a company that is formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

52 Paragraph 121FLC(1)(c)

Omit “a company that is formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

53 Paragraph 121FLG(1)(c)

Omit “a company that is formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

54 Subparagraph 121FLH(1)(c)(i)

Omit “a company that is formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

55 Subparagraph 121FLH(1)(c)(ii)

Omit “a company that is formed in Australia or in an external Territory”, substitute “a company that is registered under Part 2A.2 of the *Corporations Act 2001*”.

56 Paragraph 121FLH(2)(c)

Omit “a company that is formed in Australia or in an external Territory”, substitute “registered as a company under Part 2A.2 of the *Corporations Act 2001*”.

57 Subsections 122(7) and (8)

Repeal the subsections, substitute:

- (7) Standards under subsection (1) do not apply to a commercial television broadcasting service provided by a commercial television broadcasting licensee before the end of the final digital television switch-over day, unless that service is the core/primary commercial television broadcasting service provided by the licensee.

58 Subsection 122(9)

Omit “section 36 or”.

59 Subsection 122(10)

Repeal the subsection.

61A After section 123A

Insert:

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123B Review by the ACMA—application of code of practice to section 38C licences*Scope*

- (1) This section applies if:
 - (a) a code of practice (the *original code*) is registered under section 123; and
 - (b) the code applies to the broadcasting operations of commercial television broadcasting licensees.

Review of original code

- (2) The ACMA may conduct a review of whether the original code is appropriate in its application to the broadcasting operations of licensees of commercial television broadcasting licences allocated under section 38C.

Request for development of replacement code

- (3) If the ACMA:
 - (a) conducts a review of the original code under subsection (2); and
 - (b) considers that the original code is not appropriate in its application to the broadcasting operations of licensees of commercial television broadcasting licences allocated under section 38C;the ACMA may, by written notice given to the industry group that developed the original code:
 - (c) request the industry group to:
 - (i) develop another code of practice (the *replacement code*) that is expressed to replace the original code; and
 - (ii) give a copy of the replacement code to the ACMA within the period specified in the notice; and
 - (d) specify particular matters that, in the ACMA's opinion, should be addressed in the replacement code.

62 After section 130AB

Insert:

130AC Technical standards for digital transmission of television services provided with the use of a satellite

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to the transmission in digital mode of either or both of the following services:
 - (a) commercial television broadcasting services provided under a licence allocated under section 38C;
 - (b) national television broadcasting services provided with the use of a satellite.

Instruments

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

Compliance

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

Note: For compliance by holders of commercial television broadcasting licences, see paragraph 7A(1)(d) of Schedule 2.

Definitions

- (4) In this section:

digital mode has the same meaning as in Schedule 4.

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

63 At the end of Part 9A

Add:

130BB Technical standards for domestic digital reception equipment—television services provided with the use of a satellite

- (1) The ACMA may, by legislative instrument, determine technical standards that relate to domestic reception equipment that is

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capable of receiving any or all of the following services transmitted in digital mode:

- (a) commercial television broadcasting services provided under a licence allocated under section 38C;
- (b) national television broadcasting services provided with the use of a satellite;
- (c) community television broadcasting services provided with the use of a satellite;
- (d) open narrowcasting television services provided with the use of a satellite.

Offence

- (2) A person commits an offence if:
- (a) the person supplies equipment; and
 - (b) the equipment is domestic reception equipment; and
 - (c) the equipment is capable of receiving any or all of the following services transmitted in digital mode:
 - (i) commercial television broadcasting services provided under a licence allocated under section 38C;
 - (ii) national television broadcasting services provided with the use of a satellite;
 - (iii) community television broadcasting services provided with the use of a satellite;
 - (iv) open narrowcasting television services provided with the use of a satellite; and
 - (d) the equipment does not comply with a standard determined under subsection (1).

Penalty: 1,500 penalty units.

Civil penalty

- (3) A person must not supply domestic reception equipment if:
- (a) the equipment is capable of receiving any or all of the following services transmitted in digital mode:
 - (i) commercial television broadcasting services provided under a licence allocated under section 38C;
 - (ii) national television broadcasting services provided with the use of a satellite;

-
- (iii) community television broadcasting services provided with the use of a satellite;
 - (iv) open narrowcasting television services provided with the use of a satellite; and
 - (b) the equipment does not comply with a standard determined under subsection (1).
- (4) Subsection (3) is a civil penalty provision.

Instruments

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

Reception of television services provided with the use of a satellite

- (6) For the purposes of this section, it is immaterial whether domestic reception equipment is capable of receiving any or all of the following transmitted in digital mode:
- (a) commercial television broadcasting services provided under a licence allocated under section 38C;
 - (b) national television broadcasting services provided with the use of a satellite;
 - (ba) community television broadcasting services provided with the use of a satellite;
 - (bb) open narrowcasting television services provided with the use of a satellite;
- when used:
- (c) in isolation; or
 - (d) in conjunction with any other equipment.

Ministerial direction

- (6A) The Minister may, by legislative instrument, direct the ACMA about the exercise of its powers to:
- (a) determine technical standards under subsection (1); or
 - (b) vary technical standards determined under subsection (1).
- (6B) The ACMA must comply with a direction under subsection (6A).

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Exemptions

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

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

Definitions

- (8) In this section:

community television broadcasting service means a community broadcasting service that provides television programs.

digital mode has the same meaning as in Schedule 4.

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

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

64 After Part 9B

Insert:

**Part 9C—Access to commercial television
broadcasting services provided with the use
of a satellite****130ZBA Simplified outline**

The following is a simplified outline of this Part:

- A conditional access scheme is a scheme that sets out rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C.
- The ACMA may register a conditional access scheme developed by a body or association that represents commercial television broadcasting licensees.

-
- If no conditional access scheme is developed by a body or association that represents commercial television broadcasting licensees, the ACMA may formulate and register a conditional access scheme.

Note: Under paragraph 7A(1)(c) of Schedule 2, it is a condition of a licence allocated under section 38C that the licensee will ensure that any conditional access system relating to the services provided under the licence will comply with any conditional access scheme registered under this Part.

130ZB Objectives of conditional access scheme

Scope

- (1) This section applies to a commercial television broadcasting licence allocated under section 38C.

Objectives

- (2) A conditional access scheme for the section 38C licence area complies with this section if the scheme is directed towards the achievement of the objectives set out in this section.
- (3) The first objective is that:
 - (a) the scheme should specify the related terrestrial licence areas as areas that are taken to be areas (***category A reception areas***) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services; and
 - (b) if a terrestrial licensee for a related terrestrial licence area is authorised, under paragraph 7(2A)(d) of Schedule 2, to provide a commercial television broadcasting service outside the related terrestrial licence area to one or more persons who are in the section 38C licence area—the scheme should provide that those persons are taken in to be in a category A reception area.
- (4) The second objective is that the scheme should:
 - (a) specify one or more areas included in the section 38C licence area; or
 - (b) specify a method for ascertaining one or more areas included in the section 38C licence area;

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that are taken to be areas (*category B reception areas*) in which people are unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

- (5) The third objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable persons in:
- (a) a category A reception area; or
 - (b) a category B reception area;
- to receive those commercial television broadcasting services.
- (6) Subsection (5) has effect subject to subsections (14) and (15).
- (7) The fourth objective is that the scheme should provide that so much of the section 38C licence area as is neither:
- (a) a category A reception area; nor
 - (b) a category B reception area;
- is a *category C reception area*.
- (8) The fifth objective is that the scheme must:
- (a) if the scheme is developed by a body or association that the ACMA is satisfied represents commercial television broadcasting licensees—identify a company; or
 - (b) if the scheme is formulated by the ACMA—identify the ACMA;
- as the *scheme administrator* for the scheme.
- (9) The sixth objective is that the scheme must authorise the scheme administrator to issue a certificate (a *reception certificate*) to a person in a category C reception area stating that the person is unable to receive adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.
- (10) The seventh objective is that a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must enable a person who:
- (a) is in a category C reception area; and
 - (b) holds a reception certificate;
- to receive those commercial television broadcasting services.
- (11) Subsection (10) has effect subject to subsections (14) and (15).
-

-
- (12) The eighth objective is that, if an application for a reception certificate is made in accordance with the scheme, the application must:
- (a) be dealt with by the scheme administrator within 15 business days after receiving the application; and
 - (b) be accepted, and dealt with, without requiring:
 - (i) the payment of a fee by the applicant; or
 - (ii) the applicant to incur any expenses (other than the expense of filling in the application and sending it to the scheme administrator).
- (13) The ninth objective is that the scheme must authorise the scheme administrator to revoke a reception certificate issued to a person if the person is no longer eligible for the reception certificate.
- (14) The tenth objective is that, if persons are:
- (a) in a local market area; and
 - (b) not in a category A reception area;
- a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must not enable those persons to receive those commercial television broadcasting services earlier than 6 months before the time when the local market area becomes a digital-only local market area.
- (15) The 11th objective is that, if persons are:
- (a) in a simulcast area; and
 - (b) not in a local market area; and
 - (c) not in a category A reception area;
- a conditional access system that relates to any of the commercial television broadcasting services provided under the section 38C licence must not enable those persons to receive those commercial television broadcasting services earlier than 6 months before the end of the simulcast period for the simulcast area.
- (16) In this section:
- digital-only local market area*** has the same meaning as in Schedule 4.
- local market area*** has the same meaning as in Schedule 4.
-

Schedule 1 Amendments***related terrestrial licence area:***

- (a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
- (b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
- (c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

simulcast area means an area covered by paragraph 6(3)(c) of Schedule 4.

simulcast period has the same meaning as in Schedule 4.

Note 1: For ***adequate reception***, see section 130ZFA.

Note 2: For ***applicable terrestrial digital commercial television broadcasting services***, see section 130ZG.

terrestrial licence means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

terrestrial licence area means the licence area of a terrestrial licence.

130ZC Registration of conditional access scheme developed by representative body or association

Scope

- (1) This section applies if:
 - (a) the ACMA is satisfied that a body or association represents commercial television broadcasting licensees; and
 - (b) that body or association develops a conditional access scheme (the ***new scheme***) for the licence area of a commercial television broadcasting licence allocated under section 38C; and

-
- (c) the body or association gives a copy of the new scheme to the ACMA; and
 - (d) any of the following subparagraphs applies:
 - (i) the body or association gives the copy of the new scheme to the ACMA within 45 days after the first or only occasion on which a licence for the licence area is allocated under section 38C;
 - (ii) the body or association gives the copy of the new scheme to the ACMA in response to an invitation under section 130ZCAA;
 - (iii) the new scheme is expressed to replace another conditional access scheme registered under this section; and
 - (da) the ACMA is satisfied that the new scheme complies with section 130ZB; and
 - (e) the ACMA is satisfied that the new scheme is consistent with the principle that a person in the licence area should have adequate reception of:
 - (i) all of the applicable terrestrial digital commercial television broadcasting services; or
 - (ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.

Note: This section may cease to apply to a licence area—see subsection 130ZCA(7).

Registration

- (2) The ACMA must:
 - (a) register the new scheme by including it in the register under section 130ZE; and
 - (b) do so within 35 days after the copy of the new scheme is given to the ACMA.

130ZCAA ACMA may invite representative body or association to develop a revised conditional access scheme

Scope

- (1) This section applies if:

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- (a) the ACMA is satisfied that a body or association represents commercial television broadcasting licensees; and
 - (b) that body or association develops a conditional access scheme (the *new scheme*) for the licence area of a commercial television broadcasting licence allocated under section 38C; and
 - (c) the body or association gives a copy of the new scheme to the ACMA; and
 - (d) the body or association gives the copy of the new scheme to the ACMA within 45 days after the first or only occasion on which a licence for the licence area is allocated under section 38C;
- and either:
- (e) the ACMA is not satisfied that the new scheme complies with section 130ZB; or
 - (f) the ACMA is not satisfied that the new scheme is consistent with the principle that a person in the licence area should have adequate reception of:
 - (i) all of the applicable terrestrial digital commercial television broadcasting services; or
 - (ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.

Invitation

- (2) The ACMA must:
 - (a) by written notice given to the body or association, invite the body or association to:
 - (i) develop a revised conditional access scheme for the licence area; and
 - (ii) give a copy of the revised scheme to the ACMA within 30 days after the invitation is given; and
 - (b) do so within 60 days after the copy of the new scheme is given to the ACMA.

130ZCAB ACMA may request development of replacement conditional access scheme

Scope

- (1) This section applies if:
 - (a) a conditional access scheme for a licence area is registered under section 130ZC; and
 - (b) the ACMA is satisfied that the scheme is not achieving one or more of the objectives set out in section 130ZB.

Request

- (2) The ACMA may, by written notice given to the body or association that developed the scheme:
 - (a) request the body or association to:
 - (i) develop another conditional access scheme (the ***replacement scheme***) that is expressed to replace the scheme registered under section 130ZC; and
 - (ii) give a copy of the replacement scheme to the ACMA within the period specified in the notice; and
 - (b) specify particular matters that, in the ACMA's opinion, should be addressed in the replacement scheme.
- (3) The period specified in a notice under subsection (2):
 - (a) must not be shorter than 30 days after the notice is given; and
 - (b) must not be longer than 60 days after the notice is given.

130ZCA Registration of conditional access scheme formulated by the ACMA

Scope

- (1) This section applies if:
 - (a) the following conditions are satisfied:
 - (i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;
 - (ii) that is the first or only occasion on which a commercial television broadcasting licence is allocated under section 38C for the licence area;
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- (iii) if the ACMA has not given an invitation under section 130ZCAA in relation to the licence area—90 days pass after the allocation of the licence, and no conditional access scheme for the licence area has been registered, or is required to be registered, under section 130ZC;
 - (iv) if the ACMA has given an invitation under section 130ZCAA in relation to the licence area—60 days pass after the invitation is given, and no conditional access scheme for the licence area has been registered, or is required to be registered, under section 130ZC; or
- (b) the following conditions are satisfied:
- (i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;
 - (ii) a conditional access scheme for the licence area is registered under section 130ZC;
 - (iii) the ACMA gives a notice under subsection 130ZCAB(2) to a body or association in relation to the scheme;
 - (iv) the body or association does not give the ACMA a copy of a replacement scheme within the period specified in the notice; or
- (c) the following conditions are satisfied:
- (i) a commercial television broadcasting licence is allocated under section 38C for a particular licence area;
 - (ii) a conditional access scheme for the licence area is registered under section 130ZC;
 - (iii) the ACMA gives a notice under subsection 130ZCAB(2) to a body or association in relation to the scheme;
 - (iv) the body or association gives the ACMA a copy of a replacement scheme within the period specified in the notice;
 - (v) 35 days pass after the copy is given to the ACMA, and the replacement scheme has not been, and is not required to be, registered under section 130ZC.
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Scheme

- (2) The ACMA may, by legislative instrument, formulate a conditional access scheme for the licence area.
- (3) The ACMA must not formulate a conditional access scheme unless:
 - (a) the ACMA is satisfied that the scheme complies with section 130ZB; and
 - (b) the ACMA is satisfied that the scheme is consistent with the principle that a person in the licence area should have adequate reception of:
 - (i) all of the applicable terrestrial digital commercial television broadcasting services; or
 - (ii) all of the commercial television broadcasting services that the section 38C licensee is required to provide under clauses 7B and 7C of Schedule 2.

Registration

- (4) The ACMA must register a scheme formulated under subsection (2) by including it in the register under section 130ZE.

Consultation

- (5) Before registering a conditional access scheme formulated under subsection (2), the ACMA must:
 - (a) publish on its website:
 - (i) a draft of the scheme; and
 - (ii) a notice inviting interested persons to give written submissions about the draft to the ACMA within the period specified in the notice; and
 - (b) if any submissions are given to the ACMA within that period—have due regard to those submissions in formulating the scheme.
- (6) The period specified under subparagraph (5)(a)(ii) must not be shorter than 14 days.

Section 130ZC ceases to apply to the licence area

- (7) Section 130ZC ceases to apply to the licence area.
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130ZD Replacement of conditional access scheme

- (1) Changes to a conditional access scheme are to be achieved by replacing the scheme instead of varying the scheme.
- (2) If:
 - (a) the replacement scheme is formulated by the ACMA; and
 - (b) the replacement scheme differs in only minor respects from the original scheme;section 130ZCA has effect, in relation to the registration of the scheme, as if subsections 130ZCA(5) and (6) had not been enacted.

Note: Subsections 130ZCA(5) and (6) deal with submissions about a draft scheme formulated by the ACMA.
- (3) If:
 - (a) a conditional access scheme is registered under this Part; and
 - (b) the scheme is expressed to replace another conditional access scheme;the other conditional access scheme ceases to be registered under this Part when the replacement scheme is registered.
- (4) The replacement of a conditional access scheme does not affect the continuity of a reception certificate issued under the scheme.

130ZE ACMA to maintain register of conditional access schemes

- (1) The ACMA is to maintain a Register in which the ACMA includes any conditional access schemes required to be registered under section 130ZC or 130ZCA.
- (2) The Register is to be maintained by electronic means.
- (3) The Register is to be made available for inspection on the ACMA's website.
- (4) The Register is not a legislative instrument.

130ZF ACMA may direct a scheme administrator to issue a reception certificate etc.*Scope*

- (1) This section applies if:
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- (a) a conditional access scheme is registered under section 130ZC; and
 - (b) a person is in a category C reception area (within the meaning of the scheme); and
 - (c) the person considers that he or she does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

Note: For *applicable terrestrial digital commercial television broadcasting services*, see section 130ZG.

Investigation of complaint

- (2) The person may make a complaint to the ACMA about the matter, so long as:
 - (a) the following conditions are satisfied:
 - (i) the person has previously made an application under the scheme for a reception certificate;
 - (ii) the application was made in accordance with the scheme;
 - (iii) the scheme administrator refused to issue the reception certificate; or
 - (b) the following conditions are satisfied:
 - (i) the person has previously held a reception certificate under the scheme;
 - (ii) the scheme administrator revoked the reception certificate; or
 - (c) the following conditions are satisfied:
 - (i) the person has previously made an application under the scheme for a reception certificate;
 - (ii) the application was made in accordance with the scheme;
 - (iii) the scheme administrator did not deal with the application within 15 business days after receiving the application.
- (3) The ACMA must investigate the complaint in a manner determined by the ACMA.
- (4) However, the ACMA need not investigate the complaint if it is satisfied that the complaint:
 - (a) is frivolous or vexatious; or

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(b) was not made in good faith.

Direction to issue reception certificate

- (5) If:
- (a) the person makes a complaint under paragraph (2)(a) or (b);
and
 - (b) having investigated the complaint, the ACMA is satisfied that the person does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services;
- the ACMA may, by written notice given to the scheme administrator, direct the scheme administrator to issue a reception certificate to the person within a specified period.
- (6) The specified period must not be longer than 28 days.
- (7) In deciding whether to give a direction under subsection (5), it is to be presumed that the person does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services, unless the scheme administrator satisfies the ACMA that the person has adequate reception of all of those services.

Consultation

- (8) Before giving a direction under subsection (5), the ACMA must, by written notice given to the scheme administrator:
- (a) invite the scheme administrator to make a submission to the ACMA, within the time limit specified in the notice, about the question of whether the person has adequate reception of all of the applicable terrestrial digital commercial television broadcasting services; and
 - (b) have regard to any submission received within that time limit.
- (9) The time limit must not be longer than 28 days.

Compliance with direction

- (10) The scheme administrator must comply with a direction under subsection (5).
-

- (11) If the scheme administrator does not comply with a direction under subsection (5), then:

- (a) this Act; and
- (b) the conditional access scheme;

have effect as if, at the end of the last day for compliance, the scheme administrator had issued a reception certificate to the person.

Determination that reception certificate is taken to have been issued to complainant

- (12) If the person makes a complaint under paragraph (2)(c), the ACMA may determine that:

- (a) this Act; and
- (b) the conditional access scheme;

have effect as if the scheme administrator had issued a reception certificate to the person.

Revocation of reception certificate taken to have been issued

- (13) This Act does not prevent the subsequent revocation of a reception certificate that is taken to have been issued under subsection (11) or (12).

Notification of results of investigation

- (14) If:

- (a) the person makes a complaint under subsection (2); and
- (b) the ACMA investigates the complaint;

the ACMA must notify the person of the results of the investigation.

130ZFA Adequate reception

The ACMA may, by legislative instrument, determine that, for the purposes of this Part, *adequate reception* has the meaning ascertained in accordance with the determination.

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**130ZG Applicable terrestrial digital commercial television
broadcasting services**

Scope

- (1) This section applies if a person is in the licence area of a commercial television broadcasting licence.

Applicable terrestrial digital commercial television broadcasting services

- (2) For the purposes of the application of this Part to the person, a service is an **applicable terrestrial digital commercial television broadcasting service** if it is a commercial television broadcasting service that is:
- (a) provided by a commercial television broadcasting licensee in the licence area; and
 - (b) transmitted in digital mode.

Exemptions

- (3) This section does not apply to a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

Definitions

- (4) In this section:

digital mode has the same meaning as in Schedule 4.

65 Section 204

Before “Subject to”, insert “(1)”.

Note: The following heading to subsection 204(1) is inserted “*Decisions under this Act*”.

66 Section 204 (after table item dealing with section 38B)

Insert:

Refusal to allocate licence	Section 38C	The applicant
Cancellation of licence	Section 38C	The licensee

67 At the end of section 204

Add:

Decisions under a conditional access scheme registered under section 130ZCA

- (2) An application may be made to the Administrative Appeals Tribunal for review of a decision set out in column 1 of the table, but such an application may only be made by the person described in column 2.

Reviewable decisions		
	Column 1	Column 2
Item	Decision	Person who may apply
1	Refusal to issue a reception certificate under a conditional access scheme registered under section 130ZCA	The applicant
2	Revocation of a reception certificate under a conditional access scheme registered under section 130ZCA	The holder of the reception certificate

68 After section 211

Insert:

211AA Time when a television program is broadcast—certain terrestrial licence areas

Nomination of place

- (1) The licensee of a commercial television broadcasting licence for:
- (a) the Remote Central and Eastern Australia TV1 licence area;
 - or
 - (b) the Remote Central and Eastern Australia TV2 licence area;
- may, by written notice given to the ACMA, nominate a specified place in the licence area for the purposes of the licence.
- (2) The nomination must be expressed to be a nomination under subsection (1).

Schedule 1 Amendments*Withdrawal of nomination*

- (3) If a nomination is in force under subsection (1), the licensee may, by written notice given to the ACMA, withdraw the nomination.
- (4) The withdrawal of a nomination does not prevent the licensee from making a fresh nomination under subsection (1).

Time when a program is broadcast

- (5) If a nomination of a place is in force under subsection (1) for the purposes of a commercial television broadcasting licence, then:
 - (a) this Act; and
 - (b) any program standards; and
 - (c) any other instrument under this Act; and
 - (d) any codes of practice registered under section 123;
 have effect, in relation to any programs broadcast on a commercial television broadcasting service provided under the licence, as if those programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place.

211A Time when a television program is broadcast—South Eastern Australia TV3 and Northern Australia TV3 licence areas*Nomination of place—South Eastern Australia TV3 licence area*

- (1) The licensee of a commercial television broadcasting licence allocated under section 38C for the South Eastern Australia TV3 licence area may, by written notice given to the ACMA, nominate either or both of the following:
 - (a) a specified place in:
 - (i) the South Eastern Australia TV3 licence area; or
 - (ii) the Northern Australia TV3 licence area;
 for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;
 - (b) a specified place in the South Eastern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under the licence.
- (2) The nomination must be expressed to be a nomination under subsection (1).

Nomination of place—Northern Australia TV3 licence area

- (3) The licensee of a commercial television broadcasting licence allocated under section 38C for the Northern Australia TV3 licence area may, by written notice given to the ACMA, nominate either or both of the following:
- (a) a specified place in:
 - (i) the Northern Australia TV3 licence area; or
 - (ii) the South Eastern Australia TV3 licence area;for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under the licence;
 - (b) a specified place in the Northern Australia TV3 licence area for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under the licence.
- (4) The nomination must be expressed to be a nomination under subsection (3).

Withdrawal of nomination

- (5) If a nomination is in force under subsection (1) or (3), the licensee may, by written notice given to the ACMA, withdraw the nomination.
- (6) The withdrawal of a nomination does not prevent the licensee from making a fresh nomination under subsection (1) or (3).

Time when a program is broadcast

- (7) If a nomination of a place is in force under paragraph (1)(a) or (3)(a) for the purposes of the HDTV multi-channelled commercial television broadcasting services provided under a licence, then:
- (a) this Act; and
 - (b) any program standards; and
 - (c) any other instrument under this Act; and
 - (d) any codes of practice registered under section 123;
- have effect, in relation to any programs broadcast on those services, as if those programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place.

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- (8) If a nomination of a place is in force under paragraph (1)(b) or (3)(b) for the purposes of the SDTV multi-channelled commercial television broadcasting services provided under a licence, then:
- (a) this Act; and
 - (b) any program standards; and
 - (c) any other instrument under this Act; and
 - (d) any codes of practice registered under section 123;
- have effect, in relation to any programs broadcast on those services, as if those programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place.

Definitions

- (9) In this section:

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

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

69 Before clause 7 of Schedule 2

Insert:

Division 1—General**70 Paragraph 7(1)(c) of Schedule 2**

After “allocated under”, insert “section 38C or”.

71 Paragraphs 7(2)(a) and (c) of Schedule 2

After “allocated under”, insert “section 38C or”.

71A After subclause 7(4) of Schedule 2

Insert:

- (4A) For the purposes of paragraphs (1)(k) and (m), if:
- (a) a transmitter licence was issued under section 100 of the *Radiocommunications Act 1992*; and
 - (b) the transmitter licence authorises the operation of one or more transmitters for transmitting one or more commercial television broadcasting services in digital mode;
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ignore any transmission of those services in digital mode by those transmitters.

71B Paragraph 7(8)(a) of Schedule 2

After “subclause”, insert “(4A),”.

72 At the end of Part 3 of Schedule 2

Add:

Division 2—Licences allocated under section 38C

7A Common conditions

- (1) A licence allocated under section 38C is subject to the following conditions:
 - (a) the licensee may only provide commercial television broadcasting services in digital mode (within the meaning of Schedule 4);
 - (b) the licensee may only provide commercial television broadcasting services with the use of a satellite;
 - (c) if a conditional access scheme for the licence area is registered under Part 9C—the licensee will ensure that any conditional access system that relates to any of the commercial television broadcasting services provided under the licence complies with the scheme;
 - (d) the licensee will comply with any standards under section 130AC (which deals with technical standards for digital transmission).
- (2) Paragraphs 7(1)(i) and (oa) of this Schedule do not apply to a licence allocated under section 38C.

7B Conditions about the provision of core/primary commercial television broadcasting services

Conditions about the provision of core/primary services

- (1) A licence allocated under section 38C is subject to the condition that, if there are at least 3 commercial television broadcasting services (the *related terrestrial core/primary services*), where each of the services:

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- (a) is provided by a terrestrial licensee in a related terrestrial licence area; and
 - (b) is a core/primary commercial television broadcasting service; and
 - (c) is distinct from each of the other services;
- the section 38C licensee will provide at least 3 commercial television broadcasting services, where:
- (d) the program content of each of the services is the same, or substantially the same, as the program content of a related terrestrial core/primary service; and
 - (e) each of the services is distinct from each of the other services.
- (2) A licence allocated under section 38C is subject to the condition that, if there are only 2 commercial television broadcasting services (the *related terrestrial core/primary services*), where each of the services:
- (a) is provided by a terrestrial licensee in a related terrestrial licence area; and
 - (b) is a core/primary commercial television broadcasting service; and
 - (c) is distinct from the other service;
- the section 38C licensee will provide:
- (d) 2 commercial television broadcasting services, where:
 - (i) the program content of each of the services is the same, or substantially the same, as the program content of a related terrestrial core/primary service; and
 - (ii) the services are distinct from one another; and
 - (e) one commercial television broadcasting service, where:
 - (i) the program content of the service is the same, or substantially the same, as the program content of a core/primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and
 - (ii) the service is distinct from each of the services required to be provided by paragraph (d).
- (3) A licence allocated under section 38C is subject to the condition that, if:
- (a) neither subclause (1) nor subclause (2) applies; and
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- (b) there is a commercial television broadcasting service (the *related terrestrial core/primary service*), where:
- (i) the service is provided by a terrestrial licensee in a related terrestrial licence area; and
 - (ii) the service is a core/primary commercial television broadcasting service;

the section 38C licensee will provide:

- (c) one commercial television broadcasting service that has program content that is the same, or substantially the same, as the program content of the related terrestrial core/primary service; and
- (d) 2 commercial television broadcasting services, where:
 - (i) the program content of each of the services is the same, or substantially the same, as the program content of a core/primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and
 - (ii) the services are distinct from each other and from the service required to be provided by paragraph (c).

Services not required before start date

- (4) Subclauses (1), (2) and (3) do not require a licensee to provide a service before the start date for the licence area.

Note: For *start date*, see clause 7H.

Exemption—cessation of related terrestrial core/primary service

- (5) If:
- (a) in compliance with subclause (1), the licensee of a licence allocated under section 38C provides a commercial television broadcasting service that has the same, or substantially the same, program content as a core/primary commercial television broadcasting service provided by a terrestrial licensee in a related terrestrial licence area; and
 - (b) the core/primary commercial television broadcasting service ceases to be provided by the terrestrial licensee in the related terrestrial licence area; and
 - (c) as a result of the cessation of the service, subclause (2) applies to the section 38C licensee;

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subclause (2) has effect in relation to the section 38C licensee, while the cessation continues, as if paragraph (2)(e) had not been enacted.

(6) If:

- (a) in compliance with subclause (2), the licensee of a licence allocated under section 38C provides a commercial television broadcasting service that has the same, or substantially the same, program content as a core/primary commercial television broadcasting service provided by a terrestrial licensee in a related terrestrial licence area; and
- (b) the core/primary commercial television broadcasting service ceases to be provided by the terrestrial licensee in the related terrestrial licence area; and
- (c) as a result of the cessation of the service, subclause (3) applies to the section 38C licensee;

then, while the cessation continues:

- (d) subclause (3) has effect in relation to the section 38C licensee as if paragraph (3)(d) had not been enacted; and
- (e) the section 38C licence is subject to the condition that the section 38C licensee will provide one commercial television broadcasting service, where:
 - (i) the program content of the service is the same, or substantially the same, as the program content of a core/primary commercial television broadcasting service provided by a terrestrial licensee in a metropolitan licence area; and
 - (ii) the service is distinct from the service required to be provided by paragraph (3)(c).

Distinct services

- (7) For the purposes of this clause, a commercial television broadcasting service is *distinct* from another commercial television broadcasting service if, and only if, the program content of the services is not the same or substantially the same.

Note: For *metropolitan licence area*, *related terrestrial licence area* and *terrestrial licence*, see clause 7L.

7C Conditions about the provision of non-core/primary commercial television broadcasting services

HDTV multi-channelled commercial television broadcasting services

- (1) A licence allocated under section 38C is subject to the condition that, if:
- (a) the licensee of a terrestrial licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
 - (b) the licensee of a terrestrial licence for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service (the *related terrestrial service*) in the related terrestrial licence area; and
 - (c) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service;
- the section 38C licensee will provide a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service.
- (2) A licence allocated under section 38C is subject to the condition that, if:
- (a) the licensee of a terrestrial licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
 - (b) there is no HDTV multi-channelled commercial television broadcasting service that:
 - (i) is provided by the licensee of a terrestrial licence for a related terrestrial licence area; and
 - (ii) has the same, or substantially the same, program content as the metropolitan service;
- the section 38C licensee will provide a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the metropolitan service.

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- (3) Subclauses (1) and (2) do not require a licensee to provide a service before the start date for the licence area.

Note: For *start date*, see clause 7H.

- (4) Subclause (2) does not apply to a HDTV multi-channelled commercial television broadcasting service that a commercial television broadcasting licensee for a metropolitan licence area commences to provide after the end of the simulcast period for the metropolitan licence area.

- (5) If:

- (a) the licensee of a commercial television broadcasting licence for a metropolitan licence area provides a HDTV multi-channelled commercial television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
- (b) the licensee of a terrestrial licence for a related terrestrial licence area provides a HDTV multi-channelled commercial television broadcasting service (the *related terrestrial service*) in the related terrestrial licence area; and
- (c) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service; and
- (d) in compliance with subclause (1), the licensee of a licence allocated under section 38C provides a HDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service; and
- (e) the related terrestrial service ceases to be provided by the terrestrial licensee in the related terrestrial licence area;

subclause (2) does not apply to the section 38C licensee in relation to the metropolitan service while the cessation continues.

SDTV multi-channelled commercial television broadcasting services

- (6) A licence allocated under section 38C is subject to the condition that, if:
- (a) the licensee (the *metropolitan licensee*) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial

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- television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
- (b) the metropolitan service is not the core/primary commercial television broadcasting service provided by the metropolitan licensee; and
 - (c) the licensee of a terrestrial licence for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service (the *related terrestrial service*) in the related terrestrial licence area; and
 - (d) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service;
- the section 38C licensee will provide a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service.
- (7) A licence allocated under section 38C is subject to the condition that, if:
- (a) the licensee (the *metropolitan licensee*) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
 - (b) the metropolitan service is not the core/primary commercial television broadcasting service provided by the metropolitan licensee; and
 - (c) there is no SDTV multi-channelled commercial television broadcasting service that:
 - (i) is provided by the licensee of a terrestrial licence for a related terrestrial licence area; and
 - (ii) has the same, or substantially the same, program content as the metropolitan service;
- the section 38C licensee will provide a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the metropolitan service.
- (8) Subclauses (6) and (7) do not require a licensee to provide a service before the start date for the licence area.

Note: For *start date*, see clause 7H.

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- (9) Subclause (7) does not apply to a SDTV multi-channelled commercial television broadcasting service that a commercial television broadcasting licensee for a metropolitan licence area commences to provide after the end of the simulcast period for the metropolitan licence area.
- (10) If:
- (a) the licensee (the *metropolitan licensee*) of a commercial television broadcasting licence for a metropolitan licence area provides a SDTV multi-channelled commercial television broadcasting service (the *metropolitan service*) in the metropolitan licence area; and
 - (b) the metropolitan service is not the core/primary commercial television broadcasting service provided by the metropolitan licensee; and
 - (c) the licensee of a terrestrial licence for a related terrestrial licence area provides a SDTV multi-channelled commercial television broadcasting service (the *related terrestrial service*) in the related terrestrial licence area; and
 - (d) the related terrestrial service has the same, or substantially the same, program content as the metropolitan service; and
 - (e) in compliance with subclause (6), the licensee of a licence allocated under section 38C provides a SDTV multi-channelled commercial television broadcasting service that has the same, or substantially the same, program content as the related terrestrial service; and
 - (f) the related terrestrial service ceases to be provided by the terrestrial licensee in the related terrestrial licence area;
- subclause (7) does not apply to the section 38C licensee in relation to the metropolitan service while the cessation continues.

Note: For *metropolitan licence area*, *related terrestrial licence area* and *terrestrial licence*, see clause 7L.

7D Condition about the provision of local news services

- (1) A licence allocated under section 38C is subject to the condition that, if a program is provided, or required to be provided, to the licensee by another licensee under subsection 43AA(1), the section 38C licensee will broadcast the program on a service authorised by paragraph 41CA(1)(c), (f) or (g) as soon as practicable after the other licensee begins to broadcast the program.
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- (2) Subclause (1) does not apply if the section 38C licensee has previously broadcast the program on such a service.
 - (3) Subclause (1) does not apply to a program the broadcasting of which in any jurisdiction in the licence area of the section 38C licence could result in the section 38C licensee:
 - (a) committing an offence; or
 - (b) becoming liable to a civil penalty; or
 - (c) breaching an order or direction of a court; or
 - (d) being in contempt of court.

7E Exemption—provision of new commercial television broadcasting services not technically feasible

If:

- (a) a licence is allocated under section 38C; and
- (b) after the start date for the licence area of the section 38C licence, a commercial television broadcasting licensee (the *terrestrial licensee*) for a terrestrial licence area commences to provide, or proposes to commence to provide:
 - (i) a HDTV multi-channelled commercial television broadcasting service; or
 - (ii) a SDTV multi-channelled commercial television broadcasting service that is not the core/primary commercial television broadcasting service provided by the terrestrial licensee; and
- (c) apart from this clause, the licensee of the section 38C licence is, or will be, required to provide:
 - (i) if subparagraph (b)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or
 - (ii) if subparagraph (b)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; and

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- (d) the ACMA considers that it is not technically feasible for the licensee of the section 38C licence to provide the required service;

the ACMA may, by legislative instrument, determine that clause 7C does not oblige the section 38C licensee to provide the required service.

Note 1: For *start date*, see clause 7G.

Note 2: For *terrestrial licence area*, see clause 7L.

7F Exemption—commercial television broadcasting services with the same program content

- (1) If:
- (a) a commercial television broadcasting licensee (the *terrestrial licensee*) for a terrestrial licence area provides, or proposes to commence to provide:
 - (i) a HDTV multi-channelled commercial television broadcasting service; or
 - (ii) a SDTV multi-channelled commercial television broadcasting service that is not the core/primary commercial television broadcasting service provided by the terrestrial licensee; and
 - (b) the program content of the service provided, or to be provided, by the terrestrial licensee is, or will be:
 - (i) the same; or
 - (ii) substantially the same;
 as the program content of another commercial television broadcasting service provided, or to be provided, by the terrestrial licensee; and
 - (c) apart from this subclause, the licensee of a section 38C licence is, or will be, required to provide:
 - (i) if subparagraph (a)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or
 - (ii) if subparagraph (a)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or

substantially the same, as the service provided by the terrestrial licensee;

the Minister may, by legislative instrument, determine that clause 7C does not oblige the section 38C licensee to provide the required service during a period specified in the determination.

- (2) The specified period must not be longer than 2 years.
- (3) The Minister may, by legislative instrument, extend or further extend the specified period.
- (4) Before making:
 - (a) a determination under subclause (1); or
 - (b) an instrument under subclause (3);
 the Minister must consult:
 - (c) the section 38C licensee concerned; and
 - (d) the ACMA.

Note: For *terrestrial licence area*, see clause 7L.

7G Delay in commencement of new commercial television broadcasting services

For the purposes of this Division, if:

- (a) a licence is allocated under section 38C; and
- (b) after the start date for the licence area of the section 38C licence, a commercial television broadcasting licensee (the *terrestrial licensee*) for a terrestrial licence area commences to provide:
 - (i) a HDTV multi-channelled commercial television broadcasting service; or
 - (ii) a SDTV multi-channelled commercial television broadcasting service that is not the core/primary commercial television broadcasting service provided by the terrestrial licensee; and
- (c) the licensee of the section 38C licence is required to provide:
 - (i) if subparagraph (b)(i) applies—a HDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; or

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- (ii) if subparagraph (b)(ii) applies—a SDTV multi-channelled commercial television broadcasting service the program content of which is the same, or substantially the same, as the service provided by the terrestrial licensee; and

(d) there is a delay in the provision of the required service; disregard the delay so long as the delay is as short as is practicable.

Note 1: For *start date*, see clause 7H.

Note 2: For *terrestrial licence area*, see clause 7L.

7H Start dates for licence areas*Start date*

- (1) The ACMA may, by legislative instrument, declare that, for the purposes of this Division, a specified day is the *start date* for the South Eastern Australia TV3 licence area.
- (2) The start date for the South Eastern Australia TV3 licence area must not be later than 90 days after the first or only occasion on which a licence for the licence area is allocated under section 38C.
- (3) The ACMA may, by legislative instrument, declare that, for the purposes of this Division, a specified day is the *start date* for the Northern Australia TV3 licence area.
- (4) The ACMA may, by legislative instrument, declare that, for the purposes of this Division, a specified day is the *start date* for the Western Australia TV3 licence area.
- (5) The start date for:
 - (a) the Northern Australia TV3 licence area; or
 - (b) the Western Australia TV3 licence area;
 must not be later than 3 months before the end of the earliest applicable terrestrial digital television switch-over date for the licence area.

Applicable terrestrial digital television switch-over date—Northern Australia TV3 licence area

- (6) For the purposes of this clause, if:

-
- (a) the licence area of a terrestrial licence is included in the Northern Australia TV3 licence area; and
 - (b) there is a simulcast period for the terrestrial licence area; and
 - (c) there is no local market area included in the terrestrial licence area;

the last day of the simulcast period for the terrestrial licence area is an ***applicable terrestrial digital television switch-over date*** for the Northern Australia TV3 licence area.

- (7) For the purposes of this clause, if:

- (a) the licence area of a terrestrial licence is included in the Northern Australia TV3 licence area; and
- (b) there is a simulcast period for the terrestrial licence area; and
- (c) a local market area is included in the terrestrial licence area;

the day on which the local market area becomes a digital-only local market area is an ***applicable terrestrial digital television switch-over date*** for the Northern Australia TV3 licence area.

Applicable terrestrial digital television switch-over date—Western Australia TV3 licence area

- (8) For the purposes of this clause, if:

- (a) the licence area of a terrestrial licence is included in the Western Australia TV3 licence area; and
- (b) there is a simulcast period for the terrestrial licence area; and
- (c) there is no local market area included in the terrestrial licence area;

the last day of the simulcast period for the terrestrial licence area is an ***applicable terrestrial digital television switch-over date*** for the Western Australia TV3 licence area.

- (9) For the purposes of this clause, if:

- (a) the licence area of a terrestrial licence is included in the Western Australia TV3 licence area; and
- (b) there is a simulcast period for the terrestrial licence area; and
- (c) a local market area is included in the terrestrial licence area;

the day on which the local market area becomes a digital-only local market area is an ***applicable terrestrial digital television switch-over date*** for the Western Australia TV3 licence area.

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7J Program content

- (1) In determining, for the purposes of this Division, whether the program content of a commercial television broadcasting service provided by a licensee in a licence area is the same, or substantially the same, as the program content of another commercial television broadcasting service:
- (a) ignore the following:
 - (i) advertising or sponsorship material (whether or not of a commercial kind);
 - (ii) a promotion for a television program or a television broadcasting service;
 - (iii) community information material or community promotional material;
 - (iv) a weather bulletin;
 - (v) any other similar material; and
 - (b) ignore a news program; and
 - (c) ignore any program the broadcasting of which in any jurisdiction in the licence area could result in the licensee:
 - (i) committing an offence; or
 - (ii) becoming liable to a civil penalty; or
 - (iii) breaching an order or direction of a court; or
 - (iv) being in contempt of court; and
 - (d) ignore a program broadcast in circumstances specified in the regulations.
- (2) In determining, for the purposes of clause 7B of this Schedule, whether the program content of a commercial television broadcasting service is the same, or substantially the same, as the program content of another commercial television broadcasting service, assume that a program that provides coverage of an anti-siphoning event is the same as a program that provides coverage of another anti-siphoning event.

7K SDTV multi-channelled commercial television broadcasting service

For the purposes of this Division, assume that paragraph 5A(1)(d) of Schedule 4 had not been enacted.

7L Definitions

In this Division:

digital-only local market area has the same meaning as in Schedule 4.

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

local market area has the same meaning as in Schedule 4.

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

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

related terrestrial licence area:

- (a) in relation to a licence allocated under section 38C for the South Eastern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 1 of the table in subsection 38C(1); or
- (b) in relation to a licence allocated under section 38C for the Northern Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 2 of the table in subsection 38C(1); or
- (c) in relation to a licence allocated under section 38C for the Western Australia TV3 licence area—means a terrestrial licence area mentioned in column 3 of item 3 of the table in subsection 38C(1).

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

simulcast period has the same meaning as in Schedule 4.

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terrestrial licence means a commercial television broadcasting licence other than a commercial television broadcasting licence allocated under section 38C or subsection 40(1).

terrestrial licence area means the licence area of a terrestrial licence.

73 Subparagraph 10(1)(e)(ii) of Schedule 2

After “allocated under”, insert “section 38C or”.

74 Subclauses 10(1A) and (1B) of Schedule 2

After “allocated under”, insert “section 38C or”.

74A Clause 2 of Schedule 4 (at the end of the definition of coverage area)

Add:

Note: For overlapping coverage areas, see clause 5J.

75 Clause 2 of Schedule 4 (definition of metropolitan licence area)

Repeal the definition, substitute:

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

- (a) New South Wales; or
- (b) Victoria; or
- (c) Queensland; or
- (d) Western Australia; or
- (e) South Australia;

but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

76 Clause 2 of Schedule 4

Insert:

primary satellite national television broadcasting service, in relation to a national broadcaster, has the meaning given by clause 41N.

77 Clause 2 of Schedule 4 (definition of regional licence area)

Repeal the definition, substitute:

regional licence area means a licence area that is not a metropolitan licence area, but does not include the licence area of a commercial television broadcasting licence allocated under section 38C.

78 Clause 2 of Schedule 4

Insert:

satellite delivery area means an area that corresponds to the licence area of a commercial television broadcasting licence allocated under section 38C.

79 Clause 2 of Schedule 4 (paragraph (a) of the definition of *simulcast period*)

After “is”, insert “a metropolitan licence area or a regional licence area, but”.

80 Clause 4C of Schedule 4

Before “If there is”, insert “(1)”.

81 At the end of clause 4C of Schedule 4

Add:

- (2) Subclause (1) does not apply to a commercial television broadcasting licence allocated under section 38C.

82 After subclause 5(1) of Schedule 4

Insert:

- (1A) Subclause (1) does not apply to the licence area of a commercial television broadcasting licence allocated under section 38C.

83 Paragraph 5A(1)(b) of Schedule 4

Repeal the paragraph, substitute:

- (b) the service is transmitted in SDTV digital mode:
 - (i) using multi-channelling transmission capacity; or
 - (ii) with the use of a satellite; and

84 Paragraph 5B(b) of Schedule 4

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Repeal the paragraph, substitute:

- (b) the service is transmitted in HDTV digital mode:
 - (i) using multi-channelling transmission capacity; or
 - (ii) with the use of a satellite; and

85 Paragraph 5C(1)(b) of Schedule 4

Repeal the paragraph, substitute:

- (b) the service is transmitted in SDTV digital mode:
 - (i) using multi-channelling transmission capacity; or
 - (ii) with the use of a satellite; and

86 At the end of clause 5C of Schedule 4

Add:

- (4) Paragraph (1)(d) does not apply to a national television broadcasting service provided with the use of a satellite.

87 Paragraph 5D(b) of Schedule 4

Repeal the paragraph, substitute:

- (b) the service is transmitted in HDTV digital mode:
 - (i) using multi-channelling transmission capacity; or
 - (ii) with the use of a satellite; and

87A At the end of Part 1 of Schedule 4

Add:

5J Overlapping coverage areas

If:

- (a) apart from this clause, a coverage area (the *first coverage area*) overlaps with another coverage area; and
- (b) the last day of the simulcast period for the first coverage area is earlier than the last day of the simulcast period for the other coverage area;

this Schedule has effect as if the area of overlap were not part of the first coverage area.

88 Paragraph 6(3)(c) of Schedule 4

Omit “a licence area”, substitute “a metropolitan licence area or a regional licence area”.

88A Subparagraph 6(3)(c)(iia) of Schedule 4

Omit “for 8 years”, substitute “until the end of 31 December 2013”.

89 Paragraph 6(5A)(d) of Schedule 4

Repeal the paragraph, substitute:

(d) either:

- (i) if the other licence was allocated before the commencement of section 38C—at or about the time when the other licence was allocated, the holder gave the ACMA a written notice electing that this subclause apply to both of the commercial television broadcasting services concerned; or
- (ii) if the other licence was allocated after the commencement of section 38C—before the end of the simulcast period for the licence area of the other licence, the holder gave the ACMA a written notice electing that this subclause apply to the commercial television broadcasting services provided under the licences;

90 Paragraph 6(5A)(e) of Schedule 4

Omit “either of the commercial television broadcasting services concerned”, substitute “the commercial television broadcasting services provided under the licences”.

91 Paragraph 6(5AA)(e) of Schedule 4

Omit “either of the commercial television broadcasting services concerned”, substitute “the commercial television broadcasting services provided under the licences”.

92 Paragraph 6(5B)(a) of Schedule 4

Omit “both of the commercial television broadcasting services concerned”, substitute “the commercial television broadcasting services provided under the commercial television broadcasting licences referred to in whichever of paragraph (5A)(a) or (5AA)(a) is applicable”.

93 Paragraph 6(5B)(c) of Schedule 4

Repeal the paragraph.

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95 After subclause 6(5C) of Schedule 4

Insert:

- (5CA) For the purposes of paragraphs (3)(f), (j) and (ja), ignore any commercial television broadcasting service provided under a licence allocated under section 38C.

97 Subclause 6(5D) of Schedule 4

Omit “and (5B)(c)”.

98 After subclause 6(7K) of Schedule 4

Insert:

Licences allocated under section 38C

- (7KA) This clause does not apply to a commercial television broadcasting licence allocated under section 38C.

98A After clause 6B of Schedule 4

Insert:

6C Digital conversion of re-transmission facilities

- (1) In addition to the policy objectives set out in subclause 6(3), Part A of the commercial television conversion scheme must be directed towards ensuring the achievement of the policy objective set out in subclause (2).
- (2) The objective is that, if:
 - (a) immediately before the commencement of this clause, a self-help provider provided a service that does no more than re-transmit programs that are transmitted by a commercial television broadcasting licensee within the licence area of the licence; and
 - (b) the self-help provider did so using a radiocommunications transmitter operating at a particular location under the authority of a transmitter licence held by the self-help provider; and
 - (c) the sole or principal purpose of the service provided by the self-help provider was to enable persons living in a particular

-
- area to obtain or improve reception of the commercial television broadcasting service concerned; and
- (d) the commercial television broadcasting licensee notifies the ACMA before:
- (i) the 9-month period ending on the earliest applicable digital television switch-over date for the licence area; or
 - (ii) if this clause commences in that 9-month period—the earliest applicable digital television switch-over date for the licence area;
- that the licensee is willing to transmit the commercial television broadcasting service, under a transmitter licence held by the commercial television broadcasting licensee, using a radiocommunications transmitter at or near that location; and
- (e) such other conditions (if any) as are specified in the scheme are satisfied;
- then:
- (f) the commercial television broadcasting licensee should be authorised, under a transmitter licence held by the licensee, to transmit the commercial television broadcasting service in digital mode using a radiocommunications transmitter at or near that location; and
 - (g) if the radiocommunications transmitter mentioned in paragraph (b) is the sole radiocommunications transmitter the operation of which is authorised under the transmitter licence mentioned in that paragraph—the transmitter licence should be cancelled; and
 - (h) if the radiocommunications transmitter mentioned in paragraph (b) is not the sole radiocommunications transmitter authorised by the transmitter licence mentioned in that paragraph—the transmitter licence should be varied so that it ceases to authorise the operation of the radiocommunications transmitter.
- (3) For the purposes of this clause, if:
- (a) clause 6 applies to a commercial television broadcasting licence; and
 - (b) there is a simulcast period for the licence area of the licence; and

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(c) there is no local market area included in the licence area of the licence;

the last day of the simulcast period for the licence area is the *applicable digital television switch-over date* for the licence area.

(4) For the purposes of this clause, if:

(a) clause 6 applies to a commercial television broadcasting licence; and

(b) there is a simulcast period for the licence area of the licence; and

(c) a local market area is included in the licence area of the licence;

the day on which the local market area becomes a digital-only local market area is an *applicable digital television switch-over date* for the licence area.

99 At the end of clause 7A of Schedule 4

Add:

(4) Subclause (1) does not apply in relation to a commercial television broadcasting licence allocated under section 38C.

100 After subclause 9(1B) of Schedule 4

Insert:

(1BA) Subclause (1) does not apply in relation to a commercial television broadcasting licence allocated under section 38C.

101 After subclause 19(7C) of Schedule 4

Insert:

Satellite national television broadcasting services

(7CA) This clause does not apply to a national television broadcasting service provided with the use of a satellite.

101B After clause 35 of Schedule 4

Insert:

35A Certain transmissions to be disregarded

For the purposes of clauses 34 and 35, if:

- (a) a transmitter licence was issued under section 100 of the *Radiocommunications Act 1992*; and
 - (b) the transmitter licence authorises the operation of one or more transmitters for transmitting one or more national television broadcasting services in digital mode;
- ignore any transmission of those services in digital mode by those transmitters.

102 Before clause 37DA of Schedule 4

Insert:

37DAA This Division does not apply in relation to section 38C licences

This Division does not apply in relation to a commercial television broadcasting licence allocated under section 38C.

103 Paragraph 38(4)(a) of Schedule 4

Repeal the paragraph, substitute:

- (a) a commercial television broadcasting licence is in force; and
- (aa) the licence was not allocated under section 38C; and

103A Paragraph 38(4)(b) of Schedule 4

Omit “core”, substitute “core/primary”.

103B Subclause 38(4) of Schedule 4

Omit “, during that period,”, substitute “, before the end of the final digital television switch-over day,”.

103C Subclause 38(4) of Schedule 4

Omit “the core”, substitute “the core/primary”.

104 Paragraph 38(4A)(a) of Schedule 4

After “subsection 41B(2)”, insert “, (2C) or (2CB)”.

104A Paragraph 38(4A)(b) of Schedule 34

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Repeal the paragraph.

104B Subclause 38(4A) of Schedule 4

Omit “, during that period,”, substitute “, before the end of the final digital television switch-over day,”.

105 After subclause 38(4A) of Schedule 4

Insert:

(4B) If:

- (a) a commercial television broadcasting licence is allocated under section 38C; and
- (b) the licensee provides a primary commercial television broadcasting service in the licence area; and
- (c) the licensee provides in the licence area:
 - (i) another SDTV multi-channelled commercial television broadcasting service; or
 - (ii) a HDTV multi-channelled commercial television broadcasting service;

then, before the end of the final digital television switch-over day, subclause (1) does not require the provision of a captioning service for a television program transmitted on:

- (d) the other SDTV multi-channelled commercial television broadcasting service; or
- (e) the HDTV multi-channelled commercial television broadcasting service;

unless the program has been previously transmitted on the primary commercial television broadcasting service.

106 Subclause 38(5) of Schedule 4

Repeal the subclause, substitute:

(5) If:

- (a) a national broadcaster provides a national television broadcasting service in a coverage area; and
- (b) the service is not provided with the use of a satellite;

then, before the end of the final digital television switch-over day, subclause (1) does not require the provision of a captioning service for a television program transmitted on:

-
- (c) a SDTV national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite; or
 - (d) a HDTV national television broadcasting service provided by the national broadcaster otherwise than with the use of a satellite;

unless:

- (e) during the simulcast period, or the simulcast-equivalent period, as the case may be, for the coverage area, the television program was previously transmitted by the national broadcaster on the national television broadcasting service that is:
 - (i) provided by the national broadcaster; and
 - (ii) the service to which clause 19 applies; or
- (f) after the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for the coverage area, the television program was previously transmitted by the national broadcaster on the primary national television broadcasting service provided by the national broadcaster.

109 After subclause 38(5) of Schedule 4

Insert:

(5A) If:

- (a) a national broadcaster provides a national television broadcasting service in a satellite delivery area; and
- (b) the service is provided with the use of a satellite;

then, before the end of the final digital television switch-over day, subclause (1) does not require the provision of a captioning service for a television program transmitted on:

- (c) a SDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite; or
- (d) a HDTV multi-channelled national television broadcasting service provided by the national broadcaster with the use of a satellite;

unless the television program has been previously transmitted by the national broadcaster on the broadcaster's primary satellite national television broadcasting service.

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110 Paragraph 38(9)(a) of Schedule 4

Repeal the paragraph, substitute:

- (a) a commercial television broadcasting licence is in force; and
- (aa) the licence was not allocated under section 38C; and

110A Paragraph 38(9)(b) of Schedule 4

Omit “during that period,” substitute “before the end of the final digital television switch-over day.”

111 After subclause 38(9) of Schedule 4

Insert:

(9A) If:

- (a) a commercial television broadcasting licence is allocated under section 38C; and
- (b) before the end of the final digital television switch-over day, the licensee transmits a television program on:
 - (i) a SDTV multi-channelled commercial television broadcasting service; or
 - (ii) a HDTV multi-channelled commercial television broadcasting service;
- in the licence area; and
- (c) the program has been previously transmitted on another commercial television broadcasting service provided by the licensee in the licence area; and
- (d) the licensee provided a captioning service for the program when the program was so previously transmitted on the other service;

the licensee must provide a captioning service for the television program transmitted as mentioned in paragraph (b).

111A Paragraph 38(10)(a) of Schedule 4

Repeal the paragraph.

111B Paragraph 38(10)(b) of Schedule 4

Omit “during that period, the national broadcaster”, substitute “before the end of the final digital television switch-over day, a national broadcaster”.

111C Paragraph 38(10)(b) of Schedule 4

Omit “in the coverage area”, substitute “in a coverage area”.

112 After subclause 38(10) of Schedule 4

Insert:

(10A) Subclause (10) does not apply to a national television broadcasting service provided with the use of a satellite.

(10B) If:

(a) a national broadcaster transmits a television program on:

(i) a SDTV multi-channelled national television broadcasting service; or

(ii) a HDTV multi-channelled national television broadcasting service;

in a satellite delivery area; and

(b) the service mentioned in paragraph (a) is provided with the use of a satellite; and

(c) the program is transmitted before the end of the final digital television switch-over day; and

(d) the program has been previously transmitted on another national television broadcasting service provided by the national broadcaster, with the use of a satellite, in the satellite delivery area; and

(e) the national broadcaster provided a captioning service for the program when the program was so previously transmitted on the other service;

the national broadcaster must provide a captioning service for the television program transmitted as mentioned in paragraph (a).

114 At the end of clause 41A of Schedule 4

Add:

Licences allocated under section 38C

(4) This clause does not apply in relation to a licence allocated under section 38C.

115 Paragraph 41B(1)(a) of Schedule 4

After “subsection 41B(2)”, insert “, (2C) or (2CB)”.

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116 At the end of clause 41B of Schedule 4

Add:

Licences allocated under section 38C

- (4) This clause does not apply in relation to a licence allocated under section 38C.

117 At the end of clause 41C of Schedule 4

Add:

Licences allocated under section 38C

- (4) This clause does not apply in relation to a licence allocated under section 38C.

118 Paragraph 41D(1)(a) of Schedule 4

After “subsection 41B(2)”, insert “, (2C) or (2CB)”.

119 At the end of clause 41D of Schedule 4

Add:

Licences allocated under section 38C

- (4) This clause does not apply in relation to a licence allocated under section 38C.

120 At the end of clause 41E of Schedule 4

Add:

Licences allocated under section 38C

- (4) This clause does not apply in relation to a licence allocated under section 38C.

121 At the end of clause 41F of Schedule 4

Add:

Licences allocated under section 38C

- (4) This clause does not apply in relation to a licence allocated under section 38C.
-

122 After clause 41F of Schedule 4

Insert:

41FA SDTV multi-channelled commercial television broadcasting service provided under a section 38C licence—restrictions on televising anti-siphoning events

Scope

- (1) This clause applies to a commercial television broadcasting licensee if:
 - (a) the licence was allocated under section 38C; and
 - (b) the licensee provides:
 - (i) a SDTV multi-channelled commercial television broadcasting service that is one of the licensee's primary commercial television broadcasting services in the licence area; and
 - (ii) one or more SDTV multi-channelled commercial television broadcasting services that are not the licensee's primary commercial television broadcasting services (the ***secondary commercial television broadcasting services***) in the licence area.

Televising the whole of an anti-siphoning event

- (2) The licensee must not televise on a secondary commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
 - (a) the licensee has previously televised in the licence area the whole of the event on one or more of the licensee's primary commercial television broadcasting services; or
 - (b) the licensee will televise simultaneously in the licence area the whole of the event on:
 - (i) one or more of the licensee's primary commercial television broadcasting services; and
 - (ii) the secondary commercial television broadcasting service.

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Televising a part of an anti-siphoning event

- (3) The licensee must not televise on a secondary commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the part of the event on one or more of the licensee's primary commercial television broadcasting services; or
 - (b) the licensee will televise simultaneously in the licence area the part of the event on:
 - (i) one or more of the licensee's primary commercial television broadcasting service; and
 - (ii) the secondary commercial television broadcasting service; or
 - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the secondary commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(3).

Note 2: For *anti-siphoning event*, see subsection 6(1).

41FB HDTV multi-channelled commercial television broadcasting service provided under a section 38C licence—restrictions on televising anti-siphoning events*Scope*

- (1) This clause applies to a commercial television broadcasting licensee if the licence was allocated under section 38C.

Televising the whole of an anti-siphoning event

- (2) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area the whole of an anti-siphoning event unless:
- (a) the licensee has previously televised in the licence area the whole of the event on one or more of the licensee's primary commercial television broadcasting services; or
 - (b) the licensee will televise simultaneously in the licence area the whole of the event on:

-
- (i) one or more of the licensee's primary commercial television broadcasting services; and
 - (ii) the HDTV multi-channelled commercial television broadcasting service.

Televising a part of an anti-siphoning event

- (3) The licensee must not televise on a HDTV multi-channelled commercial television broadcasting service in the licence area a part of an anti-siphoning event unless:
 - (a) the licensee has previously televised in the licence area the part of the event on one or more of the licensee's primary commercial television broadcasting services; or
 - (b) the licensee will televise simultaneously in the licence area the part of the event on:
 - (i) one or more of the licensee's primary commercial television broadcasting services; and
 - (ii) the HDTV multi-channelled commercial television broadcasting service; or
 - (c) the licensee televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled commercial television broadcasting service.

Note 1: For *primary commercial television broadcasting service*, see subclause 41G(3).

Note 2: For *anti-siphoning event*, see subsection 6(1).

123 Subclause 41G(1) of Schedule 4

After "subsection 41B(2)", insert ", (2C) or (2CB)".

124 After subclause 41G(1) of Schedule 4

Insert:

- (1A) The ACMA must ensure that a declaration under subclause (1):
 - (a) comes into force as soon as practicable after the later of the following:
 - (i) when the licensee commences to provide a SDTV multi-channelled commercial television broadcasting service in the licence area;
 - (ii) the commencement of this subclause; and
 - (b) is in force at all times during the period:

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-
- (i) beginning at the time worked out under paragraph (a);
and
 - (ii) ending at the end of the simulcast period, or
simulcast-equivalent period, for the licence area.

125 At the end of clause 41G of Schedule 4

Add:

- (3) The ACMA must ensure that a declaration under subclause (2) is in force at all times after the later of the following:
 - (a) the end of the simulcast-period, or simulcast equivalent period, for the licence area;
 - (b) when the licensee commences to provide a SDTV multi-channelled commercial television broadcasting service in the licence area

Service provided under a section 38C licence

- (4) The ACMA may, by legislative instrument, declare that one or more specified SDTV multi-channelled commercial television broadcasting services provided by a commercial television broadcasting licensee whose licence was allocated under section 38C are the licensee's ***primary commercial television broadcasting services*** in the licence area.
- (5) The number of services declared under subclause (4) in relation to a particular licensee must not exceed 3.
- (6) The ACMA must ensure that a declaration under subclause (4) is in force at all times on and after the start date for the licence area concerned.

Definition

- (7) In this clause:

start date has the same meaning as in clause 7H of Schedule 2.

126 At the end of clause 41H of Schedule 4

Add:

National television broadcasting services provided with the use of a satellite

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

127 At the end of clause 41J of Schedule 4

Add:

National television broadcasting services provided with the use of a satellite

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

128 At the end of clause 41K of Schedule 4

Add:

National television broadcasting services provided with the use of a satellite

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

129 At the end of clause 41L of Schedule 4

Add:

National television broadcasting services provided with the use of a satellite

- (4) This clause does not apply in relation to national television broadcasting services provided with the use of a satellite.

130 After clause 41L of Schedule 4

Insert:

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41LA SDTV multi-channelled national television broadcasting service provided with the use of a satellite—restrictions on televising anti-siphoning events*Scope*

- (1) This clause applies to a national broadcaster if the national broadcaster provides, with the use of a satellite:
 - (a) a SDTV multi-channelled national television broadcasting service that is the broadcaster's primary satellite national television broadcasting service in a satellite delivery area; and
 - (b) one or more other SDTV multi-channelled national television broadcasting services (the ***secondary national television broadcasting services***) in the satellite delivery area.

Televising the whole of an anti-siphoning event

- (2) The national broadcaster must not televise on a secondary national television broadcasting service in the satellite delivery area the whole of an anti-siphoning event unless:
 - (a) the national broadcaster has previously televised in the satellite delivery area the whole of the event on the broadcaster's primary satellite national television broadcasting service; or
 - (b) the national broadcaster will televise simultaneously in the satellite delivery area the whole of the event on both:
 - (i) the broadcaster's primary satellite national television broadcasting service; and
 - (ii) the secondary national television broadcasting service.

Televising a part of an anti-siphoning event

- (3) The national broadcaster must not televise on a secondary national television broadcasting service in the satellite delivery area a part of an anti-siphoning event unless:
 - (a) the national broadcaster has previously televised in the satellite delivery area the part of the event on the broadcaster's primary satellite national television broadcasting service; or
-

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- (b) the national broadcaster will televise simultaneously in the satellite delivery area the part of the event on both:
 - (i) the broadcaster's primary satellite national television broadcasting service; and
 - (ii) the secondary national television broadcasting service; or
 - (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the secondary national television broadcasting service.

Note 1: For *primary satellite national television broadcasting service*, see clause 41N.

Note 2: For *anti-siphoning event*, see subsection 6(1).

41LB HDTV multi-channelled national television broadcasting service provided with the use of a satellite—restrictions on televising anti-siphoning events

Scope

- (1) This clause applies to a national broadcaster if the national broadcaster provides, with the use of a satellite, a HDTV multi-channelled national television broadcasting service.

Televising the whole of an anti-siphoning event

- (2) The national broadcaster must not televise on the HDTV multi-channelled national television broadcasting service in a satellite delivery area the whole of an anti-siphoning event unless:
 - (a) the national broadcaster has previously televised in the satellite delivery area the whole of the event on the broadcaster's primary satellite national television broadcasting service; or
 - (b) the national broadcaster will televise simultaneously in the satellite delivery area the whole of the event on both:
 - (i) the broadcaster's primary satellite national television broadcasting service; and
 - (ii) the HDTV multi-channelled national television broadcasting service.

Schedule 1 Amendments*Televising a part of an anti-siphoning event*

- (3) The national broadcaster must not televise on the HDTV multi-channelled national television broadcasting service in a satellite delivery area a part of an anti-siphoning event unless:
- (a) the national broadcaster has previously televised in the satellite delivery area the part of the event on the broadcaster's primary satellite national television broadcasting service; or
 - (b) the national broadcaster will televise simultaneously in the satellite delivery area the part of the event on both:
 - (i) the broadcaster's primary satellite national television broadcasting service; and
 - (ii) the HDTV multi-channelled national television broadcasting service; or
 - (c) the national broadcaster televises the part of the event in a news or current affairs program broadcast on the HDTV multi-channelled national television broadcasting service.

Note 1: For *primary satellite national television broadcasting service*, see clause 41N.

Note 2: For *anti-siphoning event*, see subsection 6(1).

131 At the end of Part 4A of Schedule 4

Add:

41N Primary satellite national television broadcasting service*Primary national television broadcasting service*

- (1) A national broadcaster must, by written notice given to the Minister, declare that a specified SDTV multi-channelled national television broadcasting service provided by the national broadcaster, with the use of a satellite, in a specified satellite delivery area is the broadcaster's *primary satellite national television broadcasting service* in the satellite delivery area.
- (2) The national broadcaster must ensure that a declaration under subclause (1):
- (a) comes into force as soon as practicable after the national broadcaster commences to provide a SDTV multi-channelled

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- national television broadcasting service, with the use of a satellite, in the satellite delivery area; and
- (b) is in force at all times after that commencement.

132 Clause 43 of Schedule 4

Insert:

commercial television broadcasting licence does not include a commercial television broadcasting licence allocated under section 38C.

132A At the end of Part 8 of Schedule 4

Add:

60D Review of content and captioning rules applicable to multi-channelled television broadcasting services

- (1) Before 31 December 2012, the Minister must cause to be conducted a review of the following matters:
- (a) the operation of Part 9 of this Act and clause 38 of this Schedule, in so far as those provisions apply to:
 - (i) SDTV multi-channelled commercial television broadcasting services; and
 - (ii) HDTV multi-channelled commercial television broadcasting services;
 - (b) whether Part 9 of this Act and clause 38 of this Schedule, in so far as those provisions apply to:
 - (i) SDTV multi-channelled commercial television broadcasting services; and
 - (ii) HDTV multi-channelled commercial television broadcasting services;should be amended;
 - (c) the operation of clause 38 of this Schedule, in so far as that clause applies to:
 - (i) SDTV multi-channelled national television broadcasting services; and
 - (ii) HDTV multi-channelled national television broadcasting services;
 - (d) whether clause 38 of this Schedule, in so far as that clause applies to:

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- (i) SDTV multi-channelled national television broadcasting services; and
 - (ii) HDTV multi-channelled national television broadcasting services;
- should be amended.
- (2) The Minister must cause to be prepared a report of a review under subclause (1).
 - (3) The Minister must cause copies of a report to be tabled in each House of the Parliament within 15 sitting days of that House after the completion of the report.

133 Subclause 2(1) of Schedule 6 (subparagraph (a)(i) of the definition of *qualified entity*)

Omit “formed in Australia or in an external Territory”, substitute “registered under Part 2A.2 of the *Corporations Act 2001*”.

134 Transitional—licences allocated under section 38B of the *Broadcasting Services Act 1992*

The amendments of section 38B of the *Broadcasting Services Act 1992* made by this Schedule do not affect the continuity of a licence allocated under that section before the commencement of this item.

Copyright Act 1968**135 Subsection 10(1) (at the end of the definition of *broadcast*) (before the note)**

Add:

For the purposes of the application of this definition to a service provided under a satellite BSA licence, assume that there is no conditional access system that relates to the service.

136 Subsection 10(1)

Insert:

satellite BSA licence means a commercial television broadcasting licence allocated under section 38C of the *Broadcasting Services Act 1992*.

137 Subsection 10(1)

Insert:

satellite BSA licensee means the licensee of a satellite BSA licence.

138 Section 100AH (note)

Omit “135ZB or 135ZZI”, substitute “135ZB, 135ZZI or 135ZZZF”.

139 Section 135ZZJA

Before “This Part”, insert “(1)”.

140 At the end of section 135ZZJA

Add:

- (2) This Part does not apply in relation to a re-transmission by a satellite BSA licensee.

Note: For re-broadcasts by satellite BSA licensees, see Part VD.

141 After Part VC

Insert:

Part VD—Re-broadcasts by satellite BSA licensees

Division 1—Preliminary

135ZZZF Definitions

In this Part:

collecting society means a body that is, for the time being, declared to be a collecting society under section 135ZZZO.

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

eligible program has the meaning given by section 135ZZZG.

engage in conduct means:

- (a) do an act; or
- (b) omit to perform an act.

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notice holder means the person who is, for the time being, appointed to be the notice holder under section 135ZZZT.

original broadcaster has the meaning given by section 135ZZZG.

relevant collecting society, in relation to a remuneration notice, means a collecting society for owners of copyright in the same kind of work or other subject-matter as that to which the remuneration notice relates.

relevant copyright owner means the owner of the copyright in a work, a sound recording or a cinematograph film, but does not include a new owner of the copyright in a sound recording of a live performance within the meaning of Subdivision B of Division 5 of Part IV.

remuneration notice means a notice referred to in section 135ZZZJ.

rules, in relation to a collecting society, means the provisions of the memorandum and articles of association of the society.

135ZZZG Eligible program and original broadcaster

- (2) For the purposes of this Part, if the following conditions are satisfied in relation to a program:
- (a) the program is broadcast by the licensee of a commercial television broadcasting licence for a regional licence area (within the meaning of section 43AA of the *Broadcasting Services Act 1992*);
 - (b) the licensee is required to provide the program to a satellite BSA licensee under section 43AA of that Act;
- then:
- (c) the program is an **eligible program**; and
 - (d) the licensee mentioned in paragraph (a) is the **original broadcaster** of the eligible program.
- (3) For the purposes of this Part, if the following conditions are satisfied in relation to a program:
- (a) the program is broadcast by the licensee of a commercial television broadcasting licence;

- (b) the licensee is required to provide the program to a satellite BSA licensee under section 43AB or 43AC of the *Broadcasting Services Act 1992*;

then:

- (c) the program is an *eligible program*; and
- (d) the licensee mentioned in paragraph (a) is the *original broadcaster* of the eligible program.

135ZZZH Operation of collecting society rules

This Part applies to a collecting society despite anything in the rules of the society, but nothing in this Part affects those rules so far as they can operate together with this Part.

Division 2—Re-broadcasts by satellite BSA licensees

135ZZZI Re-broadcasts by satellite BSA licensees

Copyright in a work, sound recording or cinematograph film included in an eligible program

- (1) The copyright in a work, sound recording or cinematograph film included in a broadcast of an eligible program is not infringed by the re-broadcast of the eligible program if:
 - (a) the eligible program is re-broadcast by a satellite BSA licensee; and
 - (b) the eligible program is re-broadcast on a service authorised by the satellite BSA licensee's satellite BSA licence; and
 - (c) the re-broadcast of the eligible program complies with the conditions of the satellite BSA licensee's satellite BSA licence that are set out in clause 7A of Schedule 2 to the *Broadcasting Services Act 1992*; and
 - (d) a remuneration notice given by the satellite BSA licensee to the relevant collecting society is in force; and
 - (e) the original broadcaster of the eligible program was specified in the remuneration notice; and
 - (f) the satellite BSA licensee complies with section 135ZZZL.

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Copyright in a broadcast of an eligible program

- (2) The copyright in a broadcast of an eligible program is not infringed by the re-broadcast of the eligible program if:
- (a) the eligible program is re-broadcast by a satellite BSA licensee; and
 - (b) the eligible program is re-broadcast on a service authorised by the satellite BSA licensee's satellite BSA licence; and
 - (c) the re-broadcast of the eligible program complies with the conditions of the satellite BSA licensee's satellite BSA licence that are set out in clause 7A of Schedule 2 to the *Broadcasting Services Act 1992*; and
 - (d) any of the following conditions is satisfied:
 - (i) there is an agreement in force between the satellite BSA licensee and the owner of the copyright in the broadcast of the eligible program as to the amount payable by the satellite BSA licensee to the owner of the copyright for the re-broadcast of eligible programs during a particular period;
 - (ii) if there is no agreement—there is in force a determination of the Copyright Tribunal under section 153RA of the amount payable by the satellite BSA licensee to the owner of the copyright in the broadcast of the eligible program for the re-broadcast of eligible programs during a particular period;
 - (iii) if there is no agreement or determination—the satellite BSA licensee has given the owner of the copyright in the broadcast of the eligible program a written undertaking to pay to the owner of the copyright such amount as is determined by the Copyright Tribunal under section 153RA for the re-broadcast of eligible programs during a particular period; and
 - (e) the eligible program is re-broadcast by the satellite BSA licensee during the period mentioned in whichever of subparagraphs (d)(i), (ii) or (iii) applies.

Making a copy for the purpose of a re-broadcast

- (3) The copyright in a work, sound recording or cinematograph film included in a broadcast of an eligible program is not infringed by the making of a copy of the eligible program if:
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- (a) the sole purpose of making the copy is to enable a re-broadcast of the eligible program at a later time; and
 - (b) subsection (1) would apply to the re-broadcast of the eligible program at the later time.
- (4) The copyright in a broadcast of an eligible program is not infringed by the making of a copy of the eligible program if:
- (a) the sole purpose of making the copy is to enable a re-broadcast of the eligible program at a later time; and
 - (b) subsection (2) would apply to the re-broadcast of the eligible program at the later time.
- (5) If:
- (a) a copy of an eligible program is made for a purpose referred to in subsection (3) or (4); and
 - (b) under a law of the Commonwealth, the satellite BSA licensee is required to retain the copy for a period longer than 7 days after the copy is made; and
 - (c) the copy is not destroyed as soon as practicable after the end of that period;
- subsection (3) or (4), as the case requires, does not apply, and is taken never to have applied, in relation to the making of the copy.
- (5A) If:
- (a) a copy of an eligible program is made for a purpose referred to in subsection (3) or (4); and
 - (b) subsection (5) does not apply; and
 - (c) the copy is not destroyed within 7 days after it is made;
- subsection (3) or (4), as the case requires, does not apply, and is taken never to have applied, in relation to the making of the copy.
- (6) In this section, a reference to the *making of a copy* of an eligible program is a reference to making a cinematograph film or sound recording of the broadcast of the eligible program, or a copy of such a film or sound recording.

135ZZZJ Remuneration notices

- (1) A satellite BSA licensee may, by written notice given to the relevant collecting society, undertake to pay equitable remuneration to the society for re-broadcasts of eligible programs

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broadcast by specified original broadcasters, where the eligible programs are re-broadcast by the satellite BSA licensee while the notice is in force.

- (2) A remuneration notice must specify that the amount of equitable remuneration is to be assessed on the basis of the records to be kept by the satellite BSA licensee under section 135ZZZL.
- (3) A remuneration notice comes into force on:
 - (a) the day on which it is given to the collecting society; or
 - (b) such earlier day as is specified in the notice;and remains in force until it is revoked.

135ZZZK Amount of equitable remuneration

- (1) If a satellite BSA licensee gives a remuneration notice to a collecting society, the amount of equitable remuneration payable to the collecting society for re-broadcasts of eligible programs by the satellite BSA licensee while the notice is in force is the amount:
 - (a) determined by agreement between the satellite BSA licensee and the collecting society; or
 - (b) failing such agreement—determined by the Copyright Tribunal on application made by either of them.
- (2) If a determination has been made by the Copyright Tribunal under subsection (1), either:
 - (a) the satellite BSA licensee; or
 - (b) the collecting society;may, at any time after 12 months from the day on which the determination was made, apply to the Tribunal under that subsection for a new determination of amounts payable to the collecting society by the satellite BSA licensee for re-broadcasts of eligible programs by the satellite BSA licensee.
- (3) For the purposes of subsection (1), different amounts may be determined (whether by agreement or by the Copyright Tribunal) in relation to different classes of:
 - (a) works; or
 - (b) sound recordings; or
 - (c) cinematograph films;included in re-broadcasts.

135ZZZL Record system

- (1) If a remuneration notice is given to a collecting society by a satellite BSA licensee, the satellite BSA licensee must establish and maintain a record system.
- (2) The record system must provide:
 - (a) for a record to be kept of the title of each eligible program that is:
 - (i) broadcast by an original broadcaster specified in the remuneration notice; and
 - (ii) re-broadcast by the satellite BSA licensee; and
 - (b) for the collecting society to have access to such a record.
- (3) The record system must be:
 - (a) determined by agreement between the satellite BSA licensee and the collecting society; or
 - (b) failing such agreement—determined by the Copyright Tribunal on application made by either of them.
- (4) Subsection (3) has effect subject to subsection (2).

135ZZZM Revocation of remuneration notice

- (1) A remuneration notice may be revoked at any time by the relevant satellite BSA licensee by written notice given to the collecting society to which the remuneration notice was given.
- (2) The revocation takes effect:
 - (a) at the end of 3 months after the date of the notice; or
 - (b) on such later day as is specified in the notice.

135ZZZN Request for payment of equitable remuneration

- (1) If a remuneration notice is or has been in force, the collecting society to which the notice was given may, by written notice given to the relevant satellite BSA licensee, request the satellite BSA licensee to pay to the society, within a reasonable time after the date of the notice, the amount of equitable remuneration specified in the notice.

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- (2) The amount specified in the notice must be an amount payable under section 135ZZZK for re-broadcasts made by the satellite BSA licensee while the remuneration notice is or was in force.
- (3) Subsection (1) has effect subject to subsection (4).
- (4) If an amount specified in a request under subsection (1) is not paid in accordance with the request, it may be recovered from the satellite BSA licensee by the collecting society in:
 - (a) the Federal Court of Australia; or
 - (b) any other court of competent jurisdiction;as a debt due to the society.

Division 3—Collecting societies

135ZZO Collecting societies

- (1) A body may apply to the Minister to be declared as a collecting society for:
 - (a) all relevant copyright owners; or
 - (b) specified classes of relevant copyright owners.
 - (2) After receiving the application, the Minister must do one of the following:
 - (a) by notice published in the *Gazette*, declare the body to be a collecting society;
 - (b) refuse to declare the body to be a collecting society;
 - (c) both:
 - (i) refer the application to the Copyright Tribunal in the way prescribed by the regulations; and
 - (ii) notify the body of the referral.
 - (3) A declaration made under paragraph (2)(a) is not a legislative instrument.
 - (4) If the Minister refers the application to the Copyright Tribunal, the Tribunal may declare the body to be a collecting society.

Note: Section 153U sets out the procedure of the Copyright Tribunal in dealing with the reference.
 - (5) A declaration of the body as a collecting society must declare the body to be:
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- (a) the collecting society for all relevant copyright owners; or
 - (b) the collecting society for classes of relevant copyright owners specified in the declaration.
- (6) If:
- (a) a body is declared to be the collecting society for a specified class of copyright owners; and
 - (b) another body is subsequently declared to be the collecting society for that class of copyright owners:
- then:
- (c) the first-mentioned collecting society ceases to be the collecting society for that class of copyright owners on the day on which the subsequent declaration is made; and
 - (d) any remuneration notice given to that collecting society ceases to be in force to the extent to which it relates to relevant copyright owners included in that class of copyright owners.
- (7) The Minister and the Copyright Tribunal must not declare a body to be a collecting society unless:
- (a) it is:
 - (i) registered as a company under Part 2A.2 of the *Corporations Act 2001*; and
 - (ii) a company limited by guarantee; and
 - (b) all persons who are included in a class of relevant copyright owners to be specified in the declaration, or their agents, are entitled to become its members; and
 - (c) its rules prohibit the payment of dividends to its members; and
 - (d) its rules contain such other provisions as are prescribed, where the provisions are necessary to ensure that the interests of members of the collecting society who are relevant copyright owners, or their agents, are protected adequately, including, in particular, provisions about:
 - (i) the collection of amounts of equitable remuneration payable under section 135ZZZK; and
 - (ii) the payment of the administrative costs of the collecting society out of amounts collected by it; and
 - (iii) the distribution of amounts collected by the collecting society; and
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- (iv) the holding on trust by the collecting society of amounts for relevant copyright owners who are not its members; and
 - (v) access to records of the collecting society by its members.
- (8) If the Minister or the Copyright Tribunal has declared a body to be the collecting society for a specified class of copyright owners, the Minister and the Copyright Tribunal may refuse to declare another body to be the collecting society for that class of copyright owners unless satisfied that to do so would be in the interests of those copyright owners, having regard to:
- (a) the number of members of the first-mentioned society; and
 - (b) the scope of its activities; and
 - (c) such other considerations as are relevant.

135ZZP Revocation of declaration

- (1) This section applies if the Minister is satisfied that a body declared as a collecting society:
- (a) is not functioning adequately as a collecting society; or
 - (b) is not acting in accordance with its rules or in the best interests of those of its members who are relevant copyright owners, or their agents; or
 - (c) has altered its rules so that they no longer comply with paragraphs 135ZZO(7)(c) and (d); or
 - (d) has refused or failed, without reasonable excuse, to comply with section 135ZZQ or 135ZZR.
- (2) The Minister may:
- (a) by notice published in the *Gazette*, revoke the declaration; or
 - (b) refer the question whether the declaration should be revoked to the Copyright Tribunal in the way prescribed by the regulations.
- (3) If the Minister refers the question to the Copyright Tribunal, the Tribunal may revoke the declaration if it is satisfied that any of paragraphs (1)(a), (b), (c) and (d) applies to the body.

Note: Section 153V sets out the procedure of the Copyright Tribunal in dealing with the reference.

135ZZZQ Annual report and accounts

- (1) A collecting society must, as soon as practicable after the end of each financial year, prepare a report of its operations during that financial year and send a copy of the report to the Minister.
- (2) The Minister must cause a copy of the report sent to the Minister under subsection (1) to be tabled in each House of the Parliament within 15 sitting days of that House after the receipt of the report by the Minister.
- (3) A collecting society must keep accounting records correctly recording and explaining:
 - (a) the transactions of the society (including any transactions as trustee); and
 - (b) the financial position of the society.
- (4) The accounting records must be kept in such a manner as will enable:
 - (a) true and fair accounts of the society to be prepared from time to time; and
 - (b) those accounts to be conveniently and properly audited.
- (5) A collecting society must, as soon as practicable after the end of each financial year:
 - (a) cause its accounts to be audited by an auditor who is not a member of the society; and
 - (b) send to the Minister a copy of its accounts as so audited.
- (6) A collecting society must give its members reasonable access to copies of all reports and audited accounts prepared by it under this section.
- (7) This section does not affect any obligations of a collecting society relating to the preparation and lodging of annual returns or accounts under the *Corporations Act 2001*.
- (8) For the purposes of this section, the period:
 - (a) beginning at the commencement of this section; and
 - (b) ending at the end of 30 June 2010;is taken to be a financial year.

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135ZZZR Amendment of rules

A collecting society must, within 21 days after it alters its rules, send a copy of the rules as so altered to the Minister, together with a statement setting out:

- (a) the effect of the alteration; and
- (b) the reasons why it was made.

135ZZZS Applying to Tribunal for review of distribution arrangement

- (1) A collecting society or a member of a collecting society may apply to the Copyright Tribunal for review of the arrangement adopted, or proposed to be adopted, by the collecting society for distributing amounts it collects in a period.
- (2) If the Tribunal makes an order under section 153W varying the arrangement or substituting for it another arrangement, the arrangement reflecting the Tribunal's order has effect as if it had been adopted in accordance with the collecting society's rules, but does not affect a distribution started before the order was made.

Division 4—Interim re-broadcasts

135ZZZT Appointment of notice holder

The Minister may, by notice published in the *Gazette*, appoint a person to be the notice holder for the purposes of this Division.

135ZZZU Re-broadcast before declaration of collecting society

The copyright in a work, sound recording or cinematograph film included in a broadcast of an eligible program is not infringed by the re-broadcast of the eligible program if:

- (a) the eligible program is re-broadcast by a satellite BSA licensee; and
- (b) the eligible program is re-broadcast on a service authorised by the satellite BSA licensee's satellite BSA licence; and
- (c) the re-broadcast of the eligible program complies with the conditions of the satellite BSA licensee's satellite BSA licence that are set out in clause 7A of Schedule 2 to the *Broadcasting Services Act 1992*; and

- (d) at the time the re-broadcast is made, a collecting society has not been declared; and
- (e) a notice given by the satellite BSA licensee to the notice holder under subsection 135ZZZV(1) is in force; and
- (f) the satellite BSA licensee complies with section 135ZZZL.

135ZZZV Notices by satellite BSA licensees

- (1) A satellite BSA licensee may, at any time before the declaration of the first collecting society, by written notice given to the notice holder by the satellite BSA licensee, undertake to pay equitable remuneration to a collecting society, when it is declared, for re-broadcasts of eligible programs by the satellite BSA licensee while the notice is in force.
- (2) A notice must specify that the amount of equitable remuneration is to be assessed on the basis of the records to be kept by the satellite BSA licensee under section 135ZZZL.
- (3) A notice comes into force on:
 - (a) the day on which it is given to the notice holder; or
 - (b) such later day as is specified in the notice;and remains in force until it is revoked.
- (4) A notice may be revoked at any time by the satellite BSA licensee by written notice given to the notice holder.
- (5) The revocation takes effect:
 - (a) on the date of the notice of revocation; or
 - (b) on such later date as is specified in the notice of revocation.

135ZZZW Record keeping requirements

If a satellite BSA licensee gives a notice to the notice holder under section 135ZZZV, sections 135ZZZK and 135ZZZL apply as if:

- (a) references to a collecting society were references to the notice holder; and
- (b) references to a remuneration notice were references to a notice under section 135ZZZV.

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135ZZZX Effect of declaration of collecting society

(1) If:

(a) as a result of the declaration of one or more collecting societies, there is a society for all relevant copyright owners; and

(b) a notice under section 135ZZZV was in force immediately before the day on which the declaration came into force;

then, on and after that day, the notice ceases to have effect as such a notice, but is taken, for the purposes of this Part, to be a remuneration notice that:

(c) was given by the relevant satellite BSA licensee to the collecting society, or to each of the collecting societies, as the case may be; and

(d) came into force on the same day as the notice came into force.

(2) If:

(a) one or more collecting societies are declared for one or more, but not for all, classes of relevant copyright owners; and

(b) a notice was in force immediately before the day on which the declaration came into force;

then, on and after that day:

(c) the notice ceases to have effect as such a notice in relation to the relevant copyright owners in the class or classes of copyright owners for whom a collecting society is declared, but is taken, for the purposes of this Part, to be a remuneration notice that:

(i) was given by the relevant satellite BSA licensee to the collecting society or to each of the collecting societies, as the case may be; and

(ii) came into force on the same day as the notice came into force; and

(d) the notice continues to have effect as such a notice in relation to all other relevant copyright owners.

(3) When a notice is, under this section, taken to be a remuneration notice, the relevant satellite BSA licensee must cause copies of all records made under section 135ZZZL on or after the day on which the notice is taken to have come into force to be sent to the relevant

collecting society within 21 days after the declaration of the collecting society.

Division 5—Miscellaneous

135ZZZY Relevant copyright owner may authorise re-broadcast

- (1) Nothing in this Part affects the right of the owner of the copyright in a broadcast of an eligible program to grant a licence authorising a satellite BSA licensee to re-broadcast the eligible program without infringing that copyright.
- (2) Nothing in this Part affects the right of the owner of the copyright in a work, sound recording or cinematograph film included in a broadcast of an eligible program to grant a licence authorising a satellite BSA licensee to re-broadcast the eligible program without infringing that copyright.

135ZZZZ Copyright not to vest under this Part

Despite any other provision of this Act, the re-broadcast of an eligible program that is not an infringement of copyright under this Part does not vest copyright in any work or other subject-matter in any person.

135ZZZZA Licence to re-broadcast does not authorise copyright infringements

The owner of the copyright in a broadcast of an eligible program is not taken, for the purposes of this Act, to have authorised the infringement of copyright in any work, sound recording or cinematograph film included in the broadcast of the eligible program merely because the owner licenses the re-broadcast of the eligible program.

142 After Subdivision G of Division 3 of Part VI

Insert:

Subdivision GA—Applications and references relating to Part VD

153RA Application to the Tribunal to determine amount payable to owner of copyright in a broadcast

- (1) Either:
 - (a) a satellite BSA licensee; or
 - (b) a person (the *copyright owner*) who is, or will be, the owner of the copyright in the broadcast of an eligible program;
may apply to the Tribunal for an order determining the amount payable by the satellite BSA licensee to the copyright owner for the re-broadcast by the satellite BSA licensee, during the period specified in the application, of eligible programs, where the copyright owner owns the copyright in the broadcast of the eligible programs.
- (2) The parties to an application under subsection (1) are:
 - (a) the satellite BSA licensee; and
 - (b) the copyright owner.
- (3) On an application to the Tribunal under subsection (1), the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the amount that it considers to be equitable remuneration for re-broadcasts of eligible programs during the period specified in the order, where the copyright owner owns the copyright in the broadcast of the eligible programs.
- (4) In this section:
eligible program has the same meaning as in Part VD.

153S Applications to the Tribunal under paragraph 135ZZZK(1)(b)—equitable remuneration

- (1) The parties to an application to the Tribunal under paragraph 135ZZZK(1)(b) for the determination of the amount of equitable remuneration payable to a collecting society by a satellite BSA licensee for re-broadcasts by the satellite BSA licensee of eligible programs are:
 - (a) the society; and

- (b) the satellite BSA licensee.
- (2) On an application to the Tribunal under paragraph 135ZZZK(1)(b), the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the amount that it considers to be equitable remuneration for the re-broadcast of eligible programs.
- (3) In making an order, the Tribunal may have regard to such matters (if any) as are prescribed.
- (4) An order may be expressed to have effect in relation to re-broadcasts of eligible programs in reliance on section 135ZZZI before the day on which the order is made.
- (5) In this section:
- collecting society* has the same meaning as in Part VD.
- eligible program* has the same meaning as in Part VD.

**153T Applications to Tribunal under paragraph 135ZZZL(3)(b)—
record system**

- (1) The parties to an application to the Tribunal under paragraph 135ZZZL(3)(b) for the determination of a record system are:
- (a) the collecting society concerned; and
- (b) the satellite BSA licensee concerned.
- (2) On an application to the Tribunal under paragraph 135ZZZL(3)(b), the Tribunal must consider the application and, after giving the parties an opportunity to present their cases, make an order determining the record system.
- (3) In this section:
- collecting society* has the same meaning as in Part VD.

153U References relating to declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under section 135ZZZO an application of a body to be declared a collecting society.

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- (2) The parties to the reference are the applicant and any person made a party by the Tribunal.
- (3) The Tribunal may make a person a party if:
 - (a) the person asks to be made a party; and
 - (b) the Tribunal thinks that the person has a sufficient interest in either or both of the following questions:
 - (i) whether the applicant should be declared to be a collecting society for all relevant copyright owners (as defined in Part VD) or a particular class of relevant copyright owners;
 - (ii) whether another body should cease to be the collecting society for any of the relevant copyright owners (as defined in Part VD) if the applicant is declared to be a collecting society.
- (4) After giving each party an opportunity to present its case, the Tribunal must:
 - (a) declare the applicant to be a collecting society under section 135ZZZO; or
 - (b) reject the application.
- (5) If the Tribunal declares the applicant to be the collecting society under section 135ZZZO, the Registrar must publish notice of the declaration in the *Gazette*.

153V References relating to revocation of declaration of collecting society

- (1) This section has effect if the Minister refers to the Copyright Tribunal under paragraph 135ZZZP(2)(b) the question whether the declaration of a body as a collecting society should be revoked.
- (2) The parties to the reference are:
 - (a) the Minister; and
 - (b) the collecting society; and
 - (c) any person made a party by the Tribunal.
- (3) The Tribunal may make a person a party if:
 - (a) the person asks to be made a party; and

- (b) the Tribunal thinks that the person has a sufficient interest in the question whether the declaration of the collecting society should be revoked.
- (4) After giving each party an opportunity to present its case, the Tribunal must:
 - (a) revoke the declaration of the collecting society under subsection 135ZZZP(3); or
 - (b) refuse to revoke the declaration.
- (5) If the Tribunal revokes the declaration of the collecting society:
 - (a) the revocation must specify the day on which it takes effect; and
 - (b) the Registrar must publish notice of the revocation in the *Gazette*.

153W Review of collecting society's distribution arrangement

- (1) This section has effect if an application is made to the Tribunal under section 135ZZZS for review of an arrangement adopted, or proposed to be adopted, by a collecting society for distributing amounts it collects in a period.
- (2) The parties to the application are:
 - (a) the applicant; and
 - (b) the collecting society (if it is not the applicant); and
 - (c) a member of the collecting society, or an organisation claiming to be representative of members of the collecting society, that the Tribunal makes a party to the application.
- (3) The Tribunal may make a member of the collecting society, or an organisation claiming to be representative of members of the collecting society, a party to the application if:
 - (a) the member or organisation asks to be made a party; and
 - (b) the Tribunal is satisfied that the member or organisation has a substantial interest in the arrangement.
- (4) The Tribunal must consider the application, give the parties an opportunity to present their cases then make an order:
 - (a) confirming the arrangement; or
 - (b) varying the arrangement; or

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(c) substituting for the arrangement another arrangement for distributing amounts the collecting society collects in the period.

(5) In this section:

collecting society has the same meaning as in Part VD.

143 Paragraph 195B(1)(e)

Omit “135ZZB(1A)(b) or 135ZZT(1A)(b)”, substitute “135ZZB(1A)(b), 135ZZT(1A)(b) or 135ZZZO(2)(b)”.

144 Paragraph 195B(1)(f)

Omit “135ZZC(2)(a) or 135ZZU(2)(a)”, substitute “135ZZC(2)(a), 135ZZU(2)(a) or 135ZZZP(2)(a)”.

Radiocommunications Act 1992

144A Subsection 100(5)

Before “153H”, insert “102AF, 102AH or”.

144B Subsection 101B(1)

Omit all the words from and including “may,” to and including “under this section”, substitute “may apply in writing to the ACMA for the issue of a transmitter licence under this section”.

144C Subsection 101B(6)

Repeal the subsection.

144D Subsection 101C(1)

Omit all the words from and including “may,” to and including “under this section”, substitute “may apply in writing to the ACMA for the issue of a transmitter licence under this section”.

144E Subsections 101C(5) and (9)

Repeal the subsections.

145 Before section 102B

Insert:

102AE Variation of transmitter licences—digital conversion of re-transmission facilities

(1) If:

- (a) there is in force a transmitter licence issued under section 102 or 102A; and
- (b) the transmitter licence is held by the licensee of a commercial television broadcasting licence (the *related licence*); and
- (c) the transmitter licence authorises the operation of one or more specified radiocommunications transmitters for transmitting a commercial television broadcasting service in digital mode in accordance with the related licence; and
- (d) under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, the ACMA is required to vary the transmitter licence so that the transmitter licence authorises the operation of one or more additional radiocommunications transmitters for transmitting the commercial television broadcasting service in digital mode in accordance with the related licence; and
- (e) the requirement that the ACMA vary the transmitter licence is related to the objective set out in clause 6C of Schedule 4 to the *Broadcasting Services Act 1992*;

the ACMA must, by written notice to the transmitter licensee, vary the transmitter licence accordingly.

(2) In this section:

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

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

102AF Variation or cancellation of transmitter licences—digital conversion of re-transmission facilities

(1) If:

- (a) a transmitter licence is in force; and
- (b) the transmitter licence is held by a self-help provider; and
- (c) the transmitter licence authorises the operation of 2 or more specified radiocommunications transmitters for

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re-transmitting programs that are transmitted by a commercial television broadcasting licensee; and

- (d) under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, the ACMA is required to vary the transmitter licence by removing the specification of one or more, but not all, of the radiocommunications transmitters; and
- (e) the requirement that the ACMA vary the transmitter licence is related to the objective set out in clause 6C of Schedule 4 to the *Broadcasting Services Act 1992*;

the ACMA must, by written notice to the transmitter licensee, vary the transmitter licence accordingly.

(2) If:

- (a) a transmitter licence is in force; and
- (b) the transmitter licence is held by a self-help provider; and
- (c) the transmitter licence authorises the operation of a specified radiocommunications transmitter for re-transmitting programs that are transmitted by a commercial television broadcasting licensee; and
- (d) under a scheme in force under clause 6 of Schedule 4 to the *Broadcasting Services Act 1992*, the ACMA is required to cancel the transmitter licence; and
- (e) the requirement that the ACMA cancel the transmitter licence is related to the objective set out in clause 6C of Schedule 4 to the *Broadcasting Services Act 1992*;

the ACMA must, by written notice to the transmitter licensee, cancel the transmitter licence.

(3) In this section:

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

self-help provider has the meaning given by section 212A of the *Broadcasting Services Act 1992*.

102AG Transmitter licences—re-transmission of commercial television broadcasting services to be in digital mode

- (1) The ACMA must not issue a transmitter licence to a self-help provider that authorises the operation of one or more specified
-

radiocommunications transmitters for re-transmitting in analog mode the programs transmitted by a commercial television broadcasting licensee in the licence area of the commercial television broadcasting licence.

- (2) Subsection (1) does not apply to the issue of a transmitter licence if the ACMA issues the transmitter licence:
- (a) by way of renewal; and
 - (b) during the simulcast period, or simulcast-equivalent period, for the licence area mentioned in subsection (1).
- (3) In this section:

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

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

self-help provider has the meaning given by section 212A of the *Broadcasting Services Act 1992*.

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

102AH Cancellation of transmitter licences—re-transmission of commercial television broadcasting services

Scope

- (1) This section applies if:
- (a) a transmitter licence (the *analog transmitter licence*) is in force; and
 - (b) the analog transmitter licence is held by a self-help provider; and
 - (c) the analog transmitter licence authorises the operation of one or more specified radiocommunications transmitters for re-transmitting in analog mode the programs transmitted by a commercial television broadcasting licensee in the licence area of the commercial television broadcasting licence.

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Cancellation of transmitter licence

- (2) The analog transmitter licence is cancelled at the end of the simulcast period, or the simulcast-equivalent period, for the licence area of the commercial television broadcasting licence.

Definitions

- (3) In this section:

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

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

self-help provider has the meaning given by section 212A of the *Broadcasting Services Act 1992*.

simulcast-equivalent period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

simulcast period has the same meaning as in Schedule 4 to the *Broadcasting Services Act 1992*.

[Minister's second reading speech made in—
House of Representatives on 18 March 2010
Senate on 15 June 2010]

(54/10)
