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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

Television Broadcasting Services (Digital Conversion) Bill 1998

No. , 1998

(Communications, the Information Economy and the Arts)

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

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

3 The Parliament of Australia enacts:

4 **1 Short title**

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

7 **2 Commencement**

8 This Act commences on the day on which it receives the Royal
9 Assent.

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3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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Schedule 1—Amendment of the Broadcasting Services Act 1992

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1 Section 28

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

7

8

2 Subsection 34(1)

9

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

10

3 After paragraph 34(1)(f)

11

Insert:

12

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

13

14

4 Subsection 34(2)

15

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

16

5 At the end of section 34

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Add:

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

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22

(4) In this section:

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datacasting service has the same meaning as in Schedule 4.

24

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

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26

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

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

4 **7 Section 92F**

5 Omit “decision”, substitute “determination”.

6 **8 Section 215**

7 Repeal the section.

8 **9 After section 216**

9 Insert:

10 **216A Schedule 4 (digital television broadcasting)**

11 Schedule 4 has effect.

12 **10 At the end of subclause 7(1) of Schedule 2**

13 Add:

- 14 (k) the licensee will comply with the requirements of the
15 commercial television conversion scheme in force under
16 clause 5 of Schedule 4 (other than a requirement covered by
17 paragraph 5(2)(a) or (b) of that Schedule);
18 (l) the licensee will comply with an implementation plan:
19 (i) given by the licensee to the ABA in accordance with the
20 commercial television conversion scheme in force under
21 clause 5 of Schedule 4; and
22 (ii) approved by the ABA;
23 (m) the licensee will not broadcast a television program in digital
24 mode during the simulcast period for the licence area
25 concerned unless:
26 (i) the program is broadcast simultaneously by the licensee
27 in analog mode in that area; or
28 (ii) under the regulations, the program is treated as
29 incidental and directly linked to a program that is
30 broadcast simultaneously by the licensee in analog
31 mode in that area;
-

- 1 (n) the licensee will comply with standards applicable to the
2 licence under clause 34 of Schedule 4 (which deals with
3 digital broadcasting format);
- 4 (o) the licensee will comply with standards applicable to the
5 licence under clause 35 of Schedule 4 (which deals with
6 captioning of television programs for the deaf and hearing
7 impaired);
- 8 (p) if the licensee holds a transmitter licence under section 102
9 or 102A of the *Radiocommunications Act 1992* that
10 authorises the operation of a transmitter—the licensee will
11 not operate, or permit the operation of, that transmitter to
12 transmit in digital mode:
- 13 (i) a commercial broadcasting service that provides radio
14 programs; or
- 15 (ii) a subscription radio broadcasting service; or
- 16 (iii) a subscription television broadcasting service; or
- 17 (iv) a subscription radio narrowcasting service; or
- 18 (v) a subscription television narrowcasting service; or
- 19 (vi) an open narrowcasting radio service; or
- 20 (vii) an open narrowcasting television service.

21 **11 At the end of clause 7 of Schedule 2**

22 Add:

- 23 (3) An expression used in paragraph (1)(m) or (p) and in Schedule 4
24 has the same meaning in that paragraph as it has in that Schedule.

25 **12 At the end of the Act**

26 Add:

27 **Schedule 4—Digital television broadcasting**

28 Note: See section 216A.

29 **Part 1—Introduction**

30

1 **1 Simplified outline**

2 The following is a simplified outline of this Schedule:

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- The ABA is to formulate schemes for the conversion, over time, of the transmission of television broadcasting services from analog mode to digital mode.
 - There is to be a simulcast period throughout which broadcasters are to transmit their television programs in both analog mode and digital mode.
 - At the end of the simulcast period, analog transmissions are to cease.
 - Broadcasters must meet standards relating to High Definition Television (HDTV) format transmission of television programs in digital mode.
 - Broadcasters must meet standards relating to captioning of television programs for the deaf and hearing impaired.
 - Broadcasters will be allowed to use spare transmission capacity on digital transmission channels to provide datacasting services.
 - Owners and operators of broadcasting transmission towers must give digital broadcasters and datacasters access to the towers for the purposes of installing or maintaining digital transmitters.
 - There are to be reviews before 1 January 2001 and 31 December 2005 of certain elements of the digital television regulatory regime.

1 **2 Definitions**

2 In this Schedule, unless the contrary intention appears:

3 **AAT** means the Administrative Appeals Tribunal.

4 **ACA** means the Australian Communications Authority.

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

7 **commercial television conversion scheme** means a scheme under
8 clause 5.

9 **coverage area** means:

- 10 (a) a metropolitan coverage area; or
11 (b) a regional coverage area.

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

- 16 (a) the delivery of the service uses the broadcasting services
17 bands; and
18 (b) the service is not of a kind specified in the regulations.

19 **licence area** means a licence area for a commercial television
20 broadcasting licence.

21 **metropolitan coverage area** means an area that corresponds to a
22 metropolitan licence area.

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

- 25 (a) New South Wales; or
26 (b) Victoria; or
27 (c) Queensland; or
28 (d) Western Australia; or
29 (e) South Australia.

1 ***national broadcasting service*** does not include a broadcasting
2 service provided under the *Parliamentary Proceedings*
3 *Broadcasting Act 1946*.

4 ***national television broadcasting service*** means a national
5 broadcasting service that provides television programs.

6 ***national television conversion scheme*** means a scheme under
7 clause 17.

8 ***regional coverage area*** means an area that corresponds to a
9 regional licence area.

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

12 ***simulcast period:***

13 (a) in relation to a commercial television broadcasting service—
14 has the meaning given by paragraph 5(2)(c) of this Schedule;
15 and

16 (b) in relation to a national television broadcasting service—has
17 the meaning given by paragraph 17(2)(c) of this Schedule.

18 ***transmitter licence*** has the same meaning as in the
19 *Radiocommunications Act 1992*.

20 **3 Analog mode**

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

24 **4 Digital mode**

25 For the purposes of this Schedule, a program or service is
26 broadcast or transmitted in ***digital mode*** if the program or service
27 is broadcast or transmitted using a digital modulation technique.

28 **Part 2—Commercial television**

29

1 **5 Commercial television conversion scheme**

- 2 (1) As soon as practicable after the commencement of this clause, the
3 ABA must, by writing, formulate a scheme (the ***commercial***
4 ***television conversion scheme***) for the conversion, over time, of the
5 transmission of commercial television broadcasting services from
6 analog mode to digital mode.

7 *Policy objectives*

- 8 (2) The commercial television conversion scheme must be directed
9 towards ensuring the achievement of the following policy
10 objectives:
- 11 (a) the objective that each holder of a commercial television
12 broadcasting licence for a metropolitan licence area is
13 required to commence transmitting the commercial television
14 broadcasting service concerned in digital mode in that area
15 on 1 January 2001;
 - 16 (b) the objective that each holder of a commercial television
17 broadcasting licence for a regional licence area is required to
18 commence transmitting the commercial television
19 broadcasting service concerned in digital mode in that area
20 by such date during the period:
 - 21 (i) beginning on 1 January 2001; and
 - 22 (ii) ending immediately before 1 January 2004;as the ABA determines under the scheme;
 - 23 (c) the objective that there should be a transitional period for a
24 licence area, that is:
 - 25 (i) to be known as the ***simulcast period***; and
 - 26 (ii) to run for 8 years or for such longer period as is
27 prescribed in relation to that area; and
 - 28 (iii) in the case of a metropolitan licence area—to begin on 1
29 January 2001; and
 - 30 (iv) in the case of a regional licence area—to begin on the
31 date determined in relation to that area in accordance
32 with paragraph (b);throughout which the holder of a commercial television
33 broadcasting licence for that area is required to transmit
34
35

- 1 simultaneously the commercial television broadcasting
2 service concerned in both analog mode and digital mode in
3 that area;
- 4 (d) the objective that, throughout the simulcast period for a
5 licence area, the holder of a commercial television
6 broadcasting licence for that area should be authorised, under
7 one or more transmitter licences, to use one or more
8 additional channels to transmit the commercial television
9 broadcasting service concerned in digital mode in that area;
- 10 (e) the objective that the additional channels should occupy the
11 same amount of bandwidth as the channels used by the
12 holder of the commercial television broadcasting licence to
13 transmit the commercial television broadcasting service
14 concerned in analog mode in that area;
- 15 (f) the objective that, throughout the simulcast period for a
16 metropolitan licence area, the transmission of a commercial
17 television broadcasting service in digital mode in that area
18 should achieve the same level of coverage and potential
19 reception quality as is achieved by the transmission of that
20 service in analog mode in that area;
- 21 (g) the objective that, as soon as is practicable after the start of
22 the simulcast period for a regional licence area, and
23 throughout the remainder of that period, the transmission of a
24 commercial television broadcasting service in digital mode in
25 that area should achieve the same level of coverage and
26 potential reception quality as is achieved by the transmission
27 of that service in analog mode in that area;
- 28 (h) the objective that, during the simulcast period for a licence
29 area, there should, as far as is practicable, be co-location of:
- 30 (i) transmitters used by the holder of a commercial
31 television broadcasting licence for that area to transmit
32 the commercial television broadcasting service
33 concerned in digital mode in that area; and
- 34 (ii) transmitters used by the holder to transmit that service
35 in analog mode in that area;
- 36 (j) the objective that, at the end of the simulcast period for a
37 licence area, all transmissions of commercial television
38 broadcasting services in analog mode in that area are to cease
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- 1 and that each holder of a commercial television broadcasting
2 licence for that area is to either:
- 3 (i) continue to transmit the commercial television
4 broadcasting service concerned in digital mode in that
5 area using the additional channels that were used for
6 digital transmission during the simulcast period and
7 surrender any transmitter licence that authorised analog
8 transmission of that service in that area during the
9 simulcast period; or
- 10 (ii) transmit the commercial television broadcasting service
11 concerned in digital mode in that area using the
12 channels that were used during the simulcast period to
13 transmit that service in analog mode and surrender any
14 transmitter licence that authorised digital transmission
15 of that service on the additional channels in that area
16 during the simulcast period;
- 17 (k) the objective that, after the end of the simulcast period for a
18 licence area, the transmission of a commercial television
19 broadcasting service in digital mode in that area should
20 achieve the same level of coverage and potential reception
21 quality as was achieved by the transmission of that service in
22 analog mode in that area immediately before the end of that
23 period;
- 24 (l) the objective that holders of commercial television
25 broadcasting licences be permitted to use any spare
26 transmission capacity that is available on the digital
27 transmission channels for the purpose of the transmission of
28 datacasting services;
- 29 (m) the objective that the ABA is to consult holders of
30 commercial television broadcasting licences about the
31 implementation of the scheme.
- 32 (3) Subclause (2) does not prevent the commercial television
33 conversion scheme from allowing the holder of a commercial
34 television broadcasting licence for a regional licence area to
35 transmit the commercial television broadcasting service concerned
36 in digital mode in that area during the whole or a part of the
37 period:

- 1 (a) beginning on 1 January 2001; and
2 (b) ending immediately before the start of the simulcast period
3 for that area;
4 so long as that transmission complies with such requirements as
5 are ascertained in accordance with the scheme.

6 **6 Scheme may confer administrative powers on the ABA**

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

10 **7 Transmitter licences**

11 *Grant of additional spectrum for digital transmission*

- 12 (1) The commercial television conversion scheme must make
13 provision for requiring the ACA to issue transmitter licences
14 authorising transmissions of commercial television broadcasting
15 services in digital mode.

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

- 17 (2) The commercial television conversion scheme must make
18 provision for requiring the holder of a commercial television
19 broadcasting licence to surrender one or more transmitter licences
20 authorising digital transmission if:
21 (a) the holder does not commence digital transmission as
22 mentioned in paragraph 5(2)(a) or (b) of this Schedule; or
23 (b) the holder commences digital transmission as mentioned in
24 paragraph 5(2)(a) or (b) of this Schedule, but does not
25 continue digital transmission throughout the simulcast period
26 for the licence area concerned;
27 and the holder does not satisfy the ABA that there are exceptional
28 circumstances.

1 *Return of spectrum at end of simulcast period*

- 2 (3) The commercial television conversion scheme must make
3 provision for requiring the holder of a commercial television
4 broadcasting licence to whom subparagraph 5(2)(j)(i) of this
5 Schedule applies to surrender the transmitter licence or licences as
6 mentioned in that subparagraph.
- 7 (4) The commercial television conversion scheme must make
8 provision for requiring the holder of a commercial television
9 broadcasting licence to whom subparagraph 5(2)(j)(ii) of this
10 Schedule applies to surrender the transmitter licence or licences as
11 mentioned in that subparagraph.
- 12 (5) The commercial television conversion scheme must provide that, if
13 the holder of a commercial television broadcasting licence for a
14 licence area fails to notify the ABA, at least 6 months before the
15 end of the simulcast period for that area, whether the holder
16 intends to pursue the outcome referred to in subparagraph 5(2)(j)(i)
17 or (ii) of this Schedule, the holder is taken to have pursued the
18 outcome referred to in subparagraph 5(2)(j)(i) of this Schedule.

19 *Return of spectrum if HDTV standards contravened*

- 20 (6) The commercial television conversion scheme must make
21 provision for requiring the holder of a commercial television
22 broadcasting licence for a licence area who contravenes a standard
23 under subclause 34(1) (which deals with HDTV) to surrender the
24 transmitter licence or licences that authorised the transmission of
25 the commercial television broadcasting service concerned in digital
26 mode in that area, unless the holder satisfies the ABA that there are
27 exceptional circumstances.
- 28 (7) Subclause (6) does not prevent the commercial television
29 conversion scheme from making provision for requiring the ACA
30 to issue a transmitter licence to replace the licence that was
31 surrendered as mentioned in that subclause. However, the amount
32 of bandwidth covered by the replacement licence must be less than
33 the amount of bandwidth covered by the surrendered licence.

1 *Variation of analog transmitter licence to allow digital*
2 *transmission*

- 3 (8) The commercial television conversion scheme must make
4 provision for requiring that, if subparagraph 5(2)(j)(ii) of this
5 Schedule applies, the ACA must vary the conditions of the
6 transmitter licence that authorised analog transmission of the
7 commercial television broadcasting service concerned during the
8 simulcast period so as to ensure that the licence authorises digital
9 transmission of that service in the area concerned after the end of
10 the simulcast period.

11 **8 Submission of implementation plans to the ABA**

- 12 (1) The commercial television conversion scheme must make
13 provision for requiring holders of commercial television
14 broadcasting licences to prepare, and submit to the ABA, one or
15 more implementation plans relating to digital transmission, where
16 the implementation plans are in accordance with the scheme.
- 17 (2) The commercial television conversion scheme may provide for
18 variation of implementation plans submitted to the ABA by
19 holders of commercial television broadcasting licences.

20 **9 Amendment of certain plans and guidelines**

- 21 (1) The commercial television conversion scheme may amend the
22 frequency allotment plan or a licence area plan.
- 23 (2) The commercial television conversion scheme may amend
24 technical planning guidelines in force under section 33.
- 25 (3) Subclauses (1) and (2) do not limit the ABA's powers under
26 sections 25, 26 and 33.

27 **10 Reviews and reports**

28 The commercial television conversion scheme may provide for the
29 ABA to conduct reviews, and report to the Minister, on specified
30 matters.

1 **11 Ancillary or incidental provisions**

2 The commercial television conversion scheme may contain such
3 ancillary or incidental provisions as the ABA considers
4 appropriate.

5 **12 ABA to have regard to datacasting allocation power**

6 (1) In formulating or varying the commercial television conversion
7 scheme, the ABA must have regard to its power under subsection
8 34(3) (which deals with datacasting allocation).

9 (2) Subclause (1) does not limit the matters to which the ABA may
10 have regard.

11 **13 Minister may give directions to the ABA**

12 (1) In formulating or varying the commercial television conversion
13 scheme, the ABA must comply with any written directions given
14 to it by the Minister under this subclause.

15 (2) A direction under subclause (1) may be of a general or specific
16 nature.

17 (3) The Minister must arrange for a copy of a direction under
18 subclause (1) to be published in the *Gazette* within 14 days after
19 the direction is given.

20 **14 Variation of scheme**

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

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

1 **15 Scheme to be a disallowable instrument**

2 An instrument under subclause 5(1) is a disallowable instrument
3 for the purposes of section 46A of the *Acts Interpretation Act*
4 1901.

5 **16 Processes to be public**

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

- 8 (a) public consultation; and
9 (b) consultation with holders of commercial television
10 broadcasting licences; and
11 (c) consultation with national broadcasters; and
12 (d) consultation with the ACA.

13 **Part 3—ABC/SBS television**

14
15 **17 National television conversion scheme**

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

21 Note: Under clause 29, the scheme does not take effect until approved by the
22 Minister.

23 *Policy objectives*

- 24 (2) The national television conversion scheme must be directed
25 towards ensuring the achievement of the following policy
26 objectives:
27 (a) the objective that each national broadcaster is required to
28 commence transmitting the national television broadcasting
29 service concerned in digital mode in a metropolitan coverage
30 area by such date as is ascertained in accordance with an

- 1 implementation plan that was given by the broadcaster, and
2 is in force, under clause 18;
- 3 (b) the objective that each national broadcaster is required to
4 commence transmitting the national television broadcasting
5 service concerned in digital mode in a regional coverage area
6 by such date as is ascertained in relation to that area in
7 accordance with an implementation plan that was given by
8 the broadcaster, and is in force, under clause 18;
- 9 (c) the objective that there should be a transitional period for a
10 coverage area, that is:
- 11 (i) to be known as the *simulcast period*; and
12 (ii) to run for such period as is determined in relation to that
13 area under subclause (4); and
14 (iii) to begin on the date mentioned in whichever of
15 paragraphs (a) and (b) is applicable;
- 16 throughout which a national broadcaster is required to
17 transmit simultaneously the national television broadcasting
18 service concerned in both analog mode and digital mode in
19 that area;
- 20 (d) the objective that, throughout the simulcast period for a
21 coverage area, each national broadcaster should be
22 authorised, under one or more transmitter licences, to use one
23 or more channels to transmit the national television
24 broadcasting service concerned in digital mode in that area;
- 25 (e) the objective that the additional channels should occupy the
26 same amount of bandwidth as the channels used by the
27 national broadcaster to transmit the national television
28 broadcasting service concerned in analog mode in that area;
- 29 (f) the objective that, throughout the simulcast period for a
30 metropolitan coverage area, the transmission of a national
31 television broadcasting service in digital mode in that area
32 should achieve the same level of coverage and potential
33 reception quality as is achieved by the transmission of that
34 service in analog mode in that area;
- 35 (g) the objective that, as soon as is practicable after the start of
36 the simulcast period for a regional coverage area, and
37 throughout the remainder of that period, the transmission of a
38 national television broadcasting service in digital mode in
-

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

- 1 digital transmission channels for the purpose of the
2 transmission of datacasting services;
- 3 (m) the objective that the ABA is to consult with national
4 broadcasters about the implementation of the scheme.
- 5 (3) Subclause (2) does not prevent the national television conversion
6 scheme from allowing a national broadcaster to transmit the
7 national television broadcasting service concerned in digital mode
8 in a regional coverage area during the whole or a part of the
9 period:
- 10 (a) beginning on 1 January 2001; and
11 (b) ending immediately before the start of the simulcast period
12 for that area;
- 13 so long as that transmission complies with such requirements as
14 are ascertained in accordance with the scheme.
- 15 *Duration of the simulcast period*
- 16 (4) For the purposes of subparagraph (2)(c)(ii), the Minister must, for
17 each coverage area, make a written determination specifying the
18 duration of the simulcast period for that area.
- 19 (5) In making a determination under subclause (4), the Minister must
20 have regard to the following matters:
- 21 (a) the end of the simulcast period that is applicable to
22 commercial television broadcasting services in the licence
23 area that corresponds to the coverage area concerned; and
24 (b) such other matters (if any) as the Minister considers relevant.

25 **18 National broadcasters to give implementation plans to the**
26 **Minister**

- 27 (1) A national broadcaster:
- 28 (a) may give the Minister one or more implementation plans
29 relating to the conversion, over time, of the transmission of
30 the national television broadcasting service concerned from
31 analog mode to digital mode; and
32 (b) must, if and when required to do so by the Minister, give the
33 Minister one or more implementation plans relating to the
-

- 1 conversion, over time, of the transmission of the national
2 television broadcasting service concerned from analog mode
3 to digital mode.
- 4 (2) If an implementation plan is given to the Minister under this
5 clause, the Minister must:
- 6 (a) approve the implementation plan; or
7 (b) refuse to approve the implementation plan.
- 8 (3) In deciding whether to approve an implementation plan under this
9 clause, the Minister must have regard to the following matters:
- 10 (a) whether the implementation plan is directed towards
11 ensuring the achievement of the following policy objectives:
- 12 (i) the objective that each national broadcaster should be
13 required to commence transmitting the national
14 broadcasting service concerned in digital mode in each
15 metropolitan coverage area on 1 January 2001;
- 16 (ii) the objective that each national broadcaster should be
17 required to commence transmitting the national
18 television broadcasting service concerned in digital
19 mode to regional coverage areas on or after 1 January
20 2001 so that all regional coverage areas have digital
21 transmission of the service by 1 January 2004;
- 22 (b) the objectives mentioned in subclause 17(2);
23 (c) such other matters (if any) as the Minister considers relevant.
- 24 (4) Before deciding whether to approve an implementation plan under
25 this clause, the Minister may direct the ABA to give the Minister a
26 report about the matter.
- 27 (5) If the Minister approves an implementation plan under this clause,
28 the implementation plan comes into force on approval.
- 29 (6) If the Minister refuses to approve an implementation plan under
30 this clause, the Minister may, by written notice given to the
31 national broadcaster concerned, require the national broadcaster to
32 give a fresh implementation plan.

- 1 (7) This clause applies to the giving or approval of a variation of an
2 implementation plan in a corresponding way to the way in which it
3 applies to the giving or approval of an implementation plan.

4 **19 Compliance with implementation plans**

5 If an implementation plan given by a national broadcaster under
6 clause 18 is in force, the national broadcaster must comply with
7 the implementation plan.

8 **20 Scheme may confer administrative powers on the ABA**

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

12 **21 Transmitter licences**

13 *Grant of additional spectrum for digital transmission*

- 14 (1) The national television conversion scheme must make provision
15 for requiring the ACA to issue transmitter licences authorising
16 transmissions of national television broadcasting services in digital
17 mode.

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

- 19 (2) The national television conversion scheme must make provision
20 for requiring a national broadcaster to surrender one or more
21 transmitter licences authorising digital transmission if:
22 (a) the national broadcaster does not commence digital
23 transmission as mentioned in paragraph 17(2)(a) or (b) of
24 this Schedule; or
25 (b) the national broadcaster commences digital transmission as
26 mentioned in paragraph 17(2)(a) or (b) of this Schedule, but
27 does not continue digital transmission throughout the
28 simulcast period for the coverage area concerned;
29 and the national broadcaster does not satisfy the ABA that there
30 are exceptional circumstances.

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Return of spectrum at end of simulcast period

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- (3) The national television conversion scheme must make provision for requiring a national broadcaster to whom subparagraph 17(2)(j)(i) of this Schedule applies to surrender the transmitter licence or licences as mentioned in that subparagraph.

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- (4) The national television conversion scheme must make provision for requiring a national broadcaster to whom subparagraph 17(2)(j)(ii) of this Schedule applies to surrender the transmitter licence or licences as mentioned in that subparagraph.

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- (5) The national television conversion scheme must provide that, if a national broadcaster fails to notify the ABA, at least 6 months before the end of the simulcast period for a coverage area, whether the broadcaster intends to pursue the outcome referred to in subparagraph 17(2)(j)(i) or (ii) of this Schedule, the broadcaster is taken to have pursued the outcome referred to in subparagraph 17(2)(j)(i) of this Schedule.

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Return of spectrum if HDTV standards contravened

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- (6) The national television conversion scheme must make provision for requiring a national broadcaster who contravenes a standard under subclause 34(1) (which deals with HDTV) to surrender the transmitter licence or licences that authorised the transmission of the national television broadcasting service concerned in digital mode in the coverage area concerned, unless the national broadcaster satisfies the ABA that there are exceptional circumstances.

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- (7) Subclause (6) does not prevent the national television conversion scheme from making provision for requiring the ACA to issue a transmitter licence to replace the licence that was surrendered as mentioned in that subclause. However, the amount of bandwidth covered by the replacement licence must be less than the amount of bandwidth covered by the surrendered licence.

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1 *Variation of analog transmitter licence to allow digital*
2 *transmission*

3 (8) The national television conversion scheme must make provision
4 for requiring that, if subparagraph 17(2)(j)(ii) of this Schedule
5 applies, the ACA must vary the conditions of the transmitter
6 licence that authorised analog transmission of the national
7 broadcasting service concerned during the simulcast period so as to
8 ensure that the licence authorises digital transmission of that
9 service in the area concerned after the end of the simulcast period.

10 **22 Amendment of certain plans and guidelines**

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

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

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

17 **23 Reviews and reports**

18 The national television conversion scheme may provide for the
19 ABA to conduct reviews, and report to the Minister, on specified
20 matters.

21 **24 Ancillary or incidental provisions**

22 The national television conversion scheme may contain such
23 ancillary or incidental provisions as the ABA considers
24 appropriate.

25 **25 ABA to have regard to datacasting allocation power**

26 (1) In formulating or varying the national television conversion
27 scheme, the ABA must have regard to its power under subsection
28 34(3) (which deals with datacasting allocation).

- 1 (2) Subclause (1) does not limit the matters to which the ABA may
2 have regard.

3 **26 Minister may give directions to the ABA**

- 4 (1) In formulating or varying the national television conversion
5 scheme, the ABA must comply with any written directions given
6 to it by the Minister under this subclause.
- 7 (2) A direction under subclause (1) may be of a general or specific
8 nature.
- 9 (3) The Minister must arrange for a copy of a direction under
10 subclause (1) to be published in the *Gazette* within 14 days after
11 the direction is given.

12 **27 Variation of scheme**

- 13 (1) The national television conversion scheme may be varied, but not
14 revoked, in accordance with subsection 33(3) of the *Acts*
15 *Interpretation Act 1901*.
- 16 (2) Subclause (1) does not limit the application of subsection 33(3) of
17 the *Acts Interpretation Act 1901* to other instruments under this
18 Act.

19 **28 Scheme to be a disallowable instrument**

20 An instrument under subclause 17(1) is a disallowable instrument
21 for the purposes of section 46A of the *Acts Interpretation Act*
22 *1901*.

23 **29 Scheme does not take effect until approved by the Minister**

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

1 **30 Processes to be public**

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

- 4 (a) public consultation; and
5 (b) consultation with national broadcasters; and
6 (c) consultation with holders of commercial television
7 broadcasting licences; and
8 (d) consultation with the ACA.

9 **31 Compliance with scheme**

10 A national broadcaster must comply with the national television
11 conversion scheme.

12 **32 Simulcasting requirements**

13 A national broadcaster must not broadcast a television program in
14 digital mode during the simulcast period for a coverage area
15 unless:

- 16 (a) the program is broadcast simultaneously by the national
17 broadcaster in analog mode in that area; or
18 (b) under the regulations, the program is treated as incidental and
19 directly linked to a program that is broadcast simultaneously
20 by the national broadcaster in analog mode in that area; or
21 (c) the program is of a kind that is declared by the regulations to
22 be exempt from this clause.

23 **33 Digital transmitter not to be used to provide a subscription
24 television broadcasting service etc.**

25 If a national broadcaster holds a transmitter licence that authorises
26 the operation of a transmitter for transmitting the national
27 broadcasting service concerned in digital mode, the national
28 broadcaster must not operate, or permit the operation of, that
29 transmitter to transmit in digital mode:

- 30 (a) a commercial broadcasting service that provides radio
31 programs; or

- 1 (b) a subscription radio broadcasting service; or
- 2 (c) a subscription television broadcasting service; or
- 3 (d) a subscription radio narrowcasting service; or
- 4 (e) a subscription television narrowcasting service; or
- 5 (f) an open narrowcasting radio service; or
- 6 (g) an open narrowcasting television service.

7 **Part 4—Standards**

8

9 **34 Digital television format standards**

- 10 (1) The regulations must determine standards that require:
 - 11 (a) holders of commercial television broadcasting licences; and
 - 12 (b) national broadcasters;to meet specified goals or targets in relation to the extent to which
13 television programs, or specified kinds of television programs, are
14 transmitted in accordance with a specified High Definition
15 Television (HDTV) format relating to the transmission of
16 television programs in digital mode.
- 17
- 18 (2) The regulations may determine other standards that are to be
19 observed by commercial television broadcasting licensees and
20 national broadcasters in relation to the format in which television
21 programs are to be transmitted in digital mode.
- 22 (3) A national broadcaster must comply with a standard under
23 subclause (1) or (2).

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

25 **35 Captioning standards**

- 26 (1) The regulations must determine standards that are to be observed
27 by:
 - 28 (a) holders of commercial television broadcasting licences; and
 - 29 (b) national broadcasters;in relation to the captioning of television programs for the deaf and
30 hearing impaired.
31

- 1 (2) Standards under subclause (1) must require licensees and national
2 broadcasters to meet specified goals or targets in relation to the
3 extent to which television programs, or specified kinds of
4 television programs, are captioned for the deaf and hearing
5 impaired.
- 6 (3) Subclause (2) does not limit subclause (1).
- 7 (4) Standards under subclause (1) must be directed towards ensuring
8 the achievement of the following objectives:
9 (a) the objective that, as far as is practicable:
10 (i) holders of commercial television broadcasting licences;
11 and
12 (ii) national broadcasters;
13 should provide a captioning service for television programs
14 transmitted during prime viewing hours;
15 (b) the objective that, as far as is practicable:
16 (i) holders of commercial television broadcasting licences;
17 and
18 (ii) national broadcasters;
19 should provide a captioning service for television news
20 programs, and television current affairs programs,
21 transmitted outside prime viewing hours.
- 22 (5) For the purposes of subclause (4), *prime viewing hours* are the
23 hours:
24 (a) beginning at 6 pm each day or, if another time is prescribed,
25 beginning at that prescribed time each day; and
26 (b) ending at 10.30 pm on the same day or, if another time is
27 prescribed, ending at that prescribed time on the same day.
- 28 (6) Standards under subclause (1) do not apply to a particular licensee
29 or national broadcaster before the first occasion on or after
30 1 January 2001 on which the licensee or broadcaster broadcasts
31 television programs in digital mode.
- 32 (7) A national broadcaster must comply with a standard under
33 subclause (1).
- 34 Note: For compliance by licensees, see clause 7 of Schedule 2.
-

1 **36 Technical standards for digital transmission of television**
2 **broadcasting services**

- 3 (1) The regulations may determine technical standards that:
4 (a) relate to the transmission of commercial television
5 broadcasting services, and national broadcasting services, in
6 digital mode; and
7 (b) are to be followed by the ABA in formulating or varying the
8 commercial television conversion scheme or the national
9 television conversion scheme.
- 10 (2) The commercial television conversion scheme must be consistent
11 with any standards determined under subclause (1).
- 12 (3) The national television conversion scheme must be consistent with
13 any standards determined under subclause (1).

14 **37 Datacasting standards**

- 15 (1) The regulations may determine standards that are to be observed
16 by:
17 (a) holders of commercial television broadcasting licences; and
18 (b) national broadcasters; and
19 (c) other persons;
20 in relation to the provision, by the holders, broadcasters or other
21 persons, of datacasting services transmitted in digital mode.
- 22 (2) If a transmitter licence authorises the transmission of datacasting
23 services in digital mode, then, in addition to any conditions to
24 which that licence is subject under the *Radiocommunications Act*
25 1992, the licence is taken to be subject to a condition that the
26 holder of the transmitter licence, and any person authorised by the
27 holder of the transmitter licence, must comply with a standard
28 under subclause (1).

1 **38 Standards may incorporate other instruments**

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

5 **Part 5—Transmitter access regime**
6

7 **39 Simplified outline**

8 The following is a simplified outline of this Part:

- | | | |
|----|---|--|
| 9 | • | The owner or operator of a broadcasting transmission tower must provide: |
| 10 | | |
| 11 | | (a) the holder of a commercial television broadcasting licence; or |
| 12 | | |
| 13 | | (b) a national broadcaster; |
| 14 | | |
| 15 | | with access to the tower, and the site of the tower, for the purpose of installing or maintaining a transmitter for use in transmitting television broadcasting services in digital mode. |
| 16 | | |
| 17 | • | The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the tower, and the site of the tower, for the purpose of installing or maintaining a transmitter for use in transmitting datacasting services in digital mode. |
| 18 | | |
| 19 | | |
| 20 | | |
| 21 | | |

22 **40 Definitions**

23 In this Part:

24 **ACCC** means the Australian Competition and Consumer
25 Commission.

26 **broadcasting transmission tower** means:

- 1 (a) a tower; or
2 (b) a pole; or
3 (c) a mast; or
4 (d) a similar structure;
5 used to supply a broadcasting service by means of
6 radiocommunications using the broadcasting services bands.

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

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

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

11 **radiocommunication** has the same meaning as in the
12 *Radiocommunications Act 1992*.

13 **site** means:

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

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

19 **41 Extended meaning of access**

- 20 (1) For the purposes of this Part, **giving access** to a tower includes
21 replacing the tower with another tower located on the same site
22 and giving access to the replacement tower.
- 23 (2) For the purposes of this Part, **giving access** to a site on which is
24 situated a tower includes replacing the tower with another tower
25 located on the site.

1 **42 Access to broadcasting transmission towers**

2 *Television broadcasting services in digital mode*

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

16 *Datacasting services in digital mode*

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

28 *Compliance not technically feasible*

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

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

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

18 *Issue of certificate*

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

23 **43 Access to sites of broadcasting transmission towers**

24 *Television broadcasting services in digital mode*

- 25 (1) The owner or operator of a broadcasting transmission tower must,
26 if requested to do so by the holder of a commercial television
27 broadcasting licence (the *access seeker*), or a national broadcaster
28 (also the *access seeker*), give the access seeker access to a site if
29 the tower is situated on the site.
- 30 (2) The owner or operator of the broadcasting transmission tower is
31 not required to comply with subclause (1) unless:

- 1 (a) the access is provided for the sole purpose of enabling the
2 access seeker to install or maintain a transmitter and/or
3 associated facilities used, or for use, wholly or principally in
4 connection with the transmission of a television broadcasting
5 service in digital mode; and
6 (b) the access seeker gives the owner or operator reasonable
7 notice that the access seeker requires the access.

8 *Datacasting services in digital mode*

- 9 (3) The owner or operator of a broadcasting transmission tower must,
10 if requested to do so by a datacaster (the *access seeker*), give the
11 access seeker access to a site if the tower is situated on the site.
- 12 (4) The owner or operator of the broadcasting transmission tower is
13 not required to comply with subclause (3) unless:
- 14 (a) the access is provided for the sole purpose of enabling the
15 access seeker to install or maintain a transmitter and/or
16 associated facilities used, or for use, in connection with the
17 provision of datacasting services in digital mode; and
18 (b) the access seeker gives the owner or operator reasonable
19 notice that the access seeker requires the access.

20 *Compliance not technically feasible*

- 21 (5) The owner or operator of a broadcasting transmission tower is not
22 required to comply with subclause (1) or (3) if there is in force a
23 written certificate issued by the ABA stating that, in the ABA's
24 opinion, compliance with subclause (1) or (3), as the case may be,
25 in relation to that tower is not technically feasible.
- 26 (6) In determining whether compliance with subclause (1) or (3) in
27 relation to a site is technically feasible, the ABA must have regard
28 to:
- 29 (a) whether compliance is likely to result in significant
30 difficulties of a technical or engineering nature; and
31 (b) whether compliance is likely to result in a significant threat
32 to the health or safety of persons who operate, or work on, a
33 facility situated on the site; and

- 1 (c) if compliance is likely to have a result referred to in
2 paragraph (a) or (b)—whether there are practicable means of
3 avoiding such a result, including (but not limited to):
4 (i) changing the configuration or operating parameters of a
5 facility situated on the site; and
6 (ii) making alterations to a facility situated on the site; and
7 (d) such other matters (if any) as the ABA considers relevant.

8 *Issue of certificate*

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

13 **44 Terms and conditions of access**

14 *Access to towers*

- 15 (1) The owner or operator of a broadcasting transmission tower must
16 comply with subclause 42(1) or (3) on such terms and conditions
17 as are:
18 (a) agreed between the following parties:
19 (i) the owner or operator;
20 (ii) the access seeker (within the meaning of that
21 subclause); or
22 (b) failing agreement, determined by an arbitrator appointed by
23 the parties.

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

26 *Access to sites*

- 27 (2) The owner or operator of a broadcasting transmission tower must
28 comply with subclause 43(1) or (3) on such terms and conditions
29 as are:
30 (a) agreed between the following parties:
31 (i) the owner or operator;

- 1 (ii) the access seeker (within the meaning of that
2 subclause); or
3 (b) failing agreement, determined by an arbitrator appointed by
4 the parties.

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

7 *Conduct of arbitration*

- 8 (3) The regulations may make provision for and in relation to the
9 conduct of an arbitration under this clause.
10 (4) The regulations may provide that, for the purposes of a particular
11 arbitration conducted by the ACCC under this clause, the ACCC
12 may be constituted by a single member, or a specified number of
13 members, of the ACCC. For each such arbitration, that member or
14 those members are to be nominated in writing by the Chair of the
15 ACCC.
16 (5) Subclause (4) does not, by implication, limit subclause (3).

17 **45 Code relating to access**

- 18 (1) The ACCC may, by written instrument, make a Code setting out
19 conditions that are to be complied with in relation to the provision
20 of access under this Part.
21 (2) An access seeker must comply with the Code.
22 (3) The owner or operator of a broadcasting transmission tower must
23 comply with the Code.
24 (4) An instrument under subclause (1) is a disallowable instrument for
25 the purposes of section 46A of the *Acts Interpretation Act 1901*.

26 **46 Arbitration—acquisition of property**

- 27 (1) This clause applies to a provision of this Part that authorises the
28 conduct of an arbitration (whether by the ACCC or another
29 person).

1 (2) The provision has no effect to the extent (if any) to which it
2 purports to authorise the acquisition of property if that acquisition:
3 (a) is otherwise than on just terms; and
4 (b) would be invalid because of paragraph 51(xxxi) of the
5 Constitution.

6 (3) In this clause:

7 *acquisition of property* has the same meaning as in paragraph
8 51(xxxi) of the Constitution.

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

11 **47 Relationship between this Part and the *National Transmission*** 12 ***Network Sale Act 1998***

13 Part 3 of the *National Transmission Network Sale Act 1998* does
14 not apply in relation to an access seeker seeking access to a
15 broadcasting transmission tower or a site to the extent to which this
16 Part applies in relation to the access seeker seeking access to that
17 tower or site.

18 **Part 6—Collection of datacasting charge**

19

20 **48 Collection of datacasting charge**

21 *Definitions*

22 (1) In this clause:

23 *charge* means charge imposed by the *Datacasting Charge*
24 *(Imposition) Act 1998*.

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

1 *When charge due and payable*

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

4 *Late payment penalty*

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

9 (a) 20% per annum; or

10 (b) if the determination specifies a lower percentage—that lower
11 percentage per annum;

12 on the amount unpaid, computed from that time.

13 *Determination has effect*

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

15 *Remission of penalty*

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

19 *Payment of charge and late payment penalty*

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

22 *Recovery of charge and penalty*

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

26 *Payment into Consolidated Revenue Fund*

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

1

Disallowable instrument

2

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

3

4

5

49 Cancellation of certain exemptions from datacasting charge

6

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

7

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9

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

10

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50 ACA to report to the Minister on principles for determining the amount of datacasting charge

14

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

16

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- (2) The report must contain a statement setting out the extent to which the ACA had regard to competitive neutrality principles in formulating those proposals.

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22

- (3) The Minister must cause copies of the report to be laid before each House of the Parliament within 15 sitting days of that House after receiving the report.

23

24

Part 7—Injunctions

25

26

1 **51 Injunctions**

2 *Restraining injunctions*

3 (1) If:

- 4 (a) the holder of a commercial television broadcasting licence
5 has, in accordance with the commercial television conversion
6 scheme, given an implementation plan to the ABA; and
7 (b) the ABA has approved the implementation plan; and
8 (c) the holder has engaged, is engaging or is proposing to engage
9 in any conduct in contravention of the implementation plan;

10 the Federal Court may, on the application of the ABA, grant an
11 injunction:

- 12 (d) restraining the holder from engaging in the conduct; and
13 (e) if, in the court's opinion, it is desirable to do so—requiring
14 the holder to do something.

15 (2) If a person has engaged, is engaging or is proposing to engage in
16 any conduct in contravention of Part 5 of this Schedule, the
17 Federal Court may, on the application of the ABA or of the access
18 seeker referred to in that Part, grant an injunction:

- 19 (a) restraining the person from engaging in the conduct; and
20 (b) if, in the court's opinion, it is desirable to do so—requiring
21 the person to do something.

22 *Performance injunctions*

23 (3) If:

- 24 (a) the holder of a commercial television broadcasting licence
25 has, in accordance with the commercial television conversion
26 scheme, given an implementation plan to the ABA; and
27 (b) the ABA has approved the implementation plan; and
28 (c) the holder has refused or failed, or is refusing or failing, or is
29 proposing to refuse or fail, to do an act or thing; and
30 (d) the refusal or failure was, is or would be a contravention of
31 the implementation plan;

32 the Federal Court may, on the application of the ABA, grant an
33 injunction requiring the holder to do that act or thing.

- 1 (4) If:
2 (a) a person has refused or failed, or is refusing or failing, or is
3 proposing to refuse or fail, to do an act or thing; and
4 (b) the refusal or failure was, is or would be a contravention of
5 Part 5 of this Schedule;
6 the Federal Court may, on the application of the ABA or of the
7 access seeker referred to in that Part, grant an injunction requiring
8 the person to do that act or thing.

9 **52 Interim injunctions**

10 *Grant of interim injunction*

- 11 (1) If an application is made to the court for an injunction under clause
12 51, the court may, before considering the application, grant an
13 interim injunction restraining a person from engaging in conduct of
14 a kind referred to in that clause.

15 *No undertakings as to damages*

- 16 (2) The court is not to require an applicant for an injunction under
17 clause 51, as a condition of granting an interim injunction, to give
18 any undertakings as to damages.

19 **53 Discharge etc. of injunctions**

20 The court may discharge or vary an injunction granted under this
21 Part.

22 **54 Certain limits on granting injunctions not to apply**

23 *Restraining injunctions*

- 24 (1) The power of the court under this Part to grant an injunction
25 restraining a person from engaging in conduct of a particular kind
26 may be exercised:
27 (a) if the court is satisfied that the person has engaged in conduct
28 of that kind—whether or not it appears to the court that the

- 1 person intends to engage again, or to continue to engage, in
2 conduct of that kind; or
- 3 (b) if it appears to the court that, if an injunction is not granted, it
4 is likely that the person will engage in conduct of that kind—
5 whether or not the person has previously engaged in conduct
6 of that kind and whether or not there is an imminent danger
7 of substantial damage to any person if the person engages in
8 conduct of that kind.

9 *Performance injunctions*

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

22 **55 Other powers of the court unaffected**

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

26 **Part 8—Reviews**

27

28 **56 Reviews before 1 January 2001**

- 29 (1) Before 1 January 2001, the Minister must cause to be conducted a
30 review of the following matters:
- 31 (a) the content of regulations made for the purposes of the
32 following provisions:
-

- 1 (i) subparagraph 7(1)(m)(ii) of Schedule 2 and paragraphs
2 32(b) and (c) of this Schedule (which deal with
3 programming during the simulcast period);
4 (ii) the definition of *datacasting service* in clause 2 of this
5 Schedule;
- 6 (b) whether any amendments of laws of the Commonwealth
7 should be made in order to deal with convergence between
8 broadcasting services and other services;
- 9 (c) whether any amendments of laws of the Commonwealth
10 should be made to deal with the re-transmission, on
11 subscription television broadcasting services, of commercial
12 television broadcasting services transmitted in digital mode;
- 13 (d) whether any amendments of laws of the Commonwealth
14 should be made in order to ensure that underserved regional
15 licence areas are provided with the same number of
16 commercial television broadcasting services as are provided
17 in metropolitan licence areas;
- 18 (e) the regulatory arrangements that should apply to:
19 (i) the allocation of spectrum in the broadcasting services
20 bands for use for the provision of datacasting services;
21 and
22 (ii) the digital transmission of a community television
23 service, free of charge, using spectrum in the
24 broadcasting services bands allocated for use for the
25 provision of datacasting services.
- 26 (2) A review under subclause (1) of the matter referred to in
27 subparagraph (1)(e)(i) is to be conducted on the basis that:
28 (a) holders of commercial television broadcasting licences; and
29 (b) national broadcasters;
30 should not be eligible for the allocation of spectrum as mentioned
31 in that subparagraph.
- 32 (3) The Minister must cause to be prepared a report of a review under
33 subclause (1).

- 1 (4) The Minister must cause copies of a report to be laid before each
2 House of the Parliament within 15 sitting days of that House after
3 the completion of the preparation of the report.
- 4 (5) For the purposes of this clause, a regional licence area is
5 *underserved* if, and only if, there are fewer than 3 commercial
6 television broadcasting services in that area.

7 **57 Reviews before 31 December 2005**

- 8 (1) Before 31 December 2005, the Minister must cause to be
9 conducted a review of the following matters:
- 10 (a) whether section 28 should be amended or repealed after
11 31 December 2008;
- 12 (b) whether paragraph 7(1)(m) of Schedule 2 or clause 32 of this
13 Schedule (which deal with simulcast requirements) should be
14 amended or repealed;
- 15 (c) whether paragraph 7(1)(p) of Schedule 2 or clause 33 of this
16 Schedule (which deal with subscription television
17 broadcasting services and other matters) should be amended
18 or repealed;
- 19 (d) the content of any regulations made for the purposes of
20 paragraph 5(2)(c) of this Schedule (which deals with the
21 duration of the simulcast period) and the content of any
22 determinations made for the purposes of subparagraph
23 17(2)(c)(ii) of this Schedule (which also deals with the
24 duration of the simulcast period);
- 25 (e) whether all parts of the broadcasting services bands that are
26 available for allocation for broadcasting services or
27 datacasting services have been so identified;
- 28 (f) whether the parts of the broadcasting services bands that
29 have been allocated for use for broadcasting services or
30 datacasting services have been efficiently structured.
- 31 (2) The Minister must cause to be prepared a report of a review under
32 subclause (1).

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

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

5

6 **58 Charges relating to the ABA’s costs**

- 7 (1) The ABA may, by written instrument, make determinations fixing
8 charges for any matter in relation to which expenses are incurred
9 by the ABA under:
10 (a) the commercial television conversion scheme; or
11 (b) the national television conversion scheme;
12 and specifying the persons by whom, and the times when, the
13 charges are payable.
- 14 (2) A charge fixed under subclause (1) must not be such as to amount
15 to taxation.
- 16 (3) A determination under subclause (1) is a disallowable instrument
17 for the purposes of section 46A of the *Acts Interpretation Act*
18 *1901*.

19 **Part 10—Review of decisions**

20

21 **59 Review by the AAT**

22 *Commercial television licensees*

- 23 (1) An application may be made to the AAT for a review of any of the
24 following decisions made by the ABA under the commercial
25 television conversion scheme:
26 (a) a decision to refuse to approve an implementation plan, or a
27 variation of an implementation plan, given to the ABA by the
28 holder of a commercial television broadcasting licence;
29 (b) a decision that the holder of a commercial television
30 broadcasting licence has failed to satisfy the ABA that
-

- 1 exceptional circumstances exist as mentioned in subclause
2 7(2) or (6) (which deal with surrender of transmitter
3 licences);
4 (c) a decision requiring the ACA to issue a replacement
5 transmitter licence to the holder of a commercial television
6 broadcasting licence as mentioned in subclause 7(7);
7 (d) a prescribed decision that relates to the holder of a
8 commercial television broadcasting licence.

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

11 *National broadcasters*

- 12 (3) An application may be made to the AAT for a review of any of the
13 following decisions made by the ABA under the national television
14 conversion scheme:
15 (a) a decision that a national broadcaster has failed to satisfy the
16 ABA that exceptional circumstances exist as mentioned in
17 subclause 21(2) or (6) (which deal with surrender of
18 transmitter licences);
19 (b) a decision requiring the ACA to issue a replacement
20 transmitter licence to a national broadcaster as mentioned in
21 subclause 21(7);
22 (c) a prescribed decision that relates to a national broadcaster.
23 (4) An application under subclause (3) may only be made by the
24 national broadcaster concerned.

25 *Transmitter access regime*

- 26 (5) An application may be made to the AAT for a review of a decision
27 of the ABA to issue a certificate under subclause 42(5) or 43(5).
28 (6) An application under subclause (5) may only be made by the
29 access seeker concerned.
30 (7) An application may be made to the AAT for a review of a decision
31 of the ABA to refuse to issue a certificate under subclause 42(5) or
32 43(5).
-

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

4 **60 Notification of decisions to include notification of reasons and**
5 **appeal rights**

6 If the ABA makes a decision that is reviewable under clause 59,
7 the ABA is to include in the document by which the decision is
8 notified:

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

1

2

Schedule 2—Amendment of the Radiocommunications Act 1992

3

4

5

1 Section 5

6

Insert:

7

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

8

9

2 After section 9A

10

Insert:

11

9B Digital mode

12

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

13

14

15

3 Subsection 100(1)

16

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

17

4 Subsection 100(2)

18

Omit “decision”, substitute “determination”.

19

5 Subsection 100(2)

20

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

21

6 After section 100

22

Insert:

23

100A NBS transmitter licences—authorisation of datacasting services

24

25

(1) If:

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

10 (2) In this section:

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

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

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

18 (1) If the ACA is required, under a scheme in force under clause 17 of
19 Schedule 4 to the *Broadcasting Services Act 1992*, to issue an NBS
20 transmitter licence to a national broadcaster, the ACA must issue
21 to the broadcaster an NBS transmitter licence that authorises the
22 operation of one or more specified radiocommunications
23 transmitters for transmitting the national broadcasting service
24 concerned in digital mode.

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

29 (3) In this section:

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

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

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

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

7 Add:

8 (3) If:

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

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

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

17 **8 After section 102**

18 Insert:

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

21 (1) If the ACA is required, under a scheme in force under clause 5 of
22 Schedule 4 to the *Broadcasting Services Act 1992*, to issue a
23 transmitter licence to a person who holds a commercial television
24 broadcasting licence (the ***related licence***), the ACA must issue to
25 the person a transmitter licence that authorises the operation of one
26 or more specified radiocommunications transmitters for
27 transmitting the broadcasting service concerned in digital mode in
28 accordance with the related licence.

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

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

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

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

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

8 After “102”, insert “or 102A”.

9 **11 Subsection 107(3)**

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

11 **12 Subsection 108(5)**

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

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

14 After “102”, insert “or 102A”.

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

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

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

18 Add:

19 (5) If the ACA is required, under a scheme in force under clause 5 or
20 17 of Schedule 4 to the *Broadcasting Services Act 1992*, to vary
21 the conditions of a transmitter licence, the ACA must, by written
22 notice given to the licensee, vary those conditions accordingly.

23 **16 Subsection 125(2)**

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

25 **17 Subsection 129(1)**

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

1 **18 Subsection 130(3)**

2 Repeal the subsection, substitute:

3 (3) In deciding whether to renew the licence, the ACA:

4 (a) except in the case of a licence issued under section 100B—
5 must have regard to the same matters to which it must have
6 regard under subsections 100(4) and (6) in deciding whether
7 to issue such a licence; and

8 (b) except in the case of a licence issued under section 100B—
9 may have regard to the same matters to which it may have
10 regard under subsection 100(5) in deciding whether to issue
11 such a licence; and

12 (c) in the case of a licence issued under section 100B—must
13 have regard to the scheme in force under clause 17 of
14 Schedule 4 to the *Broadcasting Services Act 1992*.

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

16 Repeal the subsection, substitute:

17 (2) In deciding whether to transfer the licence, the ACA:

18 (a) except in the case of a licence issued under section 100B—
19 must have regard to the same matters to which it must have
20 regard under subsections 100(4) and (6) in deciding whether
21 to issue such a licence; and

22 (b) except in the case of a licence issued under section 100B—
23 may have regard to the same matters to which it may have
24 regard under subsection 100(5) in deciding whether to issue
25 such a licence; and

26 (c) in the case of a licence issued under section 100B—must
27 have regard to the scheme in force under clause 17 of
28 Schedule 4 to the *Broadcasting Services Act 1992*.