

# EXPOSURE DRAFT

2016-2017

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT
----------------

## **Radiocommunications Bill 2017**

**No.     , 2017**

*(Communications and the Arts)*

**A Bill for an Act about the management of the  
radiofrequency spectrum, and for other purposes**

**EXPOSURE DRAFT**



# EXPOSURE DRAFT

---

## Contents

<b>Part 1—Preliminary</b>	<b>1</b>
1 Short title .....	1
2 Commencement .....	1
3 Objects .....	2
4 Simplified outline of this Act .....	2
5 Definitions .....	3
6 Radiocommunication .....	13
7 Radiocommunications device, radiocommunications transmitter and radiocommunications receiver .....	13
8 Application of labels .....	15
9 Designated crime/corruption body .....	15
10 Act binds the Crown .....	16
11 Extension to external Territories .....	16
12 Extraterritorial application .....	16
13 Offshore areas .....	17
14 Western Greater Sunrise area .....	17
15 Application to the atmosphere etc. ....	18
16 Space objects etc .....	18
<b>Part 2—Ministerial policy statements</b>	<b>20</b>
17 Simplified outline of this Part .....	20
18 Ministerial policy statements .....	20
19 ACMA must have regard to Ministerial policy statements .....	20
<b>Part 3—ACMA’s work program</b>	<b>21</b>
20 Simplified outline of this Part .....	21
21 ACMA’s work program .....	21
22 Consultation .....	22
<b>Part 4—Radiofrequency plans</b>	<b>23</b>
23 Simplified outline of this Part .....	23
24 Radiofrequency plans .....	23
25 Compliance with radiofrequency plan .....	24
<b>Part 5—Operation of radiocommunications devices</b>	<b>26</b>
26 Simplified outline of this Part .....	26
27 Unauthorised operation of radiocommunications transmitters .....	26
28 Operation of radiocommunications devices by individuals who do not hold a certificate of proficiency .....	27

# EXPOSURE DRAFT

---

29	Unlawful possession of radiocommunications transmitters .....	28
30	Civil proceedings.....	29
<b>Part 6—Licences</b>		<b>31</b>
<b>Division 1—General provisions</b>		<b>31</b>
31	Simplified outline of this Part.....	31
32	Rights conferred by a licence .....	32
<b>Division 2—Issue of licences</b>		<b>34</b>
33	Issue of licences.....	34
34	Licence issue schemes .....	35
35	Licence issue scheme to be the sole method for the issue of certain licences .....	36
36	Determination of licence issue limits.....	36
37	Consultation.....	38
38	Compliance with licence issue limits.....	38
39	Ministerial direction to offer to issue a licence .....	39
40	Limits on power to give a Ministerial direction to offer to issue a licence—regulatory undertakings .....	40
<b>Division 3—Third party use</b>		<b>42</b>
41	Third party use.....	42
42	When third party use cannot be authorised.....	42
43	Restrictions or limitations relating to authorisation of third party use .....	42
44	Record of authorisation .....	42
45	Licensees must notify authorised persons of certain matters .....	43
<b>Division 4—Conditions of licences etc.</b>		<b>46</b>
46	Conditions of licences—access to spectrum.....	46
47	Conditions about the registration of radiocommunications transmitters .....	47
48	Conditions about payment of charges.....	47
49	Conditions about disqualified persons .....	47
50	Conditions determined by the ACMA .....	48
51	Other conditions of licences .....	48
52	Breach of conditions.....	48
<b>Division 5—Regulatory undertakings</b>		<b>50</b>
53	Regulatory undertakings may be included in licences .....	50
54	Relevant connection with a part of the spectrum and an area .....	53
55	Compliance with regulatory undertaking.....	55

---

# EXPOSURE DRAFT

---

56	Regulatory undertakings do not apply in relation to issue of certain licences etc.....	56
<b>Division 6—Varying licences</b>		57
57	Varying licences .....	57
58	Restrictions or limitations on the ACMA’s power to vary a licence.....	58
<b>Division 7—Renewing licences</b>		59
59	Renewal rights etc. ....	59
60	Applications for renewal of licences .....	59
61	Renewal of licences .....	60
62	Characteristics of new licence .....	61
63	Duration of new licence.....	62
<b>Division 8—Suspending licences</b>		63
64	Suspending licences.....	63
65	Consultation.....	63
66	Supplementary circumstances in which a licence may be suspended .....	64
<b>Division 9—Cancelling licences</b>		65
<b>Subdivision A—Cancelling licences</b>		65
67	Cancelling licences .....	65
68	Consultation.....	65
69	Supplementary circumstances in which a licence may be cancelled.....	66
<b>Subdivision B—Disqualified persons</b>		66
70	Disqualified persons .....	66
71	Revocation of determination.....	68
72	Consultation.....	68
73	Register of Disqualified Persons .....	69
<b>Division 10—Surrender of licences</b>		70
74	Surrender of licences .....	70
75	Effect of surrender .....	70
76	Agreement for surrender of licence .....	71
<b>Division 11—Subdivision of licences</b>		72
77	Subdivision of licences .....	72
78	When a licence cannot be subdivided.....	73
79	Restrictions or limitations relating to subdivision .....	73

---

# EXPOSURE DRAFT

---

<b>Division 12—Assignment of licences etc.</b>	74
80 Assignment of licences etc. ....	74
81 When a licence cannot be assigned.....	75
82 Restrictions or limitations on the licensee’s right to assign the licence.....	75
<b>Division 13—Dealing with licences etc.</b>	76
83 Dealing with licences etc. ....	76
84 When a licence cannot be dealt with .....	76
85 Restrictions or limitations on the licensee’s right to deal with the licence.....	77
<b>Division 14—Resumption of licences</b>	78
86 Resumption of licences.....	78
87 Effect of resumption .....	78
88 Resumption procedures etc.....	79
89 Payment of compensation.....	79
<b>Division 15—Register of Radiocommunications Licences</b>	81
90 Register of Radiocommunications Licences .....	81
91 Contents of the Register of Radiocommunications Licences .....	81
92 Registration of radiocommunications devices .....	81
93 Updating the Register of Radiocommunications Licences .....	86
94 Correction of the Register of Radiocommunications Licences .....	86
95 Register rules may make further provision in relation to the Register of Radiocommunications Licences .....	86
96 Register rules .....	86
<b>Division 16—Miscellaneous</b>	88
97 Issue of licence etc. is to be treated as acquisition of asset .....	88
<b>Part 7—Spectrum authorisations</b>	90
98 Simplified outline of this Part.....	90
99 Spectrum authorisations .....	90
100 Conditions of spectrum authorisations .....	91
<b>Part 8—Certified operators</b>	93
<b>Division 1—Introduction</b>	93
101 Simplified outline of this Part.....	93
102 Certified operator requirements .....	93
<b>Division 2—Certificates of proficiency</b>	95
103 Applications for certificates of proficiency .....	95
104 Issuing certificates of proficiency.....	95

---

# EXPOSURE DRAFT

---

105	Exams .....	96
106	Cancelling certificates of proficiency .....	96
107	Consultation.....	97
108	Delegating the power to issue certificates of proficiency .....	97
109	Certification rules .....	98
<b>Part 9—Interference management</b>		<b>99</b>
<b>Division 1—Introduction</b>		<b>99</b>
110	Simplified outline of this Part.....	99
<b>Division 2—Resolution of interference complaints</b>		<b>100</b>
111	Interference complaints .....	100
112	Guidelines for the resolution of interference complaints .....	100
113	ACMA may assist in the resolution of interference complaints .....	101
<b>Division 3—Causing interference etc.</b>		<b>103</b>
114	Causing interference etc. ....	103
115	Operation of laws of States and Territories etc.....	106
<b>Division 4—Directions to licensees</b>		<b>107</b>
116	Directions to licensees .....	107
117	Compliance with direction.....	107
118	Delegation .....	108
<b>Division 5—Power of inspectors in emergencies</b>		<b>109</b>
119	Power of inspectors to enter premises and adjust transmitters in emergencies .....	109
<b>Part 10—Equipment</b>		<b>111</b>
<b>Division 1—Introduction</b>		<b>111</b>
120	Simplified outline of this Part.....	111
<b>Division 2—Equipment rules</b>		<b>113</b>
121	Equipment rules.....	113
122	Constitutional limits .....	114
123	Standards .....	114
124	Obligations and prohibitions.....	114
125	Breach of equipment rules .....	116
126	Decisions by the ACMA.....	117
127	Decisions by accredited persons .....	117
128	Divisions 4 and 5 do not limit the ACMA’s power to make equipment rules .....	118

---

# EXPOSURE DRAFT

---

<b>Division 3—Protected symbols</b>	119
129    Use of protected symbols .....	119
130    Protected symbol .....	120
<b>Division 4—Bans on equipment</b>	122
<b>Subdivision A—Interim bans</b>	122
131    Interim bans on equipment .....	122
132    Duration of interim bans .....	122
133    Revocation of interim bans .....	123
134    Compliance with interim bans .....	123
135    Actions for damages .....	124
<b>Subdivision B—Permanent bans</b>	124
136    Permanent bans on equipment .....	124
137    When permanent bans come into force .....	125
138    Revocation of permanent bans .....	125
139    Compliance with permanent bans—offences .....	125
140    Compliance with permanent bans—civil penalties .....	127
141    Actions for damages .....	128
142    Presumption relating to possession .....	128
<b>Division 5—Recall of equipment</b>	130
<b>Subdivision A—Compulsory recall of equipment</b>	130
143    Compulsory recall of equipment .....	130
144    Contents of a recall notice .....	131
145    Obligations of a supplier in relation to a recall notice .....	133
146    Compliance with recall notices .....	135
147    Actions for damages .....	136
<b>Subdivision B—Voluntary recall of equipment</b>	136
148    Notification requirements for a voluntary recall of equipment .....	136
<b>Part 11—Emergency orders</b>	139
<b>Division 1—Introduction</b>	139
149    Simplified outline of this Part .....	139
<b>Division 2—Declaration of period of emergency</b>	140
150    Declaration of period of emergency .....	140
151    Circumstances in which Proclamation may be made .....	140
152    Termination of period of emergency .....	140
<b>Division 3—Emergency orders</b>	141
153    Emergency orders .....	141

---



# EXPOSURE DRAFT

---

154	Application of emergency orders to broadcasting .....	141
155	Revocation of emergency orders .....	141
156	Emergency orders may have extended operation .....	142
157	Contravention of emergency orders.....	142
158	Emergency orders to prevail over inconsistent laws .....	142
<b>Part 12—Accreditation</b>		<b>144</b>
159	Simplified outline of this Part.....	144
160	ACMA may accredit persons.....	144
161	Conditions of accreditation.....	145
162	Withdrawal of accreditation .....	145
163	Accreditation rules.....	146
<b>Part 13—Industry codes</b>		<b>147</b>
164	Simplified outline of this Part.....	147
165	Approval of industry code .....	147
166	Approval of variation of industry code.....	147
167	Criteria for approval or variation of industry code .....	147
168	Revocation of approval of industry code .....	148
<b>Part 14—Information-gathering powers</b>		<b>150</b>
169	Simplified outline of this Part.....	150
170	ACMA may obtain information or documents .....	150
171	Copying documents—compensation .....	151
172	Copies of documents .....	152
173	ACMA may retain documents .....	152
174	Self-incrimination.....	152
<b>Part 15—Enforcement</b>		<b>154</b>
<b>Division 1—Introduction</b>		<b>154</b>
175	Simplified outline of this Part.....	154
<b>Division 2—Enforcement</b>		<b>156</b>
176	Remedial directions—breach of civil penalty provision.....	156
177	Civil penalty provisions—enforcement .....	157
178	Infringement notices.....	158
179	Enforceable undertakings .....	161
180	Injunctions.....	162
<b>Division 3—Inspectors</b>		<b>164</b>
181	Inspectors .....	164

---

# EXPOSURE DRAFT

---

<b>Division 4—Investigation powers</b>	166
182 Investigation powers—general .....	166
183 Retention of thing seized etc.....	168
184 Powers of inspectors to require operation of transmitters .....	169
185 General powers of inspectors.....	169
186 Self-incrimination.....	171
<b>Division 5—Forfeiture</b>	172
187 Court may order forfeiture .....	172
188 Forfeited goods may be sold.....	172
<b>Division 6—Public warning notices</b>	173
189 Public warning notices.....	173
<b>Division 7—Miscellaneous</b>	174
190 Act not to affect performance of duties by inspectors .....	174
191 Inspectors not authorised to enter or search certain land or premises used for defence purposes.....	174
<b>Part 16—Spectrum access charges</b>	175
192 Simplified outline of this Part.....	175
193 Spectrum access charges .....	175
194 Ministerial directions .....	175
195 Collection of charges on behalf of the Commonwealth .....	176
196 Limits on charges .....	176
197 Recovery of charges .....	177
<b>Part 17—Delegation</b>	178
<b>Division 1—Introduction</b>	178
198 Simplified outline of this Part.....	178
199 General licensing functions or powers.....	178
<b>Division 2—Delegation</b>	181
200 Delegation by the ACMA to eligible Australian corporation .....	181
201 Sub-delegation by eligible Australian corporation .....	182
202 ACMA’s other delegation powers not limited by this Division .....	183
<b>Division 3—Delegation rules</b>	184
203 Requirements of delegation rules .....	184
204 Compliance with delegation rules.....	184
205 Delegation rules.....	184

---

# EXPOSURE DRAFT

---

<b>Division 4—Management rights agreement</b>	185
206 Management rights agreement.....	185
207 Payments .....	186
<b>Part 18—Review of decisions</b>	188
208 Simplified outline of this Part.....	188
209 Reviewable decisions .....	188
210 Applications for reconsideration of decisions made by the ACMA .....	189
211 Reconsideration by the ACMA .....	190
212 Deadline for reconsideration.....	190
213 Review by the Administrative Appeals Tribunal.....	191
<b>Part 19—Provisions extending the concept of radiocommunication</b>	192
214 Simplified outline of this Part.....	192
215 Radio transmissions for the purpose of measurement.....	192
216 Astronomical and meteorological observations.....	194
217 Lighthouses etc.....	194
<b>Part 20—Exemptions</b>	195
218 Simplified outline of this Part.....	195
219 Exemptions for foreign vessels and aircraft.....	195
220 Exemptions for defence research and intelligence.....	196
221 Exemptions for special defence undertakings.....	196
222 Additional exemption for defence matters.....	196
223 Exemption for defence, law enforcement and emergency personnel .....	197
224 Use or possession of equipment by the ACMA .....	198
<b>Part 21—Miscellaneous</b>	199
225 Simplified outline of this Part.....	199
226 Service of documents .....	199
227 Computerised decision-making .....	200
228 Compilation etc. of information .....	200
229 Compensation for acquisition of property .....	201
230 Instruments under this Act may provide for matters by reference to other instruments .....	202
231 Variation or revocation of instruments .....	203
232 No compensation for suspensions, cancellations or variations etc. ....	203

---

# EXPOSURE DRAFT

---

233	Act not to affect performance of functions by States or certain Territories .....	204
234	Implied freedom of political communication.....	204
235	International agreements etc. ....	204
236	Legislative rules .....	204

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14

**A Bill for an Act about the management of the  
radiofrequency spectrum, and for other purposes**

The Parliament of Australia enacts:

**Part 1—Preliminary**

**1 Short title**

This Act is the *Radiocommunications Act 2017*.

**2 Commencement**

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 236	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 14 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

# EXPOSURE DRAFT

## Part 1 Preliminary

## Section 3

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

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

### 3 Objects

The objects of this Act are:

- (a) to promote the long-term public interest derived from the use of the spectrum by providing for the management of the spectrum in a manner that:
  - (i) facilitates the efficient planning, allocation and use of the spectrum; and
  - (ii) facilitates the use of the spectrum for defence, public and community purposes; and
  - (iii) supports the communications policy objectives of the Commonwealth Government; and
- (b) to establish an efficient system for the regulation of equipment.

#### 4 Simplified outline of this Act

- This Act establishes a framework for regulating radiocommunications.
- The framework is to be administered by the ACMA.
- The key components of the framework are as follows:
  - (a) radiofrequency plans;
  - (b) licences (including spectrum access charges) and spectrum authorisations;
  - (c) certified operator requirements;
  - (d) interference management (including the resolution of complaints);

- 1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26

(e) regulation of equipment (including equipment rules, interim bans, permanent bans, and recalls);

(f) accreditation of persons, and delegation.

• The ACMA must, in relation to the performance of its spectrum management functions and the exercise of its spectrum management powers:

(a) have regard to any relevant Ministerial policy statements; and

(b) prepare a work program at least once each financial year.

• A person must not operate, or possess for the purposes of operation, a radiocommunications transmitter unless the operation is authorised by:

(a) a licence; or

(b) a spectrum authorisation.

• A person must not engage in conduct that will result, or is likely to result, in:

(a) substantial interference to radiocommunications; or

(b) substantial disruption to radiocommunications; or

(c) substantial disturbance to radiocommunications.

• During a period of emergency declared by the Governor-General, the Minister may make orders prohibiting or regulating the use or operation of transmitters.

• The ACMA may delegate any or all of the ACMA’s general licensing functions or powers to an eligible Australian corporation.

27 **5 Definitions**

28 In this Act:

No. , 2017

Radiocommunications Bill 2017

3

EXPOSURE DRAFT

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

- 1 **ACCC** means the Australian Competition and Consumer  
2 Commission.
- 3 **accreditation** means an accreditation given under section 160.
- 4 **accreditation rules** means rules made under section 163.
- 5 **ACMA** means the Australian Communications and Media  
6 Authority.
- 7 **aircraft** includes a balloon.
- 8 **alternative dispute resolution service** means a service for the  
9 resolution of disputes, and includes:  
10 (a) conferencing; and  
11 (b) mediation; and  
12 (c) neutral evaluation; and  
13 (d) case appraisal; and  
14 (e) conciliation; and  
15 (f) arbitration; and  
16 (g) a service specified in the legislative rules;  
17 but does not include court procedures or services.
- 18 **auction**, when used in relation to a licence, means a process that  
19 involves inviting persons to indicate or declare what they would be  
20 willing to pay for the issue of the licence.
- 21 **Australia**, when used in a geographical sense, includes the external  
22 Territories.
- 23 Note: See also section 13 (offshore areas), section 14 (Western Greater  
24 Sunrise area) and section 15 (application to the atmosphere etc.).
- 25 **Australian aircraft** means an aircraft that is:  
26 (a) in Australian control; or  
27 (b) registered, or required to be registered, under regulations  
28 made under the *Civil Aviation Act 1988*.
- 29 **Australian vessel** means:  
30 (a) a vessel that is in Australian control; or



# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 5

---

- 1 (b) a vessel (other than an air-cushion vehicle) that is an  
2 Australian boat within the meaning of the *Fisheries*  
3 *Management Act 1991*; or  
4 (c) a vessel that:  
5 (i) is an air-cushion vehicle; and  
6 (ii) would be an Australian boat within the meaning of the  
7 *Fisheries Management Act 1991* if it were a boat within  
8 the meaning of that Act.

9 ***broadcasting station*** means a transmitter that is operating for the  
10 purposes of:

- 11 (a) a broadcasting services bands licence (within the meaning of  
12 the *Broadcasting Services Act 1992*); or  
13 (b) the provision of a national broadcasting service (within the  
14 meaning of that Act).

15 ***certificate of proficiency*** means a certificate under section 104.

16 ***certification rules*** means rules made under section 109.

17 ***certified operator requirements***: see section 102.

18 ***characteristic*** of a licence means:

- 19 (a) a condition that is included in the licence; or  
20 (b) a designated statement that is included in the licence; or  
21 (c) a regulatory undertaking that is included in the licence; or  
22 (d) a period that is specified in the licence; or  
23 (e) a day that is specified in the licence; or  
24 (f) a part of the spectrum that is specified in the licence; or  
25 (g) an area that is specified in the licence; or  
26 (h) a location that is specified in the licence; or  
27 (i) any other matter or thing that is specified in the licence.

28 ***Commonwealth officer*** means:

- 29 (a) a person who, whether on a full-time or part-time basis, and  
30 whether in a permanent capacity or otherwise:  
31 (i) is in the service or employment of the Commonwealth  
32 or an authority of the Commonwealth; or

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

- 1 (ii) holds or performs the duties of any office or position  
2 established by or under a law of the Commonwealth; or  
3 (b) a member of the Defence Force; or  
4 (c) the Commissioner of the Australian Federal Police, a Deputy  
5 Commissioner of the Australian Federal Police, an AFP  
6 employee or a special member of the Australian Federal  
7 Police (all within the meaning of the *Australian Federal*  
8 *Police Act 1979*).

9 ***constitutional corporation*** means a corporation to which  
10 paragraph 51(xx) of the Constitution applies.

11 ***deal with***, when used in relation to a licence, does not include:

- 12 (a) assign; or  
13 (b) authorise under section 41.

14 ***Defence Department*** means the Department of State that is  
15 administered by the Minister administering section 1 of the  
16 *Defence Act 1903*.

17 ***delegation rules*** means rules made under section 205.

18 ***designated crime/corruption body*** has the meaning given by  
19 section 9.

20 ***designated statement*** means a statement covered by any of the  
21 following provisions:

- 22 (a) section 42;  
23 (b) section 43;  
24 (c) section 58;  
25 (d) paragraph 59(1)(a);  
26 (e) paragraph 59(1)(b);  
27 (f) paragraph 59(1)(c);  
28 (g) subsection 59(2);  
29 (h) subsection 59(4);  
30 (i) section 66;  
31 (j) section 69;  
32 (k) section 78;

# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 5

---

- 1 (l) section 79;
- 2 (m) section 81;
- 3 (n) section 82;
- 4 (o) subsection 84(1);
- 5 (p) subsection 84(2);
- 6 (q) subsection 85(1);
- 7 (r) subsection 85(2).

8 ***disqualified person*** has the meaning given by section 70.

9 ***eligible Australian corporation*** means a body corporate that is:

- 10 (a) a company registered under Part 2A.2 of the *Corporations*
- 11 *Act 2001*; or
- 12 (b) established for a public purpose by a law of the
- 13 Commonwealth, a State or a Territory.

14 ***emergency order*** means an order made under subsection 153(1).

15 ***engage in conduct*** means:

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

18 ***environment*** means the physical environment.

19 ***equipment*** means:

- 20 (a) a radiocommunications transmitter; or
- 21 (b) a radiocommunications receiver; or
- 22 (c) anything designed or intended for radio emission; or
- 23 (d) anything, irrespective of its use or function or the purpose of
- 24 its design, that is capable of radio emission; or
- 25 (e) anything that has a use or function that is capable of being
- 26 interfered with by radio emission.

27 ***equipment rules*** means rules made under section 121.

28 ***executive officer*** of a body corporate means an individual, by

29 whatever name called and whether or not a director of the body

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

- 1 corporate, who is concerned, or takes part, in the management of  
2 the body corporate.
- 3 ***Federal Circuit Court*** means the Federal Circuit Court of  
4 Australia.
- 5 ***Federal Court*** means the Federal Court of Australia.
- 6 ***foreign aircraft*** means an aircraft that is not an Australian aircraft.
- 7 ***foreign vessel*** means a vessel that is not an Australian vessel.
- 8 ***general licensing functions or powers*** has the meaning given by  
9 section 199.
- 10 ***Greater Sunrise unit reservoirs*** has the same meaning as in the  
11 *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.
- 12 ***import*** means import into Australia.
- 13 ***in Australian control*** means in the control or possession of one or  
14 more of any of the following:
- 15 (a) the Commonwealth (including an arm of the Defence Force);  
16 (b) an authority of the Commonwealth;  
17 (c) a State;  
18 (d) an authority of a State;  
19 (e) a Territory;  
20 (f) an authority of a Territory.
- 21 ***inspector*** has the meaning given by section 181.
- 22 ***interference*** means:
- 23 (a) in relation to radiocommunications—interference to, or with,  
24 radiocommunications that is attributable, whether wholly or  
25 partly and whether directly or indirectly, to an emission of  
26 electromagnetic energy by equipment; or  
27 (b) in relation to the uses or functions of equipment—  
28 interference to, or with, those uses or functions that is  
29 attributable, whether wholly or partly and whether directly or

# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 5

---

1 indirectly, to an emission of electromagnetic energy by  
2 equipment.

3 ***interference complaint*** has the meaning given by section 111.

4 ***interim ban*** has the meaning given by section 131.

5 ***label*** includes a statement.

6 ***legislative rules*** means rules made under section 236.

7 ***licence*** means a licence issued under this Act (whether by way of  
8 renewal or otherwise).

9 ***licence issue limit*** means a limit determined under section 36.

10 ***licence issue scheme*** means a scheme determined under  
11 section 34.

12 ***licensee***, in relation to a licence, means the holder of the licence.

13 ***management rights agreement*** has the meaning given by  
14 section 206.

15 ***measurement transmission*** means radio emission for purposes  
16 connected with making a measurement by means of the  
17 propagation or other qualities of radio emission.

18 ***measurement transmitter*** means a transmitter designed or intended  
19 for measurement transmission.

20 ***Ministerial policy statement*** has the meaning given by section 18.

21 ***offence against this Act*** includes:

- 22 (a) an offence against section 6 of the *Crimes Act 1914* that  
23 relates to this Act; and  
24 (b) an ancillary offence (within the meaning of the *Criminal*  
25 *Code*) that relates to this Act; and  
26 (c) an offence against section 136.1 or 137.1 of the *Criminal*  
27 *Code* that relates to this Act.

28 ***offer to supply*** includes:

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

- 1 (a) make available for supply; and  
2 (b) expose for supply; and  
3 (c) display for supply; and  
4 (d) advertise for supply.

5 **offshore area**, in relation to a State or Territory, has the same  
6 meaning as in the *Offshore Petroleum and Greenhouse Gas*  
7 *Storage Act 2006*.

8 **overlap** means wholly or partly overlap.

9 **part of a licence** means:

- 10 (a) if the licence specifies a single part of the spectrum in which  
11 operation of radiocommunications devices is authorised  
12 under the licence:  
13 (i) a specified portion of that part of the spectrum; or  
14 (ii) a specified portion of the area within which operation of  
15 radiocommunications devices is so authorised; or  
16 (iii) a specified portion of that part of the spectrum in a  
17 specified portion of the area within which operation of  
18 radiocommunications devices is so authorised; or  
19 (b) if the licence specifies 2 or more parts of the spectrum in  
20 which operation of radiocommunications devices is  
21 authorised under the licence—for each part of the spectrum  
22 in which operation of radiocommunications devices is  
23 authorised under the licence:  
24 (i) a specified portion of that part of the spectrum; or  
25 (ii) a specified portion of the area within which operation of  
26 radiocommunications devices is so authorised; or  
27 (iii) a specified portion of that part of the spectrum in a  
28 specified portion of the area within which operation of  
29 radiocommunications devices is so authorised.

30 For the purposes of subparagraphs (b)(i), (ii) and (iii), **portion**  
31 includes all.

32 **part of the spectrum** includes a single frequency.

# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 5

---

- 1            ***period of emergency*** means a period declared to be a period of  
2            emergency under subsection 150(1).
- 3            ***permanent ban*** has the meaning given by section 136.
- 4            ***portion***, in relation to a part of the spectrum, includes a single  
5            frequency.
- 6            ***protected symbol*** has the meaning given by section 130.
- 7            ***radiocommunication*** has the meaning given by section 6.
- 8            ***radiocommunications community*** has the same meaning as in the  
9            *Australian Communications and Media Authority Act 2005*.
- 10          ***radiocommunications device*** has the meaning given by  
11          subsection 7(1).
- 12          ***radiocommunications receiver*** has the meaning given by  
13          subsection 7(4).
- 14          ***radiocommunications transmitter*** has the meaning given by  
15          subsection 7(2).
- 16          ***radio emission*** means any emission of electromagnetic energy of  
17          frequencies less than 420 terahertz without continuous artificial  
18          guide, whether or not any person intended the emission to occur.
- 19          ***radiofrequency plan*** means a plan determined under section 24.
- 20          ***reception***, in relation to radio emission, includes interception.
- 21          ***Register of Disqualified Persons*** means the Register maintained  
22          under section 73.
- 23          ***Register of Radiocommunications Licences*** means the Register  
24          maintained under section 90.
- 25          ***Register rules*** means rules made under section 96.
- 26          ***Regulatory Powers Act*** means the *Regulatory Powers (Standard*  
27          *Provisions) Act 2014*.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 5

---

- 1 *regulatory undertaking* has the meaning given by section 53.
- 2 *relevant connection*: see section 54.
- 3 *renewal application period*, for a licence, has the meaning given  
4 by section 59.
- 5 *reviewable decision* has the meaning given by section 209.
- 6 *space object* means:
- 7 (a) an object (whether artificial or natural) that is beyond, has  
8 been beyond, or is intended to go beyond, the distance of 100  
9 km above mean sea level; or
- 10 (b) any part of such an object, even if the part is intended to go  
11 only some of the way towards the distance of 100 km above  
12 mean sea level.
- 13 *spectrum* means the range of frequencies within which  
14 radiocommunications are capable of being made.
- 15 *spectrum access charge* means a spectrum access charge fixed  
16 under section 193.
- 17 *spectrum authorisation* has the meaning given by section 99.
- 18 *spectrum management functions*, in relation to the ACMA, has  
19 the same meaning as in the *Australian Communications and Media*  
20 *Authority Act 2005*.
- 21 *spectrum management powers*, in relation to the ACMA, means  
22 the powers conferred on the ACMA by or under:
- 23 (a) this Act; or
- 24 (b) section 12 of the *Australian Communications and Media*  
25 *Authority Act 2005*, to the extent that the powers relate to the  
26 performance of the ACMA's spectrum management  
27 functions.
- 28 *supplementary circumstances*, in relation to a licence, means  
29 circumstances other than a contravention of a condition of the  
30 licence.



**supply** includes supply (including re-supply) by way of sale, exchange, gift, lease, loan, hire or hire-purchase.

**transmitter** means:

- (a) anything designed or intended for radio emission; or
- (b) anything, irrespective of its use or function or the purpose of its design, that is capable of radio emission.

**vessel** means a vessel or boat of any description, and includes:

- (a) an air-cushion vehicle; and
- (b) any floating structure.

**Western Greater Sunrise area** has the same meaning as in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

## **6 Radiocommunication**

(1) For the purposes of this Act, **radiocommunication** is:

- (a) radio emission; or
- (b) reception of radio emission;

for the purpose of communicating information between persons and persons, persons and things or things and things.

(2) The reference in subsection (1) to communicating information includes communicating information between a part of a thing and:

- (a) another part of the same thing; or
- (b) the same part of that thing;

(as, for example, in the operation of radar equipment).

Note: Part 19 has the effect of extending the concept of radiocommunication in certain circumstances.

## **7 Radiocommunications device, radiocommunications transmitter and radiocommunications receiver**

(1) For the purposes of this Act, a **radiocommunications device** is:

- (a) a radiocommunications transmitter; or
- (b) a radiocommunications receiver.

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 7

---

- 1 (2) For the purposes of this Act, a ***radiocommunications transmitter***  
2 is:  
3 (a) a transmitter that is designed or intended for use for the  
4 purpose of radiocommunication; or  
5 (b) anything (other than a line within the meaning of the  
6 *Telecommunications Act 1997*) that is designed or intended to  
7 be ancillary to, or associated with, such a transmitter for the  
8 purposes of that use; or  
9 (c) anything (whether artificial or natural) that:  
10 (i) is designed or intended for use for the purpose of  
11 radiocommunication by means of the reflection of radio  
12 emissions; and  
13 (ii) is specified in a determination under subsection (3).
- 14 (3) The ACMA may, by legislative instrument, determine one or more  
15 specified things for the purposes of subparagraph (2)(c)(ii).
- 16 (4) For the purposes of this Act, a ***radiocommunications receiver*** is:  
17 (a) anything that is designed or intended for use for the purposes  
18 of radiocommunication by means of the reception of radio  
19 emission; or  
20 (b) anything (other than a line within the meaning of the  
21 *Telecommunications Act 1997*) that is designed or intended to  
22 be ancillary to, or associated with, such a thing for the  
23 purposes of that use; or  
24 (c) anything (whether artificial or natural) that:  
25 (i) is designed or intended for use for the purpose of  
26 radiocommunication by means of the reflection of radio  
27 emissions; and  
28 (ii) is specified in a determination under subsection (5).
- 29 (5) The ACMA may, by legislative instrument, determine one or more  
30 specified things for the purposes of subparagraph (4)(c)(ii).
- 31 (6) This Act does not preclude the same thing from being both a  
32 radiocommunications receiver and a radiocommunications  
33 transmitter, or any other kind of transmitter, for the purposes of  
34 this Act.
-

1     **8 Application of labels**

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

- 4             (a) the label is affixed to the thing; or  
5             (b) the label is woven in, impressed on, worked into or annexed  
6             to the thing; or  
7             (c) the label is affixed to a container, covering, package, case,  
8             box or other thing in or with which the first-mentioned thing  
9             is, or is to be, supplied; or  
10            (d) the label is woven in, impressed on, worked into or annexed  
11            to a container, covering, package, case, box or other thing in  
12            or with which the first-mentioned thing is, or is to be,  
13            supplied; or  
14            (e) the label is affixed to, or incorporated in, an instruction or  
15            other document that accompanies the first-mentioned thing.

16     **9 Designated crime/corruption body**

17            (1) For the purposes of this Act, a *designated crime/corruption body*  
18            is a body or office that:

- 19            (a) under a law of the Commonwealth, a State or a Territory,  
20            performs functions related to the investigation, prevention or  
21            prosecution of:  
22            (i) a serious crime; or  
23            (ii) corruption;  
24            (whether or not the body or office also performs other  
25            functions); and  
26            (b) is specified in a determination under subsection (2).

27            (2) The ACMA may, by legislative instrument, determine one or more  
28            bodies or offices for the purposes of paragraph (1)(b).

29            *Serious crime*

30            (3) For the purposes of paragraph (1)(a), *serious crime* is conduct that,  
31            if engaged in within, or in connection with, Australia, would  
32            constitute an offence against a law of the Commonwealth, a State

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 10

---

1 or a Territory punishable by imprisonment for a period exceeding  
2 12 months.

#### 3 **10 Act binds the Crown**

- 4 (1) This Act binds the Crown in each of its capacities.
- 5 (2) This Act does not make the Crown liable to a pecuniary penalty or  
6 to be prosecuted for an offence.
- 7 (3) The protection in subsection (2) does not apply to an authority of  
8 the Crown.

#### 9 **11 Extension to external Territories**

10 This Act extends to every external Territory.

#### 11 **12 Extraterritorial application**

- 12 (1) This Act (other than section 114) extends to acts, omissions,  
13 matters and things outside Australia.
- 14 (2) The extended application given to this Act by subsection (1)  
15 extends only in relation to:
- 16 (a) Australian citizens ordinarily resident in Australia, in respect  
17 of radio emissions intended to be received in Australia, other  
18 than:
- 19 (i) radio emissions made by a member of the crew of a  
20 foreign vessel or foreign aircraft in the course of his or  
21 her duties as such a member; or
- 22 (ii) radio emissions made from a foreign country by a  
23 person in the performance of a duty imposed by the law  
24 of that country; and
- 25 (b) members of the crew of Australian aircraft and Australian  
26 vessels; and
- 27 (c) Australian aircraft and Australian vessels; and
- 28 (d) members of the crew of a space object, in the circumstances  
29 specified in a determination under subsection (4); and

- 1 (e) space objects, in the circumstances specified in a  
2 determination under subsection (5).
- 3 (3) For the purposes of paragraph (2)(a), a radio emission that is  
4 intended to be retransmitted to Australia is taken to be intended to  
5 be received in Australia.
- 6 (4) The ACMA may, by legislative instrument, determine  
7 circumstances for the purposes of paragraph (2)(d).
- 8 (5) The ACMA may, by legislative instrument, determine  
9 circumstances for the purposes of paragraph (2)(e).
- 10 (6) Section 114 extends to acts, matters and things outside Australia.

## 11 **13 Offshore areas**

- 12 (1) This Act applies in relation to the offshore areas in respect of the  
13 States and Territories as if references in this Act to Australia, when  
14 used in a geographical sense, included references to the offshore  
15 areas in respect of the States and Territories.
- 16 (2) The extended application given to this Act by subsection (1)  
17 extends only in relation to:
- 18 (a) acts, matters and things directly or indirectly connected with  
19 exploration of, or exploitation of the resources of, the  
20 continental shelf of Australia; and
- 21 (b) acts done by or in relation to, and matters, circumstances and  
22 things affecting, a person who is in an offshore area for a  
23 reason directly or indirectly connected with such exploration  
24 or exploitation.

## 25 **14 Western Greater Sunrise area**

- 26 (1) This Act applies in relation to the Western Greater Sunrise area as  
27 if references in this Act to Australia, when used in a geographical  
28 sense, included references to the Western Greater Sunrise area.
- 29 (2) The extended application given to this Act by subsection (1)  
30 extends only in relation to:

# EXPOSURE DRAFT

## Part 1 Preliminary

### Section 15

---

- 1 (a) acts, matters and things directly or indirectly connected with  
2 exploration of, or exploitation of the resources of, either or  
3 both of the Greater Sunrise unit reservoirs; and  
4 (b) acts done by or in relation to, and matters, circumstances and  
5 things affecting, a person who is in the Western Greater  
6 Sunrise area for a reason directly or indirectly connected with  
7 such exploration or exploitation.

#### 8 **15 Application to the atmosphere etc.**

9 Except so far as the contrary intention appears, references in this  
10 Act to Australia, a foreign country, a place or any waters include  
11 references to the space (including the atmosphere and outer space)  
12 above.

#### 13 **16 Space objects etc.**

- 14 (1) If a space object is in Australia, this Act (other than section 114)  
15 applies to:  
16 (a) members of the crew of the space object, in the  
17 circumstances specified in a determination under  
18 subsection (2); and  
19 (b) the space object, in the circumstances specified in a  
20 determination under subsection (3).  
21 Note: Under section 15, a space object above Australia is taken to be in  
22 Australia.
- 23 (2) The ACMA may, by legislative instrument, determine  
24 circumstances for the purposes of paragraph (1)(a).  
25 (3) The ACMA may, by legislative instrument, determine  
26 circumstances for the purposes of paragraph (1)(b).  
27 (4) If a space object is in Australia, section 114 (other than  
28 subsections (2) and (4) of that section) applies to:  
29 (a) members of the crew of the space object; and  
30 (b) the space object.

# EXPOSURE DRAFT

Preliminary **Part 1**

## Section 16

---

1                      Note:        Under section 15, a space object above Australia is taken to be in  
2    Australia.

# EXPOSURE DRAFT

## Part 2 Ministerial policy statements

### Section 17

---

## Part 2—Ministerial policy statements

### 17 Simplified outline of this Part

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

### 18 Ministerial policy statements

- (1) The Minister may, by notifiable instrument, specify a policy of the Commonwealth Government that is to apply in relation to:
  - (a) the performance of any of the ACMA's spectrum management functions; or
  - (b) the exercise of any of the ACMA's spectrum management powers.
- (2) An instrument under subsection (1) is to be known as a ***Ministerial policy statement***.

### 19 ACMA must have regard to Ministerial policy statements

- (1) In performing its spectrum management functions, and exercising its spectrum management powers, the ACMA must have regard to any relevant Ministerial policy statements.
- (2) A contravention of subsection (1) does not affect the validity of a legislative instrument made by the ACMA.
- (3) Disregard subsection (2) in determining the validity of:
  - (a) any other instrument made by the ACMA; or
  - (b) anything else done by the ACMA;in the performance of its functions or the exercise of its powers.



## Part 3—ACMA's work program

### 20 Simplified outline of this Part

- At least once each financial year, the ACMA must prepare a work program in relation to its spectrum management functions and its spectrum management powers.
- Before preparing a work program, the ACMA must:
  - (a) consult the Minister; and
  - (b) publish a draft work program on its website; and
  - (c) invite submissions about the draft work program.

### 21 ACMA's work program

- (1) At least once each financial year, the ACMA must prepare a work program in relation to its spectrum management functions and its spectrum management powers.
- (2) A work program must be for a period of not less than 5 financial years.
- (3) If a work program (the *original work program*) is in force, the ACMA may prepare a work program (the *new work program*) that is expressed to replace the original work program. If the ACMA does so, the original work program is taken to be revoked when the new work program comes into force.
- (4) The ACMA may vary a work program, so long as the variation is of a minor nature.
- (5) The ACMA must publish a work program on its website.
- (6) A work program is not a legislative instrument.
- (7) A variation of a work program is not a legislative instrument.

# EXPOSURE DRAFT

## Part 3 ACMA's work program

### Section 22

---

#### 22 Consultation

- (1) Before preparing a work program, the ACMA must:
  - (a) consult the Minister; and
  - (b) publish on the ACMA's website a notice:
    - (i) setting out a draft work program; and
    - (ii) inviting persons to make submissions to the ACMA about the draft work program on or before the day specified in the notice; and
  - (c) consider any submissions received on or before the day specified under paragraph (b).
- (2) The day specified under paragraph (1)(b) must be at least 14 days after the day on which the notice was published.

## Part 4—Radiofrequency plans

### 23 Simplified outline of this Part

- The ACMA may determine radiofrequency plans.
- A radiofrequency plan may:
  - (a) specify the purpose or purposes for which a part of the spectrum may be used; and
  - (b) reserve parts of the spectrum for certain purposes.
- The ACMA must not perform its spectrum management functions, or exercise its spectrum management powers, in a manner that is inconsistent with a radiofrequency plan.

### 24 Radiofrequency plans

- (1) The ACMA may, in writing, determine a plan relating to either or both of the following:
  - (a) the spectrum;
  - (b) one or more parts of the spectrum.
- (2) A plan determined under subsection (1) is to be known as a ***radiofrequency plan***.
- (3) The ACMA may determine 2 or more radiofrequency plans.
- (4) A radiofrequency plan may do any or all of the following things:
  - (a) identify one or more parts of the spectrum;
  - (b) specify the purpose or purposes for which a part of the spectrum may be used;
  - (c) provide for parts of the spectrum to be reserved for provision of public or community services;
  - (d) provide for parts of the spectrum to be reserved for the general purposes of defence.

# EXPOSURE DRAFT

## Part 4 Radiofrequency plans

### Section 25

---

- 1 (5) The paragraphs of subsection (4) do not limit each other.
- 2 (6) The provisions of a radiofrequency plan:
- 3 (a) may be of general application or may be limited as provided
- 4 in the plan; and
- 5 (b) may apply:
- 6 (i) with respect to a specified area; and
- 7 (ii) with respect to a specified period.
- 8 (7) Paragraph (6)(b) does not limit paragraph (6)(a).
- 9 (8) A radiofrequency plan must not be inconsistent with another
- 10 radiofrequency plan.
- 11 (9) A determination under subsection (1) is a legislative instrument,
- 12 but section 42 (disallowance) of the *Legislation Act 2003* does not
- 13 apply to the instrument.
- 14 (10) For the purposes of this section, *used* includes:
- 15 (a) reserved for future use; and
- 16 (b) reserved for the prevention or management of interference to
- 17 radiocommunications.

### 25 Compliance with radiofrequency plan

- 18
- 19 (1) The ACMA must not perform its spectrum management functions,
- 20 or exercise its spectrum management powers, in a manner that is
- 21 inconsistent with a radiofrequency plan.
- 22 (2) Subsection (1) does not apply to:
- 23 (a) the renewal of a licence; or
- 24 (b) the issue of a licence under section 77 (which deals with the
- 25 subdivision of licences).
- 26 (3) The Minister must not, under subsection 39(1), direct the ACMA
- 27 to offer to issue a licence that is inconsistent with a radiofrequency
- 28 plan.
- 29 (4) Subsection (1) does not prevent the ACMA from issuing a licence,
- 30 and subsection (3) does not prevent the Minister from directing the

- 1 ACMA to offer to issue a licence, that is inconsistent with a  
2 radiofrequency plan if:
- 3 (a) the licence is issued, or would be issued, for purposes  
4 relating to an event of international, national or regional  
5 significance; or
- 6 (b) the licence is issued, or would be issued, for purposes  
7 relating to the defence, security or international relations of:  
8 (i) Australia; or  
9 (ii) a foreign country whose naval, military or air force is  
10 acting in co-operation with the Defence Force of  
11 Australia; or
- 12 (c) the licence is issued, or would be issued, for purposes  
13 relating to investigations or operations conducted by:  
14 (i) the Australian Federal Police; or  
15 (ii) the police force of a State or Territory; or
- 16 (d) the licence is issued, or would be issued, for purposes  
17 relating to investigations or operations conducted by a  
18 designated crime/corruption body; or
- 19 (e) the issue of the licence is otherwise in the public interest.
- 20 (5) If a licence covered by paragraph (4)(a), (b), (c), (d) or (e) is  
21 inconsistent with a radiofrequency plan, the licence:  
22 (a) must not be issued for more than 6 months; and  
23 (b) must include a statement under paragraph 59(1)(c) to the  
24 effect that the licence cannot be renewed.
- 25 (6) If a licence covered by paragraph (4)(a), (b), (c), (d) or (e) is  
26 inconsistent with a radiofrequency plan, the ACMA may, by  
27 written notice given to the licensee, extend, or further extend, the  
28 period for which the licence is in force, so long as the extension or  
29 further extension does not result in the licence being in force for  
30 more than 12 months.

# EXPOSURE DRAFT

## Part 5 Operation of radiocommunications devices

### Section 26

---

## Part 5—Operation of radiocommunications devices

### 26 Simplified outline of this Part

- A person must not operate a radiocommunications transmitter unless the operation is authorised by:
  - (a) a licence; or
  - (b) a spectrum authorisation.
- If the certified operator requirements apply to a radiocommunications device, an individual must hold a certificate of proficiency to operate the device, unless the individual is exempt from those requirements.
- A person must not have a radiocommunications transmitter in the person's possession, for the purpose of operating the transmitter, unless the operation is authorised by:
  - (a) a licence; or
  - (b) a spectrum authorisation.
- Civil proceedings may be instituted in the Federal Court if the unauthorised operation of a radiocommunications transmitter causes interference to radiocommunications carried on by a person under a licence.

### 27 Unauthorised operation of radiocommunications transmitters

#### *Offence*

- (1) A person commits an offence if:
- (a) the person operates a radiocommunications transmitter; and
  - (b) the operation is not authorised by:
    - (i) a licence; or
    - (ii) a spectrum authorisation.

# EXPOSURE DRAFT

Penalty: Imprisonment for 2 years or 300 penalty units, or both.

- (2) Section 12.2 of the *Criminal Code* has effect, in relation to subsection (1) of this section, as if “also” were omitted.

Note: Section 12.2 of the *Criminal Code* is about corporate responsibility.

## *Civil penalty*

- (3) A person must not operate a radiocommunications transmitter if the operation is not authorised by:

- (a) a licence; or
- (b) a spectrum authorisation.

Civil penalty: 300 penalty units.

- (4) Section 97 of the Regulatory Powers Act has effect, in relation to subsection (3) of this section, as if “also” were omitted.

Note: Section 97 of the Regulatory Powers Act is about corporate responsibility.

## **28 Operation of radiocommunications devices by individuals who do not hold a certificate of proficiency**

- (1) An individual must not operate a radiocommunications device (otherwise than in the capacity of an employee or agent of another person) if:

- (a) the certified operator requirements apply to the device (see section 102) because the device is included in a particular class of radiocommunications devices; and
- (b) the individual does not hold a certificate of proficiency in relation to that class; and
- (c) the individual is not exempt from the certified operator requirements (see section 102).

Civil penalty: 300 penalty units.

- (2) A person must not permit an individual to operate a radiocommunications device in the individual’s capacity as an employee or agent of the person if:

# EXPOSURE DRAFT

## Part 5 Operation of radiocommunications devices

### Section 29

---

- 1 (a) the certified operator requirements apply to the device (see  
2 section 102) because the device is included in a particular  
3 class of radiocommunications devices; and  
4 (b) the individual does not hold a certificate of proficiency in  
5 relation to that class; and  
6 (c) the individual is not exempt from the certified operator  
7 requirements (see section 102).

8 Civil penalty: 300 penalty units.

### 9 **29 Unlawful possession of radiocommunications transmitters**

#### 10 *Offence*

- 11 (1) A person commits an offence if:  
12 (a) the person possesses a radiocommunications transmitter; and  
13 (b) the possession is for the purpose of operating the transmitter;  
14 and  
15 (c) the operation is not authorised by:  
16 (i) a licence; or  
17 (ii) a spectrum authorisation.

18 Penalty: Imprisonment for 2 years or 300 penalty units, or both.

#### 19 *Civil penalty*

- 20 (2) A person must not have a radiocommunications transmitter in the  
21 person's possession if:  
22 (a) the possession is for the purpose of operating the transmitter;  
23 and  
24 (b) the operation is not authorised by:  
25 (i) a licence; or  
26 (ii) a spectrum authorisation.

27 Civil penalty: 300 penalty units.

- 28 (3) For the purposes of subsections (1) and (2), if:



# EXPOSURE DRAFT

- 1 (a) a person has a radiocommunications transmitter in the  
2 person's possession, otherwise than for the purpose of supply  
3 to another person; and  
4 (b) the transmitter can be operated;  
5 it must be presumed, in the absence of evidence to the contrary,  
6 that the person has the transmitter in the person's possession for  
7 the purpose of operating the transmitter.
- 8 (4) For the purposes of paragraph (3)(b), it is immaterial whether the  
9 transmitter can be operated:  
10 (a) immediately; or  
11 (b) after the taking of one or more steps (for example, the  
12 connection of the transmitter to a power supply).
- 13 (5) A reference in this section to a person having a  
14 radiocommunications transmitter in the person's possession  
15 includes a reference to the person having it under control in any  
16 place:  
17 (a) whether for the use or benefit of the person or another  
18 person; and  
19 (b) although another person has the actual possession or custody  
20 of it.

## 30 Civil proceedings

- 21  
22 (1) If a person (the *defendant*):  
23 (a) operates a radiocommunications transmitter; and  
24 (b) the operation is not authorised by:  
25 (i) a licence; or  
26 (ii) a spectrum authorisation; and  
27 (c) the operation causes interference to radiocommunications  
28 carried on by another person (the *plaintiff*) under a licence;  
29 the plaintiff may apply to the Federal Court for relief.
- 30 (2) The court may grant all or any of the following forms of relief:  
31 (a) an injunction restraining the defendant from:  
32 (i) causing such interference; or

# EXPOSURE DRAFT

**Part 5** Operation of radiocommunications devices

Section 30

---

- 1 (ii) causing interference of a similar kind; or
- 2 (iii) causing, or permitting, others to cause interference of
- 3 the same, or a similar, kind;
- 4 (b) an order directing the defendant to do a specified act for the
- 5 purpose of:
- 6 (i) placing the plaintiff as nearly as practicable in the
- 7 position in which the plaintiff would have been but for
- 8 the interference; or
- 9 (ii) otherwise mitigating detriment to the plaintiff arising
- 10 out of the interference;
- 11 (c) damages against the defendant in respect of loss suffered by
- 12 the plaintiff as a result of the interference, including loss of
- 13 any benefit that the plaintiff might reasonably have been
- 14 expected to obtain but for the interference;
- 15 (d) such other relief as the court thinks just.

1 **Part 6—Licences**  
2 **Division 1—General provisions**  
3 **31 Simplified outline of this Part**

- 4 • The ACMA may issue a licence:
  - 5 (a) on application made to the ACMA by a person; or
  - 6 (b) in accordance with a licence issue scheme; or
  - 7 (c) at the direction of the Minister.
- 8 • The ACMA may determine limits on the aggregate of the
  - 9 parts of the spectrum that may be used by:
    - 10 (a) any one person; or
    - 11 (b) a specified person; or
    - 12 (c) the members of a specified group of persons.
- 13 • A licence authorises the licensee, and any person authorised
  - 14 by the licensee, to operate a radiocommunications device in
  - 15 accordance with the licence.
- 16 • A licence is subject to conditions.
- 17 • A licence may include regulatory undertakings given by the
  - 18 ACMA that do one or more of the following:
    - 19 (a) specify steps that must be taken before the ACMA
    - 20 issues other licences, or makes spectrum authorisations,
    - 21 that have a relevant connection to a specified part of the
    - 22 spectrum or a specified area;
    - 23 (b) specify requirements for the conditions of other licences
    - 24 or spectrum authorisations that have a relevant
    - 25 connection to a specified part of the spectrum or a
    - 26 specified area;

# EXPOSURE DRAFT

## Part 6 Licences

### Division 1 General provisions

#### Section 32

---

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

- (c) specify requirements for the designated statements of other licences that have a relevant connection to a specified part of the spectrum or a specified area.
- Subject to any designated statements included in a licence, a licence may be:
  - (a) varied; or
  - (b) renewed; or
  - (c) suspended; or
  - (d) cancelled; or
  - (e) surrendered; or
  - (f) subdivided; or
  - (g) assigned; or
  - (h) dealt with; or
  - (i) resumed.
- If a licence is cancelled because of a contravention of a licence condition, the ACMA may determine that an individual licensee, or an executive officer of a body corporate licensee, is a disqualified person.
- The ACMA must maintain a Register of Radiocommunications Licences.
- Certain licence-related actions are taken to be acquisitions of assets for the purposes of provisions of the *Competition and Consumer Act 2010* that relate to acquisitions resulting in a substantial lessening of competition.

25  
26  
27  
28  
29  
30

#### **32 Rights conferred by a licence**

- (1) A licence authorises:
  - (a) the licensee; and
  - (b) any person authorised by the licensee under section 41; to operate a radiocommunications device in accordance with the licence.

# EXPOSURE DRAFT

Licences **Part 6**  
General provisions **Division 1**

## Section 32

---

- 1           (2) Operation of a radiocommunications device is not authorised by
- 2           the licence if it is not in accordance with the conditions of the
- 3           licence.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 2 Issue of licences

#### Section 33

---

## Division 2—Issue of licences

### 33 Issue of licences

- (1) The ACMA may issue a licence on written application made to the ACMA by a person.

Note: A refusal to issue a licence under subsection (1) is reviewable under Part 18.

- (2) The ACMA may issue a licence in accordance with a licence issue scheme.

Note 1: Licence issue schemes are determined under section 34.

Note 2: A refusal to issue a licence under subsection (2) is reviewable under Part 18.

- (3) The ACMA must not issue a licence to a person under subsection (1) or (2) unless the person:

- (a) pays to the ACMA, on behalf of the Commonwealth, the spectrum access charge (if any) for issuing the licence; or
- (b) reaches an agreement with the ACMA for the payment of that spectrum access charge.

Note: Spectrum access charges are determined under section 193.

#### *Duration of licences*

- (4) A licence issued under subsection (1) or (2) comes into force on:

- (a) the day on which it is issued; or
- (b) such later day as is specified in the licence.

- (5) Subject to this Act, a licence issued under subsection (1) or (2) remains in force for the period specified in the licence.

- (6) The specified period must not be longer than 20 years.

**34 Licence issue schemes**

- (1) The ACMA may, by writing, determine a scheme relating to the issue of licences under subsection 33(2).
- (2) A scheme determined under subsection (1) is to be known as a ***licence issue scheme***.
- (3) The ACMA may determine 2 or more licence issue schemes.
- (4) A licence issue scheme may make provision for and in relation to any or all of the following:
- (a) an auction process;
  - (b) a tender process;
  - (c) a pre-determined price process;
  - (d) a negotiated price process;
  - (e) an application process.
- (5) The following are examples of matters that may be dealt with by a licence issue scheme:
- (a) eligibility requirements for participants in a process;
  - (b) matters to which the ACMA must have regard when making decisions under the scheme;
  - (c) circumstances in which the ACMA must issue a licence to a person;
  - (d) circumstances in which the ACMA must not issue a licence to a person;
  - (e) circumstances in which a process may be terminated;
  - (f) the verification by statutory declaration of information given to the ACMA by a participant in a process;
  - (g) the consequences of a contravention, by a participant in a process, of a provision of the scheme that is applicable to the participant;
  - (h) a matter specified in the legislative rules.
- (6) A licence issue scheme may make provision in relation to a matter by conferring a power on the ACMA.
- Example 1: The approval of a form.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 2 Issue of licences

#### Section 35

---

- 1                    Example 2: The conduct of an auction.
- 2                    (7) A licence issue scheme may make provision in relation to a matter
- 3                    by conferring a power on a person who holds a specified kind of
- 4                    accreditation.
- 5                    (8) Subsections (4) to (7) do not limit subsection (1).
- 6                    (9) A licence issue scheme may authorise a person who holds a
- 7                    specified kind of accreditation to charge fees in relation to the
- 8                    exercise by the person of a power conferred by the scheme. A fee
- 9                    must not be such as to amount to taxation.
- 10                  (10) A licence issue scheme may be of general application or may be
- 11                  limited as provided in the scheme. This subsection does not limit
- 12                  subsection 33(3A) of the *Acts Interpretation Act 1901*.
- 13                  (11) A determination under subsection (1) is a legislative instrument,
- 14                  but section 42 (disallowance) of the *Legislation Act 2003* does not
- 15                  apply to the determination.

#### 35 Licence issue scheme to be the sole method for the issue of certain licences

- 18                  (1) The ACMA may, by notifiable instrument, declare that a specified
- 19                  licence issue scheme is the sole method for the issue, under
- 20                  section 33, of a licence included in a specified class of licences.
- 21                  (2) If a declaration is in force under subsection (1), the ACMA must
- 22                  not issue, under section 33, a licence included in the class of
- 23                  licences specified in the declaration unless the ACMA does so:
- 24                      (a) under subsection 33(2); and
- 25                      (b) in accordance with the licence issue scheme specified in the
- 26                      declaration.

#### 36 Determination of licence issue limits

- 28                  (1) The ACMA may, by writing, determine limits on either or both of
- 29                  the following:



# EXPOSURE DRAFT

- 1 (a) the aggregate of the parts of the spectrum that may be used  
2 by:  
3 (i) any one person; or  
4 (ii) a specified person;  
5 (b) the aggregate of the parts of the spectrum that may, in total,  
6 be used by the members of a specified group of persons.
- 7 Note: Persons or groups may be specified by name, by inclusion in a  
8 specified class or in any other way.
- 9 (2) A limit determined under subsection (1) is to be known as a ***licence***  
10 ***issue limit***.
- 11 (3) A licence issue limit may be expressed to apply in relation to any  
12 or all of the following:  
13 (a) a specified part of the spectrum;  
14 (b) a specified area;  
15 (c) a specified population reach.
- 16 Example: An aggregate limit of 15 MHz per person in the band between 1200  
17 MHz and 1300 MHz (inclusive) for a particular area.
- 18 (4) A licence issue limit may be expressed to apply during a specified  
19 period.
- 20 (5) A licence issue limit may be a limit of nil in relation to specified  
21 persons or to the members of specified groups of persons.
- 22 (6) A licence issue limit may be expressed to take effect only if one or  
23 more specified conditions are satisfied.
- 24 (7) A licence issue limit may be expressed to cease to have effect if  
25 one or more specified conditions are satisfied.
- 26 (8) Subsections (3) to (7) do not limit subsection (1).
- 27 (9) A licence issue limit has effect only for:  
28 (a) purposes relating to the exercise by the ACMA of the  
29 following powers:  
30 (i) a power conferred by section 33;  
31 (ii) a power conferred by a licence issue scheme;
-

# EXPOSURE DRAFT

## Part 6 Licences

### Division 2 Issue of licences

#### Section 37

---

- 1 (iii) a power to include conditions in a licence issued under  
2 section 33; and  
3 (b) the purposes of section 39; and  
4 (c) the purposes of subsection 97(2); and  
5 (d) the purposes of subsection 97(3).
- 6 (10) Subsection (9) has effect subject to subsection (11).
- 7 (11) A licence issue limit may provide that, in addition to its effect  
8 under subsection (9), the limit also has effect for purposes relating  
9 to the exercise by the ACMA of a power to include a specified  
10 kind of designated statement in a licence.
- 11 (12) A determination under subsection (1) is a legislative instrument,  
12 but section 42 (disallowance) of the *Legislation Act 2003* does not  
13 apply to the determination.

#### 37 Consultation

- 14 (1) Before determining a licence issue limit, the ACMA must be  
15 satisfied that it has undertaken any consultation with the ACCC  
16 that is:  
17 (a) considered by the ACMA to be appropriate; and  
18 (b) reasonably practicable to undertake.
- 19 (2) The ACMA may give information to the ACCC for purposes  
20 relating to consultation under subsection (1).
- 21 (3) A contravention of subsection (1) does not affect the validity of a  
22 licence issue limit.  
23

#### 38 Compliance with licence issue limits

- 24 (1) The ACMA must not exercise any of the following powers in a  
25 manner that is inconsistent with a licence issue limit:  
26 (a) a power conferred by section 33;  
27 (b) a power conferred by a licence issue scheme;  
28 (c) a power to include conditions in a licence issued under  
29 section 33.  
30

- 1 (2) If a licence issue limit provides that, in addition to its effect under  
2 subsection 36(9), the limit also has effect for purposes relating to  
3 the exercise by the ACMA of a power to include a specified kind  
4 of designated statement in a licence, the ACMA must not exercise  
5 the power in a manner that is inconsistent with the licence issue  
6 limit.
- 7 (3) The Minister must not exercise the power conferred by  
8 subsection 39(1) in a manner that is inconsistent with a licence  
9 issue limit.

## 10 **39 Ministerial direction to offer to issue a licence**

- 11 (1) The Minister may, by legislative instrument, direct the ACMA to  
12 give a specified person a written offer to issue to the person a  
13 licence that has specified characteristics.

14 Note 1: See also subsection 38(3).

15 Note 2: See also section 40.

- 16 (2) The ACMA must comply with a direction under subsection (1).

### 17 *Issue of licence*

- 18 (3) If:
- 19 (a) in compliance with a direction under subsection (1), the  
20 ACMA gives a person a written offer to issue to the person a  
21 licence that has particular characteristics; and
- 22 (b) the person gives the ACMA a written notice accepting the  
23 offer; and
- 24 (c) the person:
- 25 (i) pays to the ACMA, on behalf of the Commonwealth,  
26 the spectrum access charge (if any) for issuing the  
27 licence; or
- 28 (ii) reaches an agreement with the ACMA for the payment  
29 of that spectrum access charge;
- 30 the ACMA must issue to the person a licence that has those  
31 characteristics.

32 Note: Spectrum access charges are determined under section 193.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 2 Issue of licences

#### Section 40

---

##### *Duration of licences*

- (4) A licence issued under subsection (3) comes into force on:
- (a) the day on which it is issued; or
  - (b) such later day as is specified in the licence.
- (5) Subject to this Act, a licence issued under subsection (3) remains in force for the period specified in the licence.
- (6) The specified period must not be longer than 20 years.

#### **40 Limits on power to give a Ministerial direction to offer to issue a licence—regulatory undertakings**

- (1) If:
- (a) the Minister proposes to give a direction under subsection 39(1) in relation to the issue of a licence; and
  - (b) assuming that the licence were to be issued, the ACMA would be required, by a regulatory undertaking covered by paragraph 53(3)(a) or (b), to ensure that specified steps have been taken before the licence is issued;
- then:
- (c) the Minister must give the ACMA a draft of the direction; and
  - (d) the Minister must direct the ACMA to ensure that those steps are taken; and
  - (e) the ACMA must:
    - (i) comply with the direction mentioned in paragraph (d); and
    - (ii) when the steps mentioned in paragraph (b) have been taken, notify the Minister of the results and outcomes of those steps; and
  - (f) the Minister must not give the direction mentioned in paragraph (a) unless the ACMA has given the notification required by subparagraph (e)(ii).
- (2) The Minister must not give a direction under subsection 39(1) in relation to the issue of a licence if, assuming that the licence were

# EXPOSURE DRAFT

## Licences **Part 6**

## Issue of licences **Division 2**

Section 40

1 to be issued, the issue of the licence would contravene a regulatory  
2 undertaking covered by paragraph 53(3)(c), (d), (e) or (f).

No. , 2017

Radiocommunications Bill 2017

41

# EXPOSURE DRAFT

# EXPOSURE DRAFT

## Part 6 Licences

### Division 3 Third party use

#### Section 41

---

## 1 Division 3—Third party use

### 2 41 Third party use

3 (1) The holder of a licence may authorise one or more other persons to  
4 operate radiocommunications devices under the licence.

5 (2) However, the holder is not entitled to authorise a person under  
6 subsection (1) if:

7 (a) the licence includes a statement to the effect that the licence  
8 cannot authorise one or more other persons to operate  
9 radiocommunications devices under the licence; or

10 (b) both:

11 (i) the licence includes a statement setting out restrictions  
12 or limitations on the holder's right to authorise one or  
13 more other persons to operate radiocommunications  
14 devices under the licence; and

15 (ii) the authorisation would contravene any of those  
16 restrictions or limitations.

### 17 42 When third party use cannot be authorised

18 A licence may include a statement to the effect that the licensee  
19 cannot authorise one or more other persons to operate  
20 radiocommunications devices under the licence.

### 21 43 Restrictions or limitations relating to authorisation of third party 22 use

23 A licence may include a statement setting out restrictions or  
24 limitations on the licensee's right to authorise one or more other  
25 persons to operate radiocommunications devices under the licence.

### 26 44 Record of authorisation

27 If the holder of a licence authorises a person to operate a  
28 radiocommunications device under the licence, the holder must:

- 1 (a) make a record of the authorisation; and  
2 (b) retain the record, or a copy, until the end of the 6-month  
3 period beginning when authorisation ceases to be in force.

4 Civil penalty: 30 penalty units.

## 5 **45 Licensees must notify authorised persons of certain matters**

### 6 *Variation or suspension*

- 7 (1) If the holder of a licence is given:  
8 (a) a notice under section 57 varying the licence; or  
9 (b) a notice under subsection 64(1) or (2) suspending the licence;  
10 or  
11 (c) a notice under subsection 64(4) revoking the suspension of  
12 the licence;  
13 the holder must:  
14 (d) notify the effect of the notice to each person who is currently  
15 authorised under section 41 in relation to the licence; and  
16 (e) do so as soon as practicable (and in any event within 7 days)  
17 after the notice was given to the holder.

18 Civil penalty: 30 penalty units.

### 19 *Direction*

- 20 (2) If:  
21 (a) the holder of a licence is given a direction under  
22 subsection 116(1); and  
23 (b) the direction applies to a person authorised under section 41  
24 in relation to the licence;  
25 the holder must:  
26 (c) give a copy of the direction to the person; and  
27 (d) do so as soon as practicable (and in any event within 7 days)  
28 after whichever is the later of the following days:  
29 (i) the day the direction was given to the holder;

# EXPOSURE DRAFT

## Part 6 Licences

### Division 3 Third party use

#### Section 45

---

- 1 (ii) the day the person was authorised under section 41 in  
2 relation to the licence.

3 Civil penalty: 30 penalty units.

#### 4 *Cancellation or resumption*

5 (3) If a person is given:

6 (a) a notice under subsection 67(1) or (2) cancelling a licence  
7 held by the person; or

8 (b) a notice under subsection 86(1) resuming:

9 (i) a licence held by the person; or

10 (ii) a part of a licence held by the person;

11 the person must:

12 (c) notify the effect of the notice to each person who,  
13 immediately before the cancellation or resumption, was  
14 authorised under section 41 in relation to the licence; and

15 (d) do so as soon as practicable (and in any event within 7 days)  
16 after the notice was given to the person.

17 Civil penalty: 30 penalty units.

#### 18 *Surrender*

19 (4) If a person, by written notice given to the ACMA under section 74,  
20 surrenders:

21 (a) a licence held by the person; or

22 (b) a part of a licence held by the person;

23 the person must:

24 (c) notify the surrender to each person who, immediately before  
25 the surrender, was authorised under section 41 in relation to  
26 the licence; and

27 (d) do so as soon as practicable (and in any event within 7 days)  
28 after the surrender.

29 Civil penalty: 30 penalty units.



# EXPOSURE DRAFT

Licences **Part 6**  
Third party use **Division 3**

## Section 45

---

1

### *Subdivision*

2

(5) If a person, by written notice given to the ACMA under subsection 77(1), requests the ACMA to subdivide a licence held by the person, the person must:

3

4

5

6

7

8

9

- (a) notify the request to each person who, immediately before the request was made, was authorised under section 41 in relation to the licence; and
- (b) do so as soon as practicable (and in any event within 7 days) after the request was made.

10

Civil penalty: 30 penalty units.

11

### *Assignment*

12

(6) If a person assigns a licence held by the person, the person must:

13

14

15

16

17

- (a) notify the assignment to each person who, immediately before the assignment, was authorised under section 41 in relation to the licence; and
- (b) do so as soon as practicable (and in any event within 7 days) after the assignment.

18

Civil penalty: 30 penalty units.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 4 Conditions of licences etc.

#### Section 46

---

## Division 4—Conditions of licences etc.

### 46 Conditions of licences—access to spectrum

(1) A licence must include the following conditions:

- (a) a condition specifying the part or parts of the spectrum in which operation of radiocommunications devices is authorised under the licence;
- (b) for each part of the spectrum specified in the condition referred to in paragraph (a)—either:
  - (i) a condition specifying the area within which operation of radiocommunications devices is authorised under the licence; or
  - (ii) a condition specifying the location at which operation of radiocommunications devices is authorised under the licence.

(2) The area specified in the condition referred to in subparagraph (1)(b)(i) may be the whole of Australia.

(3) A part of the spectrum specified in the condition referred to in paragraph (1)(a) may be the same as, or overlap, a part that is:

- (a) specified in a corresponding condition of another licence; or
- (b) specified in a condition of a spectrum authorisation referred to in paragraph 100(2)(a).

(4) The rule in subsection (3) applies even if:

- (a) the area within which operation of radiocommunications devices is authorised under the licence is the same as, or overlaps:
  - (i) the area within which operation of radiocommunications devices is authorised under another licence; or
  - (ii) the area within which operation of radiocommunications devices is authorised under a spectrum authorisation; or
- (b) the location at which operation of radiocommunications devices is authorised under the licence is the same as, or is in the vicinity of, the location at which operation of

1 radiocommunications devices is authorised under another  
2 licence.

## 3 **47 Conditions about the registration of radiocommunications** 4 **transmitters**

- 5 (1) A licence must include a condition that a radiocommunications  
6 transmitter must not be operated under the licence unless:
- 7 (a) the transmitter is registered, under section 92, in relation to  
8 the licence; or
  - 9 (b) the transmitter is included in a class of radiocommunications  
10 transmitters specified in the licence for the purposes of this  
11 section; or
  - 12 (c) the transmitter is included in a class of radiocommunications  
13 transmitters specified in a determination under  
14 subsection (2).
- 15 (2) The ACMA may, by legislative instrument, specify one or more  
16 classes of radiocommunications transmitters for the purposes of  
17 paragraph (1)(c).

## 18 **48 Conditions about payment of charges**

- 19 A licence must include a condition that the licensee meet all  
20 obligations (if any) of the licensee to pay:
- 21 (a) charges fixed by determinations made under section 60 of the  
22 *Australian Communications and Media Authority Act 2005*;  
23 and
  - 24 (b) spectrum access charges fixed by determinations made under  
25 section 193.

## 26 **49 Conditions about disqualified persons**

- 27 (1) A licence must include a condition that, if the holder of the licence  
28 is a body corporate, the holder must not, without the written  
29 consent of the ACMA, permit a disqualified person to be an  
30 executive officer of the holder.

31 Note: A decision to refuse to give consent is reviewable under Part 18.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 4 Conditions of licences etc.

#### Section 50

---

- 1 (2) The ACMA must not give consent for the purposes of such a  
2 condition unless the ACMA is satisfied that there are special  
3 circumstances.

#### 4 **50 Conditions determined by the ACMA**

- 5 (1) The ACMA may, by legislative instrument, determine that each  
6 licence is taken to include one or more specified conditions.
- 7 (2) The ACMA may, by legislative instrument, determine that each  
8 licence included in a specified class of licences is taken to include  
9 one or more specified conditions.
- 10 (3) The ACMA's power under subsection (1) or (2) of this section is  
11 not limited by sections 46 to 49.

#### 12 **51 Other conditions of licences**

- 13 (1) The ACMA may include such other conditions in a licence as it  
14 thinks appropriate.

15 Note: A decision to include a condition in a licence is reviewable under  
16 Part 18.

- 17 (2) The ACMA's power under subsection (1) of this section is not  
18 limited by sections 46 to 49.

- 19 (3) Subsection (1) has effect subject to section 62.

#### 20 **52 Breach of conditions**

- 21 (1) If a person:  
22 (a) is the holder of a licence; or  
23 (b) has been authorised under section 41 in relation to the  
24 licence;  
25 the person must not contravene a condition of the licence.

26 Civil penalty: 300 penalty units.

EXPOSURE DRAFT

- 1
- 2
- 3
- 4
- (2) Subsection (1) does not apply to a contravention of a condition of a licence if the contravention amounts to a breach of subsection 27(1) or (3).
- Note: See also subsection 32(2).

# EXPOSURE DRAFT

## Part 6 Licences

### Division 5 Regulatory undertakings

#### Section 53

---

## 1 Division 5—Regulatory undertakings

### 2 53 Regulatory undertakings may be included in licences

#### 3 *Scope*

4 (1) This section applies if a licence (the ***first licence***) authorises the  
5 operation of radiocommunications transmitters:

6 (a) in a specified part of the spectrum; and

7 (b) for that part of the spectrum:

8 (i) in a specified area; or

9 (ii) at a specified location.

#### 10 *Regulatory undertaking*

11 (2) The first licence may include one or more regulatory undertakings.

12 (3) Each of the following is a ***regulatory undertaking***:

13 (a) an undertaking to the effect that, before the ACMA issues  
14 another licence under subsection 33(1) or (2) or 39(3) that  
15 has a relevant connection with:

16 (i) a specified part of the spectrum; and

17 (ii) a specified area;

18 the ACMA will ensure that specified steps have been taken;

19 (b) an undertaking to the effect that, before the ACMA issues  
20 another licence under subsection 33(1) or (2) or 39(3) a part  
21 of which has a relevant connection with:

22 (i) a specified part of the spectrum; and

23 (ii) a specified area;

24 the ACMA will ensure that specified steps have been taken;

25 (c) an undertaking to the effect that, if, at any time when the first  
26 licence is in force, there is in force another licence that has a  
27 relevant connection with:

28 (i) a specified part of the spectrum; and

29 (ii) a specified area;

- 1 the ACMA will ensure that, while both the first licence and  
2 the other licence are in force, the conditions included in the  
3 other licence will comply with the requirements specified in  
4 the undertaking;
- 5 (d) an undertaking to the effect that, if, at any time when the first  
6 licence is in force, there is in force another licence a part of  
7 which has a relevant connection with:  
8 (i) a specified part of the spectrum; and  
9 (ii) a specified area;
- 10 the ACMA will ensure that, while both the first licence and  
11 the other licence are in force, the conditions included in the  
12 other licence, to the extent to which they relate to that part of  
13 the other licence, will comply with the requirements specified  
14 in the undertaking;
- 15 (e) an undertaking to the effect that, if, at any time when the first  
16 licence is in force, there is in force another licence that has a  
17 relevant connection with:  
18 (i) a specified part of the spectrum; and  
19 (ii) a specified area;
- 20 the ACMA will ensure that, while both the first licence and  
21 the other licence are in force, the designated statements  
22 included in the other licence will comply with the  
23 requirements specified in the undertaking;
- 24 (f) an undertaking to the effect that, if, at any time when the first  
25 licence is in force, there is in force another licence a part of  
26 which has a relevant connection with:  
27 (i) a specified part of the spectrum; and  
28 (ii) a specified area;
- 29 the ACMA will ensure that, while both the first licence and  
30 the other licence are in force, the designated statements  
31 included in the other licence, to the extent to which they  
32 relate to that part of the other licence, will comply with the  
33 requirements specified in the undertaking;
- 34 (g) an undertaking to the effect that, before the ACMA makes a  
35 spectrum authorisation that has a relevant connection with:  
36 (i) a specified part of the spectrum; and

# EXPOSURE DRAFT

## Part 6 Licences

### Division 5 Regulatory undertakings

#### Section 53

---

- 1 (ii) a specified area;  
2 the ACMA will ensure that specified steps have been taken;  
3 (h) an undertaking to the effect that, if, at any time when the first  
4 licence is in force, there is in force a spectrum authorisation  
5 that has a relevant connection with:  
6 (i) a specified part of the spectrum; and  
7 (ii) a specified area;  
8 the ACMA will ensure that, while both the first licence and  
9 the spectrum authorisation are in force, the conditions of the  
10 spectrum authorisation will comply with the requirements  
11 specified in the undertaking.

12 Note 1: See also section 54 (relevant connection with a part of the spectrum  
13 and an area).

14 Note 2: See also section 56 (regulatory undertakings do not apply in relation to  
15 certain licences etc.).

#### 16 *Examples of specified steps*

- 17 (4) The following are examples of steps that may be specified under  
18 paragraph (3)(a), (b) or (g):  
19 (a) consulting the holder of the first licence;  
20 (b) carrying out an assessment of whether issuing the other  
21 licence, or making the spectrum authorisation, as the case  
22 may be, would result in unacceptable levels of interference to  
23 the operation of radiocommunications transmitters operated,  
24 or likely to be operated, under the first licence.

#### 25 *Specification of a part of the spectrum*

- 26 (5) A part of the spectrum must not be specified in a regulatory  
27 undertaking included in the first licence unless it:  
28 (a) is the same as the part of the spectrum mentioned in  
29 paragraph (1)(a); or  
30 (b) is included in the part of the spectrum mentioned in  
31 paragraph (1)(a); or  
32 (c) overlaps the part of the spectrum mentioned in  
33 paragraph (1)(a); or



# EXPOSURE DRAFT

- 1 (d) is contiguous with the part of the spectrum mentioned in  
2 paragraph (1)(a).

3 *Specification of an area*

- 4 (6) If subparagraph (1)(b)(i) applies, an area must not be specified in a  
5 regulatory undertaking included in the first licence unless it:  
6 (a) is the same as the area mentioned in that subparagraph; or  
7 (b) is included in the area mentioned in that subparagraph; or  
8 (c) overlaps the area mentioned in that subparagraph; or  
9 (d) has a common boundary with the area mentioned in that  
10 subparagraph.
- 11 (7) If subparagraph (1)(b)(ii) applies, an area must not be specified in a  
12 regulatory undertaking included in the first licence unless the  
13 location mentioned in that subparagraph is included in the area.

14 *Undertaking may be unconditional or subject to conditions*

- 15 (8) A regulatory undertaking included in the first licence may be:  
16 (a) unconditional; or  
17 (b) subject to such conditions (if any) as are specified in the  
18 undertaking.

19 *Duration of undertaking*

- 20 (9) A regulatory undertaking included in the first licence:  
21 (a) comes into force when the first licence comes into force; and  
22 (b) ceases to be in force when the first licence ceases to be in  
23 force.

24 **54 Relevant connection with a part of the spectrum and an area**

25 *Relevant connection with a part of the spectrum and an area—*  
26 *licence*

- 27 (1) For the purposes of this Act, a licence has a **relevant connection**  
28 with:  
29 (a) a part of the spectrum specified in an undertaking; and
-

# EXPOSURE DRAFT

## Part 6 Licences

### Division 5 Regulatory undertakings

#### Section 54

---

- 1 (b) an area specified in the undertaking;  
2 if:  
3 (c) the licence authorises the operation of radiocommunications  
4 transmitters in a part of the spectrum that:  
5 (i) is the same as the part of the spectrum specified in the  
6 undertaking; or  
7 (ii) is included in the part of the spectrum specified in the  
8 undertaking; and  
9 (d) so far as the licence authorises the operation of  
10 radiocommunications transmitters in the part of the spectrum  
11 first mentioned in paragraph (c)—the licence authorises the  
12 operation of radiocommunications transmitters in an area  
13 that:  
14 (i) is the same as the area specified in the undertaking; or  
15 (ii) is included in the area specified in the undertaking.

16 *Relevant connection with a part of the spectrum and an area—part*  
17 *of a licence*

- 18 (2) For the purposes of this Act, a part of a licence has a **relevant**  
19 **connection** with:  
20 (a) a part of the spectrum specified in an undertaking; and  
21 (b) an area specified in the undertaking;  
22 if:  
23 (c) the part of the licence authorises the operation of  
24 radiocommunications transmitters in a part of the spectrum  
25 that:  
26 (i) is the same as the part of the spectrum specified in the  
27 undertaking; or  
28 (ii) is included in the part of the spectrum specified in the  
29 undertaking; or  
30 (iii) overlaps the part of the spectrum specified in the  
31 undertaking; and  
32 (d) so far as the part of the licence authorises the operation of  
33 radiocommunications transmitters in the part of the spectrum  
34 first mentioned in paragraph (c)—the part of the licence

authorises the operation of radiocommunications transmitters  
in an area that:

- (i) is the same as the area specified in the undertaking; or
- (ii) is included in the area specified in the undertaking; or
- (iii) overlaps the area specified in the undertaking.

*Relevant connection with a part of the spectrum and an area—  
spectrum authorisation*

(3) For the purposes of this Act, a spectrum authorisation has a  
**relevant connection** with:

- (a) a part of the spectrum specified in an undertaking; and
- (b) an area specified in the undertaking;

if:

- (c) the spectrum authorisation authorises the operation of  
radiocommunications transmitters in a part of the spectrum  
that:
  - (i) is the same as the part of the spectrum specified in the  
undertaking; or
  - (ii) is included in the part of the spectrum specified in the  
undertaking; or
  - (iii) overlaps the part of the spectrum specified in the  
undertaking; and
- (d) so far as the spectrum authorisation authorises the operation  
of radiocommunications transmitters in the part of the  
spectrum first mentioned in paragraph (c)—the spectrum  
authorisation authorises the operation of  
radiocommunications transmitters in an area that:
  - (i) is the same as the area specified in the undertaking; or
  - (ii) is included in the area specified in the undertaking; or
  - (iii) overlaps the area specified in the undertaking.

## **55 Compliance with regulatory undertaking**

The ACMA must comply with a regulatory undertaking that is  
included in a licence.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 5 Regulatory undertakings

#### Section 56

---

#### **56 Regulatory undertakings do not apply in relation to issue of certain licences etc.**

- (1) A regulatory undertaking covered by paragraph 53(3)(a) or (b) does not apply in relation to the issue of a licence if:
- (a) the licence is issued for purposes relating to the defence, security or international relations of:
    - (i) Australia; or
    - (ii) a foreign country whose naval, military or air force is acting in co-operation with the Defence Force of Australia; or
  - (b) the licence is issued for purposes relating to investigations or operations conducted by:
    - (i) the Australian Federal Police; or
    - (ii) the police force of a State or Territory; or
  - (c) the licence is issued for purposes relating to investigations or operations conducted by a designated crime/corruption body.
- (2) A regulatory undertaking covered by paragraph 53(3)(c), (d), (e) or (f) does not apply to:
- (a) conditions; or
  - (b) designated statements;
- included in a licence if:
- (c) the licence was issued for purposes relating to the defence, security or international relations of:
    - (i) Australia; or
    - (ii) a foreign country whose naval, military or air force is acting in co-operation with the Defence Force of Australia; or
  - (d) the licence was issued for purposes relating to investigations or operations conducted by:
    - (i) the Australian Federal Police; or
    - (ii) the police force of a State or Territory; or
  - (e) the licence was issued for purposes relating to investigations or operations conducted by a designated crime/corruption body.

**Division 6—Varying licences**

**57 Varying licences**

- (1) If a licence is in force, the ACMA may, by written notice given to the licensee, vary the licence by:
- (a) including one or more further conditions; or
  - (b) revoking any conditions of the licence (other than the conditions covered by sections 46 to 50); or
  - (c) varying any conditions of the licence (other than the conditions covered by sections 48 to 50); or
  - (d) including one or more designated statements in the licence; or
  - (e) revoking any designated statements included in the licence, other than a statement covered by subsection 59(2); or
  - (f) varying any designated statements included in the licence; or
  - (g) varying any regulatory undertaking included in the licence; or
  - (h) revoking any regulatory undertaking included in the licence.

Note: A decision to vary a licence is reviewable under Part 18.

- (2) If a licence includes a statement setting out restrictions or limitations on the ACMA's power to vary the licence, the ACMA must comply with those restrictions or limitations unless the licensee agrees to the variation concerned.
- (3) If the variation of a licence under subsection (1) involves:
- (a) including one or more further conditions; or
  - (b) revoking any conditions of the licence; or
  - (c) varying any conditions of the licence;
- the conditions of the licence as varied under subsection (1) must comply with the requirements of Division 4.
- (4) If the variation of a licence under subsection (1) of this section involves the revocation or variation of a designated statement covered by paragraph 59(1)(a), (b) or (c), the licence as varied

# EXPOSURE DRAFT

## Part 6 Licences

### Division 6 Varying licences

#### Section 58

---

1 under subsection (1) of this section must comply with the  
2 requirements of subsection 59(1).

3 (5) If the variation of a licence under subsection (1) of this section  
4 involves the variation of a designated statement covered by  
5 subsection 59(2), the licence as varied under subsection (1) of this  
6 section must comply with the requirements of subsections 59(2)  
7 and (3).

#### 8 **58 Restrictions or limitations on the ACMA's power to vary a** 9 **licence**

10 A licence may include a statement setting out restrictions or  
11 limitations on the ACMA's power to vary the licence.

## Division 7—Renewing licences

### 59 Renewal rights etc.

- (1) A licence must include:
  - (a) a statement to the effect that there is a right to renew the licence in specified circumstances; or
  - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA; or
  - (c) a statement to the effect that the licence cannot be renewed.
- (2) If a licence includes:
  - (a) a statement mentioned in paragraph (1)(a); or
  - (b) a statement mentioned in paragraph (1)(b);the licence must also include a statement to the effect that a specified period is the *renewal application period* for the licence.
- (3) The renewal application period must:
  - (a) begin at a time when the licence is in force; and
  - (b) end before the time when the licence is due to expire.
- (4) A licence (the *existing licence*) may include a statement to the effect that the characteristics (other than statements covered by subsection (1) or (2)) of any new licence issued as a result of the renewal of the existing licence must comply with the requirements specified in the statement.

### 60 Applications for renewal of licences

- (1) If a licence is in force, the licensee may:
  - (a) apply in writing to the ACMA for the licence to be renewed; and
  - (b) do so at any time during the renewal application period for the licence.
- (2) The application must be in a form approved, in writing, by the ACMA.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 7 Renewing licences

#### Section 61

---

1       **61 Renewal of licences**

2                       *Right to renew*

3               (1) If:

- 4                       (a) an application is made under section 60 for a licence to be  
5                               renewed; and  
6                       (b) the licence includes a statement to the effect that there is a  
7                               right to renew the licence in specified circumstances; and  
8                       (c) the ACMA is satisfied that those circumstances exist;  
9               the ACMA must renew the licence by issuing a new licence to the  
10              applicant.

- 11              (2) Subsection (1) has effect subject to subsections (4) and (5).

12                       *Discretionary renewal*

13               (3) If:

- 14                       (a) an application is made under section 60 for a licence to be  
15                               renewed; and  
16                       (b) the licence includes a statement to the effect that the licence  
17                               may be renewed at the discretion of the ACMA;  
18               the ACMA may renew the licence by issuing a new licence to the  
19              applicant.

20                       *Payment of spectrum access charge*

- 21               (4) The ACMA must not issue a new licence to a person under  
22                       subsection (1) or (3) unless the person:  
23                       (a) pays to the ACMA, on behalf of the Commonwealth, the  
24                               spectrum access charge (if any) for issuing the new licence;  
25                               or  
26                       (b) reaches an agreement with the ACMA for the payment of  
27                               that spectrum access charge.

28              Note:       Spectrum access charges are determined under section 193.



*Refusal to renew*

- (5) The ACMA may refuse to renew a licence if:
- (a) the renewal of the licence would be inconsistent with a radiofrequency plan; or
  - (b) either:
    - (i) the licensee; or
    - (ii) a person who has been authorised under section 41 in relation to the licence;has contravened a condition of the licence; or
  - (c) the licensee is a disqualified person; or
  - (d) the renewal of the licence would contravene a law of the Commonwealth other than this Act.

Note: A refusal to renew a licence is reviewable under Part 18.

- (6) Subsection (5) does not limit the circumstances in which the ACMA may refuse to renew a licence under subsection (3).

## **62 Characteristics of new licence**

*Scope*

- (1) This section applies if the ACMA renews a licence (the *existing licence*) by issuing a new licence.

*Characteristics*

- (2) If the existing licence includes a statement covered by subsection 59(4), the characteristics of the new licence must comply with the requirements specified in the statement, to the extent that those requirements are consistent with this Act as in force at the time of renewal.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 7 Renewing licences

#### Section 63

---

#### **63 Duration of new licence**

##### *Scope*

- (1) This section applies if the ACMA renews a licence (the *existing licence*) by issuing a new licence.

##### *Duration of new licence*

- (2) The new licence comes into force immediately after the expiration of the existing licence.
- (3) Subject to this Act, the new licence remains in force for the period specified in the new licence.
- (4) The specified period must not be longer than 20 years.

**Division 8—Suspending licences**

**64 Suspending licences**

(1) If:

(a) a licence is in force; and

(b) either:

(i) the licensee; or

(ii) a person authorised under section 41 in relation to the licence;

has contravened a condition of the licence;

the ACMA may, by written notice given to the licensee, suspend the licence for a period specified in, or ascertained in accordance with, the notice.

Note: Suspensions of licences under this subsection are reviewable under Part 18.

(2) If:

(a) a licence is in force; and

(b) the licence includes a statement setting out supplementary circumstances in which the licence may be suspended; and

(c) the ACMA is satisfied that any of those circumstances exist; the ACMA may, by written notice given to the licensee, suspend the licence for a period specified in, or ascertained in accordance with, the notice.

(3) A notice under this section must give the reasons for suspending the licence.

(4) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.

**65 Consultation**

(1) Before suspending a licence under subsection 64(1), the ACMA must give the licensee a written notice:

# EXPOSURE DRAFT

## Part 6 Licences

### Division 8 Suspending licences

#### Section 66

---

- 1 (a) stating that the ACMA is considering suspending the licence  
2 for a specified period; and  
3 (b) inviting the licensee to make a submission to the ACMA  
4 about the matter on or before the day specified in the notice.
- 5 (2) The day specified under paragraph (1)(b) must be at least 14 days  
6 after the day on which the notice is given.
- 7 (3) The ACMA must have regard to any submissions made by the  
8 licensee on or before the day specified in the notice.

9 **66 Supplementary circumstances in which a licence may be**  
10 **suspended**

11 A licence may include a statement setting out supplementary  
12 circumstances in which the licence may be suspended.

1 **Division 9—Cancelling licences**

2 **Subdivision A—Cancelling licences**

3 **67 Cancelling licences**

4 (1) If:

5 (a) a licence is in force; and

6 (b) either:

7 (i) the licensee; or

8 (ii) a person authorised under section 41 in relation to the  
9 licence;

10 has contravened a condition of the licence;

11 the ACMA may, by written notice given to the licensee, cancel the  
12 licence.

13 Note: Cancellations of licences under this subsection are reviewable under  
14 Part 18.

15 (2) If:

16 (a) a licence is in force; and

17 (b) the licence includes a statement setting out supplementary  
18 circumstances in which the licence may be cancelled; and

19 (c) the ACMA is satisfied that any of those circumstances exist;  
20 the ACMA may, by written notice given to the licensee, cancel the  
21 licence.

22 (3) A notice under this section must give the reasons for cancelling the  
23 licence.

24 **68 Consultation**

25 (1) Before cancelling a licence under subsection 67(1), the ACMA  
26 must give the licensee a written notice:

27 (a) stating that the ACMA is considering cancelling the licence;  
28 and

# EXPOSURE DRAFT

## Part 6 Licences

### Division 9 Cancelling licences

#### Section 69

---

- 1 (b) inviting the licensee to make a submission to the ACMA  
2 about the matter on or before the day specified in the notice.
- 3 (2) The day specified under paragraph (1)(b) must be at least 14 days  
4 after the day on which the notice is given.
- 5 (3) The ACMA must have regard to any submissions made by the  
6 licensee on or before the day specified in the notice.

#### 69 Supplementary circumstances in which a licence may be cancelled

7 A licence may include a statement setting out supplementary  
8 circumstances in which the licence may be cancelled.

#### Subdivision B—Disqualified persons

#### 70 Disqualified persons

##### *Individuals*

- 14 (1) If:  
15 (a) the holder of a licence is an individual; and  
16 (b) the ACMA cancels the licence under subsection 67(1) on the  
17 grounds that the holder has contravened a condition of the  
18 licence;  
19 the ACMA may, by writing, determine that the individual is a  
20 **disqualified person** for the purposes of this Act.

21 Note: A decision to determine that an individual is a disqualified person is  
22 reviewable under Part 18.

##### *Executive officers of bodies corporate*

- 24 (2) If:  
25 (a) the holder of a licence is a body corporate; and  
26 (b) the ACMA cancels the licence under subsection 67(1) on the  
27 grounds that the holder has contravened a condition of the  
28 licence; and

# EXPOSURE DRAFT

Licences **Part 6**  
Cancelling licences **Division 9**

## Section 70

---

- 1 (c) when the contravention occurred, an individual was an  
2 executive officer of the holder; and  
3 (d) the ACMA is satisfied that:  
4 (i) the individual knew that, or was reckless or negligent as  
5 to whether, the contravention would occur; and  
6 (ii) the individual was in a position to influence the conduct  
7 of the holder in relation to the contravention; and  
8 (iii) the individual failed to take all reasonable steps to  
9 prevent the contravention;

10 the ACMA may, by writing, determine that the individual is a  
11 **disqualified person** for the purposes of this Act.

12 Note: A decision to determine that an individual is a disqualified person is  
13 reviewable under Part 18.

- 14 (3) For the purposes of subsection (2), the individual is **reckless** as to  
15 whether the contravention would occur if:  
16 (a) the individual is aware of a substantial risk that the  
17 contravention would occur; and  
18 (b) having regard to the circumstances known to the individual,  
19 it is unjustifiable to take the risk.
- 20 (4) For the purposes of subsection (2), the individual is **negligent** as to  
21 whether the contravention would occur if the individual's conduct  
22 involves:  
23 (a) such a great falling short of the standard of care that a  
24 reasonable person would exercise in the circumstances; and  
25 (b) such a high risk that the contravention would occur;  
26 that the conduct merits the making of a determination under  
27 subsection (2).

### 28 *Duration of determination*

- 29 (5) Subject to this Act, a determination under subsection (1) or (2) that  
30 relates to an individual:  
31 (a) comes into force at the time specified in the determination  
32 (which must not be earlier than the time when the  
33 determination is entered on the Register of Disqualified  
34 Persons); and
-

# EXPOSURE DRAFT

## Part 6 Licences

### Division 9 Cancelling licences

#### Section 71

---

- 1 (b) remains in force for the period specified in the determination  
2 (which must not exceed 2 years).

#### 3 *Notice*

- 4 (6) If the ACMA makes a determination under subsection (1) or (2),  
5 the ACMA must give a copy of the determination to the individual.

#### 6 **71 Revocation of determination**

- 7 (1) If:  
8 (a) a determination under subsection 70(1) or (2) is in force in  
9 relation to an individual; and  
10 (b) the ACMA is satisfied that there are special circumstances  
11 that warrant the revocation of the determination;  
12 the ACMA may, by writing, revoke the determination.

13 Note: A decision to refuse to revoke a determination made under  
14 subsection 70(1) or (2) is reviewable under Part 18.

- 15 (2) If the ACMA revokes a determination relating to an individual, the  
16 ACMA must give a copy of the revocation to the individual.

#### 17 **72 Consultation**

- 18 (1) Before making a determination under section 70 in relation to an  
19 individual, the ACMA must give the individual a written notice:  
20 (a) stating that the ACMA is considering making the  
21 determination; and  
22 (b) inviting the individual to make a submission to the ACMA  
23 about the matter on or before the day specified in the notice.
- 24 (2) The day specified under paragraph (1)(b) must be at least 14 days  
25 after the day on which the notice is given.
- 26 (3) The ACMA must have regard to any submissions made by the  
27 individual on or before the day specified in the notice.



# EXPOSURE DRAFT

Licences **Part 6**  
Cancelling licences **Division 9**

## Section 73

---

### **73 Register of Disqualified Persons**

- (1) The ACMA is to maintain a register, to be known as the Register of Disqualified Persons, in which the ACMA must include:
  - (a) all determinations in force under subsection 70(1) or (2); and
  - (b) for each determination that is in force in relation to an individual:
    - (i) the name of the individual; and
    - (ii) a brief description of the circumstances that led to the individual becoming a disqualified person.
- (2) The Register of Disqualified Persons is to be maintained by electronic means.
- (3) The Register of Disqualified Persons is to be made available for inspection on the ACMA's website.
- (4) The Register of Disqualified Persons is not a legislative instrument.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 10 Surrender of licences

#### Section 74

---

## 1 Division 10—Surrender of licences

### 2 74 Surrender of licences

3 (1) The holder of a licence may, by written notice given to the ACMA,  
4 surrender the licence.

5 (2) The holder of a licence may, by written notice given to the ACMA,  
6 surrender a part of the licence, so long as the ACMA has given  
7 written consent to the surrender.

8 Note: A decision to refuse to give consent is reviewable under Part 18.

### 9 75 Effect of surrender

10 (1) If the whole of a licence is surrendered, the licence ceases to have  
11 effect:

12 (a) on the day specified for that purpose in the notice of  
13 surrender; or

14 (b) if such a day is not specified—at the end of the day on which  
15 the notice is given.

16 (2) If a part of a licence is surrendered:

17 (a) that part of the licence ceases to have effect at the end of the  
18 day on which the ACMA makes the necessary changes to the  
19 Register of Radiocommunications Licences under the  
20 Register rules to take the surrender into account; and

21 (b) the ACMA must vary, in the way that in its opinion best  
22 gives effect to the surrender, the following:

23 (i) the conditions included in the remaining part of the  
24 licence;

25 (ii) the regulatory undertakings (if any) included in the  
26 remaining part of the licence;

27 (iii) the designated statements (if any) included in the  
28 remaining part of the licence.

29 Note: Variations under this section are reviewable under Part 18.

# EXPOSURE DRAFT

Licences **Part 6**  
Surrender of licences **Division 10**

Section 76

1       **76 Agreement for surrender of licence**

2       The ACMA may, on behalf of the Commonwealth, enter into an  
3       agreement with the holder of a licence for the making of a payment  
4       to the holder as an incentive to surrender:

- 5 (a) the licence; or  
6 (b) a part of the licence.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 11 Subdivision of licences

#### Section 77

---

## Division 11—Subdivision of licences

### 77 Subdivision of licences

- (1) If the holder of a licence (the *existing licence*), by written notice given to the ACMA, requests the ACMA to subdivide the existing licence into 2 or more specified parts, the ACMA must:
- (a) issue to the holder 2 or more new licences, where each new licence corresponds to one of those parts of the existing licence; and
  - (b) revoke the existing licence.
- (2) However, the holder is not entitled to give a notice under subsection (1) if:
- (a) the existing licence includes a statement to the effect that the existing licence cannot be subdivided; or
  - (b) both:
    - (i) the existing licence includes a statement setting out restrictions or limitations on the holder's right to request the ACMA to subdivide the existing licence; and
    - (ii) the notice would contravene any of those restrictions or limitations.
- (3) A notice under subsection (1) must be in a form approved, in writing, by the ACMA.

#### *Conditions of new licence*

- (4) In order to give effect to the subdivision, the conditions of a new licence may be different from the conditions of the existing licence.

#### *Designated statements in new licence*

- (5) In order to give effect to the subdivision, the designated statements in a new licence may be different from the designated statements in the existing licence.

# EXPOSURE DRAFT

*Regulatory undertakings in new licence*

- (6) In order to give effect to the subdivision, the regulatory undertakings in a new licence may be different from the regulatory undertakings in the existing licence.

*Duration of new licence*

- (7) A new licence comes into force immediately after the revocation of the existing licence.
- (8) Subject to this Act, a new licence remains in force for the period specified in the new licence.
- (9) The period specified in a new licence must end at the same time as the end of the period that was specified in the existing licence.

## **78 When a licence cannot be subdivided**

A licence may include a statement to the effect that the licence cannot be subdivided.

## **79 Restrictions or limitations relating to subdivision**

A licence may include a statement setting out restrictions or limitations on the licensee's right to request the ACMA to subdivide the licence.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 12 Assignment of licences etc.

#### Section 80

---

## Division 12—Assignment of licences etc.

### 80 Assignment of licences etc.

- (1) The holder of a licence may assign the licence.
- (2) Despite subsection (1), the holder of a licence is not entitled to assign the licence if:
  - (a) the licence includes a statement to the effect that the licence cannot be assigned; or
  - (b) both:
    - (i) the licence includes a statement setting out restrictions or limitations on the holder's right to assign the licence; and
    - (ii) the assignment of the licence would contravene any of those restrictions or limitations; or
  - (c) the prospective assignee is a disqualified person.
- (3) The ACMA may waive compliance with paragraph (2)(c) in a particular case if the ACMA is satisfied that there are special circumstances.

Note: A decision to refuse to waive compliance with paragraph (2)(c) is reviewable under Part 18.
- (4) An assignment of a licence is of no force until:
  - (a) the holder and the assignee, by joint written notice given to the ACMA, request the ACMA to amend the Register of Radiocommunications Licences to take account of the assignment; and
  - (b) the ACMA amends the Register of Radiocommunications Licences to take account of the assignment.
- (5) A notice under paragraph (4)(a) must:
  - (a) be in a form approved, in writing, by the ACMA; and
  - (b) be accompanied by such information about the assignment as the ACMA requires for the purpose of amending the Register

# EXPOSURE DRAFT

1 of Radiocommunications Licences to take account of the  
2 assignment.

3 **81 When a licence cannot be assigned**

4 A licence may include a statement to the effect that the licence  
5 cannot be assigned.

6 **82 Restrictions or limitations on the licensee’s right to assign the**  
7 **licence**

8 A licence may include a statement setting out restrictions or  
9 limitations on the licensee’s right to assign the licence.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 13 Dealing with licences etc.

#### Section 83

---

## 1 Division 13—Dealing with licences etc.

### 2 83 Dealing with licences etc.

3 (1) The holder of a licence may deal with the licence.

4 Note: This subsection does not authorise assignment or third party  
5 authorisation. See the definition of *deal with* in section 5.

6 (2) Despite subsection (1), the holder of a licence is not entitled to deal  
7 with the licence if:

8 (a) the licence includes a statement to the effect that the licence  
9 cannot be dealt with; or

10 (b) both:

11 (i) the licence includes a statement setting out restrictions  
12 or limitations on the holder's right to deal with the  
13 licence; and

14 (ii) dealing with the licence would contravene any of those  
15 restrictions or limitations.

16 (3) Despite subsection (1), the holder of a licence is not entitled to deal  
17 with the licence in a particular kind of way if:

18 (a) the licence includes a statement to the effect that the licence  
19 cannot be dealt with in that kind of way; or

20 (b) both:

21 (i) the licence includes a statement setting out restrictions  
22 or limitations on the holder's right to deal with the  
23 licence in that kind of way; and

24 (ii) dealing with the licence in that kind of way would  
25 contravene any of those restrictions or limitations.

### 26 84 When a licence cannot be dealt with

27 (1) A licence may include a statement to the effect that the licence  
28 cannot be dealt with.

29 (2) A licence may include a statement to the effect that the licence  
30 cannot be dealt with in a particular kind of way.



EXPOSURE DRAFT

- 1

2

3

4

5

6

7
- 85 Restrictions or limitations on the licensee’s right to deal with the licence**

(1) A licence may include a statement setting out restrictions or limitations on the licensee’s right to deal with the licence.

(2) A licence may include a statement setting out restrictions or limitations on the licensee’s right to deal with the licence in a particular kind of way.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 14 Resumption of licences

#### Section 86

---

## Division 14—Resumption of licences

### 86 Resumption of licences

(1) The ACMA may, by written notice given to the holder of a licence, resume:

- (a) the licence; or
- (b) a part of the licence.

Note: Resumptions are reviewable under Part 18.

(2) The ACMA must not resume a licence, or a part of a licence, unless:

(a) either:

- (i) the Minister has given his or her written approval for the resumption; or
- (ii) the Minister has given his or her written approval for a particular class of resumptions, and the resumption is included in that class; and

(b) the ACMA has followed any procedures determined under section 88.

(3) An approval under subsection (2) is not a legislative instrument.

### 87 Effect of resumption

(1) If the whole of a licence is resumed, the licence ceases to have effect:

- (a) on the day specified for that purpose in the notice of resumption; or
- (b) if such a day is not specified—at the end of the day on which the notice is given.

(2) If a part of a licence is resumed:

- (a) that part of the licence ceases to have effect at the end of the day on which the ACMA makes the necessary changes to the Register of Radiocommunications Licences under the Register rules to take the resumption into account; and

# EXPOSURE DRAFT

- 1 (b) the ACMA must vary, in the way that in its opinion best  
2 gives effect to the resumption, the following:  
3 (i) the conditions included in the remaining part of the  
4 licence;  
5 (ii) the regulatory undertakings (if any) included in the  
6 remaining part of the licence;  
7 (iii) the designated statements (if any) included in the  
8 remaining part of the licence.

9 Note: Variations under this section are reviewable under Part 18.

## 10 **88 Resumption procedures etc.**

11 The ACMA may, by legislative instrument:

- 12 (a) determine procedures to be applied in relation to the  
13 resumption of licences, or parts of licences, under this  
14 Division; and  
15 (b) determine procedures to be followed for determining the  
16 compensation payable for resuming a licence, or a part of a  
17 licence, under this Division; and  
18 (c) determine the rate, or a method of ascertaining the rate, at  
19 which interest is payable on an amount of such  
20 compensation.

## 21 **89 Payment of compensation**

- 22 (1) If an amount of compensation is determined, under the  
23 paragraph 88(b) procedures, to be payable to a person, the  
24 Commonwealth must pay the person:  
25 (a) the amount of compensation; and  
26 (b) the amount of interest payable under subsection (2).  
27 (2) Interest is payable on the amount of compensation:  
28 (a) in respect of the period:  
29 (i) starting on the day the resumption took place; and  
30 (ii) ending at the end of the day on which the compensation  
31 is paid; and

# EXPOSURE DRAFT

**Part 6** Licences  
**Division 14** Resumption of licences

Section 89

---

- 1
- (b) at the rate specified in, or ascertained in accordance with, the
- 2
- paragraph 88(c) determination.

## **Division 15—Register of Radiocommunications Licences**

### **90 Register of Radiocommunications Licences**

- (1) The ACMA must maintain a register, to be known as the Register of Radiocommunications Licences.
- (2) The Register of Radiocommunications Licences is to be kept by electronic means.
- (3) The Register of Radiocommunications Licences is to be made available for inspection on the ACMA's website.
- (4) Subsection (3) does not apply in relation to particular information in the Register of Radiocommunications Licences if the ACMA is satisfied that it would not be in the national interest (for example, for defence or security reasons) for that information to be made available for inspection on the ACMA's website.

### **91 Contents of the Register of Radiocommunications Licences**

- (1) The Register of Radiocommunications Licences must contain, for each licence, such information as is specified in the Register rules.
- (2) If a licence includes a regulatory undertaking, the Register of Radiocommunications Licences must set out the regulatory undertaking.
- (3) The ACMA may include in the Register of Radiocommunications Licences such other details about licences as it thinks necessary or convenient for the purposes of this Act.

### **92 Registration of radiocommunications devices**

#### *Request for registration—applicant for licence*

- (1) If:
  - (a) a person applies to the ACMA for the issue of a licence under subsection 33(1) or (2); and

# EXPOSURE DRAFT

## Part 6 Licences

### Division 15 Register of Radiocommunications Licences

#### Section 92

---

- 1 (b) the application is accompanied by a request that, in the event  
2 that the licence is issued, the ACMA register a specified  
3 radiocommunications device in relation to the licence; and  
4 (c) assuming that the licence were to be issued, the licence  
5 would authorise the operation of the device (disregarding  
6 section 47); and  
7 (d) the request is accompanied by information that is sufficient to  
8 enable the ACMA to register the device in relation to the  
9 licence; and  
10 (e) either:  
11 (i) the ACMA is satisfied that the device satisfies the  
12 conditions set out in the Register rules that are  
13 applicable to the device; or  
14 (ii) there are no conditions set out in the Register rules that  
15 are applicable to the device; and  
16 (f) the licence is issued to the applicant;  
17 the ACMA must, immediately after the issue of the licence:  
18 (g) register the device in relation to the licence; and  
19 (h) do so by setting out, in the part of the Register of  
20 Radiocommunications Licences that relates to the licence,  
21 such information about the device as is specified in the  
22 Register rules.

23 Note: A refusal to register a device is reviewable under Part 18.

#### 24 *Request for registration—licensee or authorised person*

- 25 (2) If:  
26 (a) a licence authorises the operation of a radiocommunications  
27 device (disregarding section 47); and  
28 (b) either:  
29 (i) the licensee; or  
30 (ii) a person authorised by the licensee under section 41;  
31 requests the ACMA to register the device in relation to the  
32 licence; and

# EXPOSURE DRAFT

- 1 (c) the request is accompanied by information that is sufficient to  
2 enable the ACMA to register the device in relation to the  
3 licence; and  
4 (d) either:  
5 (i) the ACMA is satisfied that the device satisfies the  
6 conditions set out in the Register rules that are  
7 applicable to the device; or  
8 (ii) there are no conditions set out in the Register rules that  
9 are applicable to the device;  
10 the ACMA must:  
11 (e) register the device in relation to the licence; and  
12 (f) do so by setting out, in the part of the Register of  
13 Radiocommunications Licences that relates to the licence,  
14 such information about the device as is specified in the  
15 Register rules.

16 Note: A refusal to register a device is reviewable under Part 18.

17 *Request for registration—applicant for renewal of licence*

- 18 (3) If:  
19 (a) a person applies to the ACMA under section 60 for the  
20 renewal of a licence (the **first licence**); and  
21 (b) the application is accompanied by a request that, in the event  
22 that the first licence is renewed by issuing a new licence, the  
23 ACMA register a specified radiocommunications device in  
24 relation to the new licence; and  
25 (c) the first licence authorises the operation of the device  
26 (disregarding section 47); and  
27 (d) assuming that the first licence were to be renewed, the new  
28 licence would authorise the operation of the device  
29 (disregarding section 47); and  
30 (e) the request is accompanied by information that is sufficient to  
31 enable the ACMA to register the device in relation to the new  
32 licence; and  
33 (f) the first licence is renewed by issuing the new licence;  
34 the ACMA must, immediately after the issue of the new licence:

# EXPOSURE DRAFT

## Part 6 Licences

### Division 15 Register of Radiocommunications Licences

#### Section 92

---

- 1 (g) register the device in relation to the new licence; and  
2 (h) do so by setting out, in the part of the Register of  
3 Radiocommunications Licences that relates to the new  
4 licence, such information about the device as is specified in  
5 the Register rules.

6 Note: A refusal to register a device is reviewable under Part 18.

#### 7 *Request for registration—applicant for subdivision of licence*

8 (4) If:

- 9 (a) a person makes a request (the *subdivision request*) to the  
10 ACMA under section 77 for the subdivision of a licence (the  
11 *first licence*); and  
12 (b) the subdivision request is accompanied by a request that, in  
13 the event that the subdivision of the first licence results in the  
14 issue of a new licence that corresponds to a specified part of  
15 the first licence, the ACMA register a specified  
16 radiocommunications device in relation to the new licence;  
17 and  
18 (c) the first licence authorises the operation of the device  
19 (disregarding section 47); and  
20 (d) assuming that the new licence were to be issued, the new  
21 licence would authorise the operation of the device  
22 (disregarding section 47); and  
23 (e) the subdivision request is accompanied by information that is  
24 sufficient to enable the ACMA to register the device in  
25 relation to the new licence; and  
26 (f) the new licence is issued;  
27 the ACMA must, immediately after the issue of the new licence:  
28 (g) register the device in relation to the new licence; and  
29 (h) do so by setting out, in the part of the Register of  
30 Radiocommunications Licences that relates to the new  
31 licence, such information about the device as is specified in  
32 the Register rules.

33 Note: A refusal to register a device is reviewable under Part 18.



# EXPOSURE DRAFT

*Deregistration*

(5) If:

- (a) a radiocommunications device is registered under subsection (1), (2), (3) or (4) in relation to a licence; and
- (b) the Register rules set out conditions that are applicable to the device; and
- (c) the ACMA is not satisfied that the device satisfies the conditions set out in the Register rules that are applicable to the device;

the ACMA may:

- (d) deregister the device in relation to the licence; and
- (e) do so by removing information about the device from the part of the Register of Radiocommunications Licences that relates to the licence.

Note: The deregistration of a device is reviewable under Part 18.

*Reliance on certificates and circumstances*

(6) The Register rules may provide that, if:

- (a) the ACMA; or
- (b) a person who holds an accreditation of a specified kind;

has issued a certificate under the Register rules stating that a specified radiocommunications device satisfies one or more specified conditions set out in the Register rules that are applicable to the device, the ACMA may rely on the certificate in determining whether the device satisfies those conditions.

(7) The Register rules may provide that, if specified circumstances exist in relation to a specified radiocommunications device, the ACMA may rely on the existence of those circumstances in determining whether the device satisfies one or more specified conditions set out in the Register rules that are applicable to the device.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 15 Register of Radiocommunications Licences

#### Section 93

---

#### 93 Updating the Register of Radiocommunications Licences

The Register rules may authorise the ACMA to make such changes to the information in the Register of Radiocommunications Licences about a licence as the ACMA considers are necessary or convenient for taking into account:

- (a) any variation of the licence; or
- (b) any extension of the period for which a licence is in force; or
- (c) any suspension of the licence; or
- (d) any cancellation of the licence; or
- (e) any surrender of the licence or a part of the licence; or
- (f) any revocation of the licence; or
- (g) any assignment of the licence; or
- (h) any resumption of the licence or a part of the licence.

Note: A decision to make a change to information in the Register of Radiocommunications Licences is reviewable under Part 18.

#### 94 Correction of the Register of Radiocommunications Licences

The Register rules may authorise the ACMA to correct information in the Register of Radiocommunications Licences.

Note: A refusal to correct information in the Register is reviewable under Part 18.

#### 95 Register rules may make further provision in relation to the Register of Radiocommunications Licences

The Register rules may make further provision in relation to the Register of Radiocommunications Licences.

#### 96 Register rules

- (1) The ACMA may, by legislative instrument, make rules (*Register rules*) prescribing matters required or permitted by this Act to be prescribed by the Register rules.
- (2) The Register rules may make provision in relation to a matter by conferring a power on the ACMA.

# EXPOSURE DRAFT

- 1           (3) The Register rules may make provision in relation to a matter by
- 2           conferring a power on a person who holds a specified kind of
- 3           accreditation.
  
- 4           (4) The Register rules may authorise a person who holds a specified
- 5           kind of accreditation to charge fees in relation to the exercise by
- 6           the person of a power conferred by the Register rules. A fee must
- 7           not be such as to amount to taxation.

# EXPOSURE DRAFT

## Part 6 Licences

### Division 16 Miscellaneous

#### Section 97

---

## Division 16—Miscellaneous

### 97 Issue of licence etc. is to be treated as acquisition of asset

#### *Issue or renewal*

(1) For the purposes of the following provisions of the *Competition and Consumer Act 2010*:

- (a) section 50;
- (b) section 80AC;
- (c) subsection 81(1);
- (d) section 81A;
- (e) the provisions of Part VII, to the extent that those provisions relate to section 50 of that Act;

each of the following:

- (f) the issue of a licence to a person under section 33 of this Act;
- (g) the issue of a licence to a person under section 39 of this Act;
- (h) the renewal of a person's licence under section 61 of this Act;

is taken to be an acquisition by the person of an asset of another person.

(2) Paragraph (1)(f) does not apply in relation to the issue of a licence under section 33 if the licence authorises the operation of radiocommunications devices in a part of the spectrum that is covered by a licence issue limit.

(3) Paragraph (1)(g) does not apply in relation to the issue of a licence under section 39 if the licence authorises the operation of radiocommunications devices in a part of the spectrum that is covered by a licence issue limit.

#### *Authorisation or assignment*

(4) For the purposes of the following provisions of the *Competition and Consumer Act 2010*:

- (a) section 50;

# EXPOSURE DRAFT

- 1 (b) section 80AC;
- 2 (c) subsection 81(1);
- 3 (d) subsection 81(1A);
- 4 (e) section 81A;
- 5 (f) the provisions of Part VII, to the extent that those provisions
- 6 relate to section 50 of that Act;
- 7 each of the following:
- 8 (g) the authorisation of a person, under section 41 of this Act, in
- 9 relation to a licence;
- 10 (h) the assignment of a licence to a person;
- 11 is taken to be an acquisition by the person of an asset of another
- 12 person.

# EXPOSURE DRAFT

## Part 7 Spectrum authorisations

### Section 98

---

## Part 7—Spectrum authorisations

### 98 Simplified outline of this Part

- The ACMA may authorise any person to:
  - (a) operate a radiocommunications transmitter of a specified kind; or
  - (b) operate a radiocommunications transmitter for a specified purpose; or
  - (c) operate a radiocommunications transmitter of a specified kind for a specified purpose.
- The authorisation is to be known as a spectrum authorisation.
- A spectrum authorisation is subject to such conditions as are specified in the authorisation.

### 99 Spectrum authorisations

- (1) The ACMA may, by legislative instrument, authorise any person to operate a radiocommunications transmitter of a specified kind.
- (2) The ACMA may, by legislative instrument, authorise any person to operate a radiocommunications transmitter for a specified purpose.
- (3) The ACMA may, by legislative instrument, authorise any person to operate a radiocommunications transmitter of a specified kind for a specified purpose.
- (4) An authorisation under subsection (1), (2) or (3) is to be known as a *spectrum authorisation*.
- (5) Operation of a radiocommunications transmitter is not authorised by a spectrum authorisation if it is not in accordance with the conditions of the authorisation.

## **100 Conditions of spectrum authorisations**

- (1) A spectrum authorisation is subject to such conditions as are specified in the authorisation.
- (2) The conditions may, for example, include any or all of the following:
- (a) a condition specifying the part or parts of the spectrum in which operation of radiocommunications transmitters is authorised under the authorisation;
  - (b) a condition specifying other technical requirements about operation of radiocommunications transmitters under the authorisation;
  - (c) a condition specifying the area within which operation of radiocommunications transmitters is authorised under the authorisation;
  - (d) a condition specifying the periods during which operation of radiocommunications transmitters is authorised under the authorisation.
- (3) A part of the spectrum specified in a condition referred to in paragraph (2)(a) may be the same as, or overlap, a part that is:
- (a) specified in a corresponding condition of another spectrum authorisation; or
  - (b) specified in a condition of a licence referred to in paragraph 46(1)(a).
- (4) The rule in subsection (3) applies even if:
- (a) the area within which operation of radiocommunications transmitters is authorised under the spectrum authorisation is the same as, or overlaps:
    - (i) the area within which operation of radiocommunications transmitters is authorised under another spectrum authorisation; or
    - (ii) the area within which operation of radiocommunications transmitters is authorised under a licence; or
  - (b) the location at which operation of radiocommunications transmitters is authorised under the spectrum authorisation is

# EXPOSURE DRAFT

## Part 7 Spectrum authorisations

## Section 100

1 the same as, or is in the vicinity of, the location at which  
2 operation of radiocommunications transmitters is authorised  
3 under a licence.



1 **Part 8—Certified operators**

2 **Division 1—Introduction**

3 **101 Simplified outline of this Part**

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- Certification rules made by the ACMA may provide that the certified operator requirements apply in relation to a specified class of radiocommunications devices.
  - The ACMA may issue a certificate of proficiency in relation to such a class of radiocommunications devices.
  - The certification rules may provide that an individual is exempt from the certified operator requirements.

11 Note: Section 28 deals with operating radiocommunications devices without  
12 a certificate of proficiency.

13 **102 Certified operator requirements**

- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- (1) The certification rules may provide that the certified operator requirements apply in relation to a specified class of radiocommunications devices.
  - (2) The certification rules may provide that an individual is exempt from the certified operator requirements if the individual satisfies one or more specified conditions.
  - (3) A class of radiocommunications transmitters may be specified under subsection (1) by reference to the purpose or purposes for which the transmitters are, or are to be, operated.
  - (4) Subsection (3) does not, by implication, limit the ways in which:
    - (a) a class of radiocommunications transmitters may be specified under subsection (1); or

# EXPOSURE DRAFT

**Part 8** Certified operators  
**Division 1** Introduction

Section 102

---

- 1
- (b) a class may be specified under any other provision of this
- 2
- Act.

1 **Division 2—Certificates of proficiency**

2 **103 Applications for certificates of proficiency**

- 3 (1) An individual may apply to the ACMA for a certificate of  
4 proficiency in relation to a specified class of radiocommunications  
5 devices, so long as the class is specified in certification rules made  
6 for the purposes of section 102.
- 7 (2) The application must be in a form approved, in writing, by the  
8 ACMA.

9 **104 Issuing certificates of proficiency**

10 *Scope*

- 11 (1) This section applies if an application has been made under  
12 section 103 for a certificate of proficiency in relation to a specified  
13 class of radiocommunications devices.

14 *Issue of certificate*

- 15 (2) After considering the application, the ACMA must:  
16 (a) issue the certificate of proficiency to the applicant; or  
17 (b) refuse to issue the certificate of proficiency to the applicant.
- 18 (3) The ACMA must not issue the certificate of proficiency unless:  
19 (a) if the certification rules specify conditions in relation to the  
20 specified class—the applicant satisfies those conditions; and  
21 (b) if the certification rules specify a minimum age in relation to  
22 the specified class—the applicant has reached that age; and  
23 (c) if an exam specified in, or ascertained in accordance with, the  
24 certification rules is the applicable exam in relation to the  
25 specified class—the ACMA:  
26 (i) is satisfied that the applicant has achieved satisfactory  
27 results in the applicable exam; or

# EXPOSURE DRAFT

## Part 8 Certified operators

### Division 2 Certificates of proficiency

#### Section 105

---

- 1 (ii) is satisfied, on reasonable grounds, that the applicant  
2 would probably achieve such results.

3 *Notice of refusal*

- 4 (4) If the ACMA refuses to issue a certificate of proficiency, the  
5 ACMA must give the applicant:  
6 (a) a written notice of the refusal; and  
7 (b) a statement of reasons for the refusal.

8 Note: A refusal to issue a certificate of proficiency is reviewable under  
9 Part 18.

10 **105 Exams**

- 11 (1) The certification rules may provide that an exam mentioned in  
12 paragraph 104(3)(c) may be conducted by:  
13 (a) the ACMA; or  
14 (b) a person who holds an accreditation of a kind specified in the  
15 certification rules.

- 16 (2) A person mentioned in paragraph (1)(b) may charge fees in relation  
17 to an exam that is:  
18 (a) mentioned in paragraph 104(3)(c); and  
19 (b) conducted by the person.

20 Note: For charges by the ACMA, see section 60 of the *Australian*  
21 *Communications and Media Authority Act 2005*.

- 22 (3) A fee must not be such as to amount to taxation.

23 **106 Cancelling certificates of proficiency**

24 *Scope*

- 25 (1) This section applies if an individual holds a certificate of  
26 proficiency.

# EXPOSURE DRAFT

Certified operators **Part 8**  
Certificates of proficiency **Division 2**

## Section 107

---

### *Cancellation*

- (2) The ACMA may, by written notice given to the individual, cancel the certificate of proficiency.
- (3) In deciding whether to cancel the certificate of proficiency, the ACMA must have regard to:
- (a) the matters specified in the certification rules; and
  - (b) such other matters (if any) as the ACMA considers relevant.
- (4) A notice under subsection (2) must set out the reasons for the cancellation.

Note: Cancellations of certificates of proficiency are reviewable under Part 18.

### **107 Consultation**

- (1) Before cancelling a certificate of proficiency held by an individual, the ACMA must give the individual a written notice:
- (a) stating that the ACMA is considering cancelling the certificate of proficiency; and
  - (b) inviting the individual to make a submission to the ACMA about the matter on or before the day specified in the notice.
- (2) The day specified under paragraph (1)(b) must be at least 14 days after the day on which the notice is given.
- (3) The ACMA must have regard to any submissions made by the individual on or before the day specified in the notice.

### **108 Delegating the power to issue certificates of proficiency**

- (1) The ACMA may, by writing, delegate its powers under this Part (other than section 109) to:
- (a) a body specified in the certification rules; or
  - (b) an authority of the Commonwealth.

# EXPOSURE DRAFT

## Part 8 Certified operators

### Division 2 Certificates of proficiency

#### Section 109

---

- 1 (2) If, under section 50 of the *Australian Communications and Media*  
2 *Authority Act 2005*, the ACMA has delegated the powers referred  
3 to in subsection (1) of this section to a Division of the ACMA:  
4 (a) the Division may delegate the power to a body or authority  
5 referred to in subsection (1) of this section; and  
6 (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian*  
7 *Communications and Media Authority Act 2005* have effect  
8 as if such a delegation by the Division were a delegation  
9 under section 52 of that Act.
- 10 (3) A delegate referred to in paragraph (1)(a) is not entitled to make a  
11 final decision refusing to issue a certificate of proficiency. If such a  
12 delegate decides not to issue the certificate, the delegate must refer  
13 the application, for a final decision, to:  
14 (a) the ACMA, if the delegation to the delegate was under  
15 subsection (1); or  
16 (b) the Division that delegated the power, if the delegation to the  
17 delegate was under subsection (2).
- 18 (4) The powers conferred on the ACMA by subsection (1), and on a  
19 Division of the ACMA by subsection (2), do not limit the powers  
20 conferred by sections 50, 51 and 52 of the *Australian*  
21 *Communications and Media Authority Act 2005*.

#### 109 Certification rules

- 22 The ACMA may, by legislative instrument, make rules  
23 (*certification rules*) prescribing matters required or permitted by  
24 this Act to be prescribed by the certification rules.  
25

1 **Part 9—Interference management**

2 **Division 1—Introduction**

3 **110 Simplified outline of this Part**

- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- The ACMA may formulate guidelines relating to procedures for resolving interference complaints.
  - If a licensee makes an interference complaint to the ACMA, the ACMA may:
    - (a) investigate the complaint; or
    - (b) provide an alternative dispute resolution service that is directed towards resolving the complaint; or
    - (c) refer the complainant to a provider of alternative dispute resolution services.
  - A person must not engage in conduct that will result, or is likely to result, in:
    - (a) substantial interference to radiocommunications; or
    - (b) substantial disruption to radiocommunications; or
    - (c) substantial disturbance to radiocommunications.
  - A person must not, outside Australia, use a transmitter for the purposes of transmitting to the general public in Australia radio programs or television programs.
  - The ACMA may give a direction to the holder of a licence for the purpose of avoiding, minimising or reducing interference to radiocommunications.
  - Inspectors appointed under this Act have the power to adjust transmitters in emergencies.

# EXPOSURE DRAFT

## Part 9 Interference management

### Division 2 Resolution of interference complaints

#### Section 111

---

## Division 2—Resolution of interference complaints

### 111 Interference complaints

(1) For the purposes of this Act, an *interference complaint* is a complaint made by the holder of a licence (the *complainant*) to the effect that:

(a) one or more other persons have engaged, are engaging, or propose to engage, in conduct that has caused, is causing, or is likely to cause:

(i) interference, or risk of interference, to radiocommunications under the licence; or

(ii) any other disruption or disturbance, or risk of disruption or disturbance, to radiocommunications under the licence; and

(b) the interests of the complainant have been, are being, or are likely to be, affected by the conduct.

(2) It is immaterial whether the complainant can identify any or all of those other persons.

(3) For the purposes of this section, *engage in conduct* includes being involved in, or contributing to, that conduct.

Note: See also section 18A of the *Acts Interpretation Act 1901*.

### 112 Guidelines for the resolution of interference complaints

(1) The ACMA may, by writing, formulate guidelines relating to procedures for resolving interference complaints.

(2) The guidelines are not binding.

(3) The ACMA must publish the guidelines on its website.

(4) An instrument under subsection (1) is not a legislative instrument.



# EXPOSURE DRAFT

Interference management **Part 9**  
Resolution of interference complaints **Division 2**

## Section 113

---

### 113 ACMA may assist in the resolution of interference complaints

#### *Scope*

- (1) This section applies if a person (the **complainant**) makes an interference complaint to the ACMA.

#### *Investigation*

- (2) The ACMA may:
- (a) investigate the complaint; and
  - (b) inform the complainant of the results of the investigation.

#### *Provision of alternative dispute resolution services*

- (3) The ACMA may provide an alternative dispute resolution service that is directed towards resolving the complaint.

#### *Matters to which the ACMA must have regard*

- (4) In deciding whether to exercise a power conferred by subsection (2) or (3), the ACMA must have regard to:
- (a) if any guidelines under section 112 were in force at the time when the complaint was made—whether those guidelines were followed; and
  - (b) such other matters (if any) as the ACMA considers relevant.

#### *Referral to providers of alternative dispute resolution services*

- (5) The ACMA may refer the complainant to one or more providers of alternative dispute resolution services.

#### *Protection from civil actions*

- (6) Civil proceedings do not lie against a person in respect of loss, damage or injury suffered by another person because:
- (a) a statement was made, or a document or information was given, in good faith to the ACMA in connection with the provision of an alternative dispute resolution service under subsection (3); or

# EXPOSURE DRAFT

**Part 9** Interference management  
**Division 2** Resolution of interference complaints

## Section 113

---

- 1 (b) a statement was made, or a document or information was
- 2 given, in good faith to a provider of an alternative dispute
- 3 resolution service in connection with the provision of an
- 4 alternative dispute resolution service in response to a referral
- 5 under subsection (5).

**Division 3—Causing interference etc.**

**114 Causing interference etc.**

*Offences*

(1) A person commits an offence if:

(a) the person engages in conduct; and

(b) the conduct will result, or is likely to result, in:

(i) substantial interference; or

(ii) substantial disruption; or

(iii) substantial disturbance;

to radiocommunications:

(iv) within Australia; or

(v) between a place in Australia and a place outside  
Australia; and

(c) the conduct will, or is likely to:

(i) endanger the safety of another person; or

(ii) cause another person to suffer or incur substantial loss  
or damage; or

(iii) affect the radiocommunications carried on by, or on  
behalf of, the Royal Flying Doctor Service; or

(iv) affect the radiocommunications carried on by, or on  
behalf of, the Australian Federal Police; or

(v) affect the radiocommunications carried on by, or on  
behalf of, the police force of a State or Territory; or

(vi) affect the radiocommunications carried on by, or on  
behalf of, an emergency service specified in the  
legislative rules; or

(vii) prejudice the safe operation of a vessel, aircraft or space  
object.

Penalty: Imprisonment for 5 years or 1,000 penalty units, or both.

(2) A person commits an offence if:

# EXPOSURE DRAFT

## Part 9 Interference management

### Division 3 Causing interference etc.

#### Section 114

---

- 1 (a) outside Australia, the person uses a transmitter; and  
2 (b) the person does so for the purposes of transmitting to the  
3 general public in Australia radio programs or television  
4 programs.

5 Penalty: 300 penalty units.

#### 6 *Civil penalties*

- 7 (3) A person must not engage in conduct that will result, or is likely to  
8 result, in:  
9 (a) substantial interference; or  
10 (b) substantial disruption; or  
11 (c) substantial disturbance;  
12 to radiocommunications:  
13 (d) within Australia; or  
14 (e) between a place in Australia and a place outside Australia.

15 Civil penalty: 500 penalty units.

- 16 (4) A person must not, outside Australia, use a transmitter for the  
17 purposes of transmitting to the general public in Australia radio  
18 programs or television programs.

19 Civil penalty: 300 penalty units.

#### 20 *Exceptions*

- 21 (5) Subsections (1), (2), (3) and (4) do not apply if the person engaged  
22 in the conduct, or used the transmitter as the case may be:  
23 (a) in accordance with the ACMA's written permission; or  
24 (b) in accordance with a lawful direction of:  
25 (i) the ACMA; or  
26 (ii) an inspector.
- 27 (6) If the ACMA refuses to give permission to a person who applied  
28 for it, the ACMA must give the person a written notice of the  
29 refusal.

# EXPOSURE DRAFT

Interference management **Part 9**  
Causing interference etc. **Division 3**

## Section 114

---

Note: Refusals to give permission are reviewable under Part 18.

- (7) Subsections (1), (2), (3) and (4) do not apply if the person reasonably believed that the conduct, or the use of the transmitter, as the case may be, was necessary for the purpose of:
- (a) securing the safety of:
    - (i) a vessel that was in danger; or
    - (ii) an aircraft that was in danger; or
    - (iii) a space object that was in danger; or
  - (b) dealing with an emergency involving a serious threat to the environment; or
  - (c) dealing with an emergency involving risk of death of, or injury to, persons; or
  - (d) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (8) Subsections (1), (2), (3) and (4) do not apply to the use, outside Australia, of a transmitter:
- (a) in accordance with an agreement, treaty or convention that:
    - (i) is entered into between Australia and any other country or countries; and
    - (ii) is in force for Australia; and
    - (iii) is specified in the legislative rules; or
  - (b) under the direction of a person exercising powers under a law of the Commonwealth or of a State or Territory.

### *Emergency service*

- (9) For the purposes of this section, an **emergency service** is:
- (a) a fire-fighting, civil defence or rescue organisation; or
  - (b) an organisation providing ambulance services; or
  - (c) any other organisation the sole or principal purpose of which is to secure the safety of persons during an emergency.

# EXPOSURE DRAFT

**Part 9** Interference management

**Division 3** Causing interference etc.

## Section 115

---

1     **115 Operation of laws of States and Territories etc.**

2                     This Division is not intended to exclude or limit the concurrent  
3                     operation of:

4                     (a) a law of a State or Territory; or

5                     (b) a legislative instrument made under an Act other than this  
6                     Act.

**Division 4—Directions to licensees**

**116 Directions to licensees**

- (1) The ACMA may give a written direction to the holder of a licence in relation to either or both of the following:
- (a) the installation, maintenance or operation of a radiocommunications transmitter that is, or is to be, operated under the licence;
  - (b) anything that is, or is to be, installed or used in connection with a radiocommunications transmitter that is, or is to be, operated under the licence;
- if the direction is for the purpose of avoiding, minimising or reducing interference to radiocommunications.
- (2) A direction given under this section to the holder of a licence applies to the holder of the licence, and may also be expressed to apply to:
- (a) all persons authorised under section 41 in relation to the licence; or
  - (b) a specified class of persons authorised under section 41 in relation to the licence; or
  - (c) a specified person authorised under section 41 in relation to the licence.
- (3) A direction given under this section is not a legislative instrument.

**117 Compliance with direction**

- (1) A person commits an offence if:
- (a) the person is subject to a direction under section 116; and
  - (b) the person engages in conduct; and
  - (c) the person's conduct contravenes the direction.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

# EXPOSURE DRAFT

## Part 9 Interference management

### Division 4 Directions to licensees

#### Section 118

---

1                                      Note:            For strict liability, see section 6.1 of the *Criminal Code*.

#### 2            **118 Delegation**

3                                      (1) The ACMA may, by writing, delegate its powers under section 116  
4                                      to an inspector.

5                                      (2) In exercising powers under a delegation, the delegate must comply  
6                                      with any directions of the ACMA.

7                                      (3) The powers conferred on the ACMA by subsection (1) do not limit  
8                                      the powers conferred by sections 50, 51 and 52 of the *Australian*  
9                                      *Communications and Media Authority Act 2005*.



**Division 5—Power of inspectors in emergencies**

**119 Power of inspectors to enter premises and adjust transmitters in emergencies**

*Interference with radiocommunications that are essential to the safety of human life*

- (1) If an inspector has reasonable grounds to believe that:
- (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and
  - (b) the land, premises, vessel, aircraft, space object or vehicle is or are unoccupied; and
  - (c) the operation of the transmitter is interfering with radiocommunications that are essential to the safety of human life;
- the inspector may:
- (d) enter the land, premises, vessel, aircraft, space object or vehicle, if the entry is made in circumstances of such seriousness and urgency as to require and justify entry to prevent the consequence set out in paragraph (c); and
  - (e) take such action as the inspector considers necessary to cause the transmitter to:
    - (i) cease operating; or
    - (ii) operate in such a way as to no longer give rise to the consequence set out in paragraph (c).
- (2) In exercising a power conferred by paragraph (1)(e) in relation to a transmitter, an inspector must try to ensure that any disruption caused to the performance of the transmitter is no greater than is necessary to prevent the consequence set out in paragraph (1)(c).

*Substantial loss or damage*

- (3) If an inspector has reasonable grounds to believe that:
- (a) a transmitter is operating on any land, or on or in any premises, vessel, aircraft, space object or vehicle; and

# EXPOSURE DRAFT

## Part 9 Interference management

### Division 5 Power of inspectors in emergencies

#### Section 119

---

- 1 (b) the land, premises, vessel, aircraft, space object or vehicle is  
2 or are unoccupied; and  
3 (c) the operation of the transmitter is causing substantial loss or  
4 damage;  
5 the inspector may:  
6 (d) enter the land, premises, vessel, aircraft, space object or  
7 vehicle, if the entry is made in circumstances of such  
8 seriousness and urgency as to require and justify entry to  
9 prevent the consequence set out in paragraph (c); and  
10 (e) take such action as the inspector considers necessary to cause  
11 the transmitter to:  
12 (i) cease operating; or  
13 (ii) operate in such a way as to no longer give rise to the  
14 consequence set out in paragraph (c).
- 15 (4) In exercising a power conferred by paragraph (3)(e) in relation to a  
16 transmitter, an inspector must try to ensure that any disruption  
17 caused to the performance of the transmitter is no greater than is  
18 necessary to prevent the consequence set out in paragraph (3)(c).
- 19 *Notification of the owner of the transmitter*
- 20 (5) If an inspector has, under a power conferred by this section:  
21 (a) entered any land, premises, vessel, aircraft, space object or  
22 vehicle; and  
23 (b) taken any action in respect of a transmitter;  
24 the inspector must, as soon as practicable, take all reasonable steps  
25 to notify the owner of the transmitter that the action has been  
26 taken.

1 **Part 10—Equipment**

2 **Division 1—Introduction**

3 **120 Simplified outline of this Part**

- 4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25
- The ACMA may make equipment rules.
  - The equipment rules may prescribe standards for equipment.
  - The equipment rules may impose obligations or prohibitions in relation to equipment.
  - An obligation or prohibition may relate to:
    - (a) the operation of equipment; or
    - (b) the supply of equipment; or
    - (c) offers to supply equipment; or
    - (d) the possession of equipment; or
    - (e) the import of equipment.
  - A person must not use or apply a protected symbol unless the use or application is authorised by or under:
    - (a) the equipment rules; or
    - (b) this Act.
  - A protected symbol is a symbol:
    - (a) the design of which is determined by the ACMA; and
    - (b) the purpose of which is to indicate compliance by equipment with any equipment rules applicable to the equipment.
  - The ACMA may impose interim bans, or permanent bans, on equipment.
  - The ACMA may require a supplier to recall equipment.

# EXPOSURE DRAFT

**Part 10** Equipment  
**Division 1** Introduction

Section 120

---

1  
2

- If a supplier voluntarily recalls equipment, the supplier must notify the ACMA of the recall.

## Division 2—Equipment rules

### 121 Equipment rules

- (1) The ACMA may, by legislative instrument, make rules (*equipment rules*) relating to equipment.
- (2) The ACMA may make 2 or more sets of equipment rules.
- (3) The equipment rules must be directed towards achieving any or all of the following objectives:
  - (a) ensuring the electromagnetic compatibility of equipment;
  - (b) containing interference to radiocommunications;
  - (c) containing interference to any uses or functions of equipment;
  - (d) establishing for the uses or functions of equipment an adequate level of immunity from electromagnetic disturbances caused by the use of other equipment;
  - (e) protecting the health or safety of individuals from any adverse effect likely to be attributable to radio emissions resulting from a reasonably foreseeable use (including a misuse) of radiocommunications transmitters;
  - (f) ensuring that persons who operate equipment have access to information about the equipment;
  - (g) ensuring that radiocommunications transmitters are not supplied to persons intending to operate those transmitters unless those persons are authorised by or under this Act to operate those transmitters;
  - (h) an objective specified in the legislative rules;
  - (i) an objective that is incidental or ancillary to any of the above objectives.
- (4) Before making equipment rules directed towards achieving the objective mentioned in paragraph (3)(e), the ACMA must consult ARPANSA (the Australian Radiation Protection and Nuclear Safety Agency).

# EXPOSURE DRAFT

## Part 10 Equipment Division 2 Equipment rules

### Section 122

---

#### 122 Constitutional limits

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

- (a) paragraph 51(i);
- (b) paragraph 51(v);
- (c) paragraph 51(vi);
- (d) paragraph 51(vii);
- (e) paragraph 51(viii);
- (f) paragraph 51(xiii);
- (g) paragraph 51(xiv);
- (h) paragraph 51(xv);
- (i) paragraph 51(xx);
- (j) paragraph 51(xxxix), to the extent to which that paragraph relates to one or more of the above-mentioned paragraphs;
- (k) section 122.

#### 123 Standards

- (1) The equipment rules may prescribe standards for equipment.
- (2) Standards may require equipment:
  - (a) to have particular design features; or
  - (b) to meet particular performance requirements.
- (3) A standard may be of general application or may be limited as provided in the equipment rules. This subsection does not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.
- (4) This section does not limit section 121.

#### 124 Obligations and prohibitions

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

# EXPOSURE DRAFT

Equipment **Part 10**  
Equipment rules **Division 2**

## Section 124

---

- 1 (a) to conduct quality assurance programs in relation to  
2 equipment; or  
3 (b) to conduct tests in relation to equipment; or  
4 (c) to apply labels to equipment; or  
5 (d) to keep and retain records; or  
6 (e) to do a thing specified in the legislative rules.
- 7 (3) The equipment rules may impose obligations or prohibitions that  
8 relate to:  
9 (a) the operation of equipment; or  
10 (b) the supply of equipment; or  
11 (c) offers to supply equipment; or  
12 (d) the possession of equipment; or  
13 (e) the import of equipment.
- 14 (4) The equipment rules may prohibit a person from:  
15 (a) supplying; or  
16 (b) offering to supply;  
17 a specified kind of equipment unless the person satisfies one or  
18 more specified conditions.
- 19 (5) The equipment rules may require that, if:  
20 (a) the supply of equipment to a person; or  
21 (b) an offer to supply equipment to a person;  
22 involves the person accessing the supplier's website, the supplier  
23 must ensure that, before the equipment is supplied to the person,  
24 the person's attention is drawn to material that:  
25 (c) is on the website; and  
26 (d) complies with specified requirements.
- 27 (6) The equipment rules may prohibit a person from applying a  
28 specified kind of label to equipment unless the person does so in  
29 specified circumstances.
- 30 (7) The equipment rules may prohibit a person who supplies, or offers  
31 to supply, equipment from publishing a specified kind of material

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 2 Equipment rules

#### Section 125

---

- 1                   about the equipment on the person's website unless the person does  
2                   so in specified circumstances.
- 3                   (8) The equipment rules may prohibit a person from doing an act or  
4                   thing specified in the legislative rules.
- 5                   (9) The equipment rules may prohibit the doing of an act or thing by a  
6                   person unless:  
7                   (a) the person holds a permit issued by the ACMA under the  
8                   equipment rules; and  
9                   (b) the permit authorises the person to do that act or thing.
- 10                  (10) An act or thing is not authorised by a permit if it is not in  
11                  accordance with the conditions of the permit.
- 12                  (11) The equipment rules may make provision for:  
13                  (a) the issue of permits by the ACMA; and  
14                  (b) the ACMA to include conditions in a permit; and  
15                  (c) compliance by permit holders with the conditions of a permit;  
16                  and  
17                  (d) the cancellation of permits by the ACMA.
- 18                  (12) Subsections (2) to (11) do not limit subsection (1).
- 19                  (13) This section does not, by implication, limit subsection 121(1).
- 20                  (14) This section has effect subject to subsection 121(3).

#### 125 Breach of equipment rules

##### *Offence*

- 23                  (1) A person commits an offence if:  
24                  (a) the person is subject to an obligation or prohibition imposed  
25                  by equipment rules made for the purposes of section 124  
26                  (other than an obligation to keep or retain records); and  
27                  (b) the person engages in conduct; and  
28                  (c) the person's conduct contravenes the obligation or  
29                  prohibition.



# EXPOSURE DRAFT

1                   Penalty: 500 penalty units.

2                   *Civil penalty*

3                   (2) If a person is subject to an obligation or prohibition imposed by  
4                   equipment rules made for the purposes of section 124 (other than  
5                   an obligation to keep or retain records), the person must not  
6                   contravene the obligation or prohibition.

7                   Civil penalty:           500 penalty units.

8                   (3) If:

9                   (a) a person is subject to an obligation imposed by equipment  
10                  rules made for the purposes of section 124; and

11                  (b) the obligation is to keep or retain records;  
12                  the person must not contravene the obligation.

13                  Civil penalty:           30 penalty units.

## 14           **126 Decisions by the ACMA**

15                   The equipment rules may make provision in relation to a matter by  
16                   conferring a power to make a decision of an administrative  
17                   character on the ACMA.

## 18           **127 Decisions by accredited persons**

19                   (1) The equipment rules may make provision in relation to a matter by  
20                   conferring a power to make a decision of an administrative  
21                   character on a person who holds a specified kind of accreditation.

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

# EXPOSURE DRAFT

**Part 10** Equipment  
**Division 2** Equipment rules

Section 128

---

- 1
- 2
- 3
- 4
- 128 Divisions 4 and 5 do not limit the ACMA’s power to make equipment rules**

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

**Division 3—Protected symbols**

**129 Use of protected symbols**

(1) A person must not:

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

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

(c) use in relation to:

(i) goods or services; or

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

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

Civil penalty: 50 penalty units.

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

*Exceptions*

(3) Subsection (1) does not apply to a person who uses or applies a  
protected symbol for the purposes of:

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

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

(4) Subsection (1) does not apply to a person who uses or applies a  
protected symbol for a purpose of a kind specified in a  
determination under subsection (5).

(5) The ACMA may, by legislative instrument, determine one or more  
specified kinds of purpose for the purposes of subsection (4).

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 3 Protected symbols

#### Section 130

---

- 1 (6) The equipment rules may provide that subsection (1) does not  
2 apply in relation to a specified use or application of a protected  
3 symbol.

4 *Alternative constitutional basis*

- 5 (7) In addition to its effect apart from this subsection, this section also  
6 has the effect it would have if a reference in subsection (1) to a  
7 person were, by express provision, confined to a constitutional  
8 corporation.

- 9 (8) In addition to its effect apart from this subsection, this section also  
10 has the effect it would have if each reference in subsection (1) to  
11 use, or to apply, were a reference to use or application, as the case  
12 may be, in the course of, or in relation to:

- 13 (a) trade or commerce between Australia and places outside  
14 Australia; or  
15 (b) trade or commerce among the States; or  
16 (c) trade or commerce within a Territory, between a State and a  
17 Territory or between 2 Territories; or  
18 (d) the supply of goods or services to the Commonwealth, to a  
19 Territory or to an authority or instrumentality of the  
20 Commonwealth or of a Territory; or  
21 (e) the defence of Australia; or  
22 (f) the operation of lighthouses, lightships, beacons or buoys; or  
23 (g) astronomical or meteorological observations; or  
24 (h) an activity of a constitutional corporation; or  
25 (i) banking, other than State banking; or  
26 (j) insurance, other than State insurance; or  
27 (k) weighing or measuring.

28 **130 Protected symbol**

- 29 (1) For the purposes of this Act, *protected symbol* means a symbol:  
30 (a) the design of which is set out in a determination under  
31 subsection (2); and

# EXPOSURE DRAFT

## Section 130

---

- 1 (b) a purpose of which, after the commencement of this section,  
2 is to indicate compliance by equipment with any equipment  
3 rules applicable to the equipment.
- 4 (2) The ACMA may, by legislative instrument, determine a design for  
5 the purposes of paragraph (1)(a).
- 6 *Labels applied to equipment*
- 7 (3) For the purposes of this Act, if:  
8 (a) a label is applied to equipment; and  
9 (b) the label embodies a symbol referred to in subsection (1);  
10 the label is taken to indicate that the equipment meets the  
11 requirements of any equipment rules applicable to the equipment.

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 4 Bans on equipment

#### Section 131

---

## 1 Division 4—Bans on equipment

### 2 Subdivision A—Interim bans

#### 3 131 Interim bans on equipment

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

- 6 (a) the ACMA has reasonable grounds to believe that equipment  
7 of that kind is designed to have an adverse effect on  
8 radiocommunications; or  
9 (b) the ACMA has reasonable grounds to believe that a  
10 reasonably foreseeable use (including a misuse) of equipment  
11 of that kind would be likely to substantially:  
12 (i) interfere with radiocommunications; or  
13 (ii) disrupt or disturb radiocommunications in any other  
14 way; or  
15 (c) both:  
16 (i) equipment of that kind consists of radiocommunications  
17 transmitters; and  
18 (ii) the ACMA has reasonable grounds to believe that radio  
19 emissions resulting from a reasonably foreseeable use  
20 (including a misuse) of equipment of that kind would be  
21 likely to adversely affect the health or safety of  
22 individuals.

#### 23 132 Duration of interim bans

- 24 (1) An interim ban imposed by the ACMA:  
25 (a) comes into force on the day (the *start day*) specified in the  
26 instrument imposing the ban; and  
27 (b) subject to this Act, remains in force for 60 days after the start  
28 day.

# EXPOSURE DRAFT

Equipment **Part 10**  
Bans on equipment **Division 4**

## Section 133

---

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

### 4 **133 Revocation of interim bans**

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

### 10 **134 Compliance with interim bans**

#### 11 *Supply*

- 12 (1) A person must not supply equipment of a particular kind to another  
13 person if an interim ban on equipment of that kind is in force.

14 Civil penalty: 200 penalty units.

#### 15 *Offer of supply*

- 16 (2) A person must not offer to supply equipment of a particular kind to  
17 another person if an interim ban on equipment of that kind is in  
18 force.

19 Civil penalty: 200 penalty units.

#### 20 *Operation*

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

23 Civil penalty: 200 penalty units.

- 24 (4) If:  
25 (a) a person contravenes subsection (1), (2) or (3); and

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 4 Bans on equipment

#### Section 135

---

- 1 (b) another person suffers loss or damage because of a  
2 reasonably foreseeable use (including a misuse) of the  
3 equipment;  
4 the other person is taken, for the purposes of this Division, to have  
5 suffered the loss or damage because of the contravention.

#### 6 **135 Actions for damages**

- 7 (1) If:  
8 (a) a person (the *claimant*) suffers loss or damage because of  
9 conduct engaged in by another person; and  
10 (b) the conduct contravened section 134;  
11 the claimant may recover the amount of the loss or damage by  
12 action in the Federal Court against:  
13 (c) that other person; or  
14 (d) any person involved in the contravention.  
15 (2) An action under subsection (1) may be commenced at any time  
16 within 6 years after the day on which the cause of action that  
17 relates to the conduct accrued.  
18 (3) A reference in this section to a person involved in the  
19 contravention is a reference to a person who has:  
20 (a) aided, abetted, counselled or procured the contravention; or  
21 (b) induced the contravention, whether through threats or  
22 promises or otherwise; or  
23 (c) been in any way (directly or indirectly) knowingly concerned  
24 in or a party to the contravention; or  
25 (d) conspired with others to effect the contravention.

#### 26 **Subdivision B—Permanent bans**

#### 27 **136 Permanent bans on equipment**

- 28 The ACMA may, by legislative instrument, impose a *permanent*  
29 *ban* on equipment of a specified kind if:



- 1 (a) the ACMA is satisfied that equipment of that kind is  
2 designed to have an adverse effect on radiocommunications;  
3 or  
4 (b) the ACMA is satisfied that a reasonably foreseeable use  
5 (including a misuse) of equipment of that kind would be  
6 likely to substantially:  
7 (i) interfere with radiocommunications; or  
8 (ii) disrupt or disturb radiocommunications in any other  
9 way; or  
10 (c) both:  
11 (i) equipment of that kind consists of radiocommunications  
12 transmitters; and  
13 (ii) the ACMA is satisfied that radio emissions resulting  
14 from a reasonably foreseeable use (including a misuse)  
15 of equipment of that kind would be likely to adversely  
16 affect the health or safety of individuals.

## 17 **137 When permanent bans come into force**

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

## 20 **138 Revocation of permanent bans**

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

## 26 **139 Compliance with permanent bans—offences**

27 *Supply*

- 28 (1) A person commits an offence if:  
29 (a) the person supplies equipment of a particular kind to another  
30 person; and

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 4 Bans on equipment

#### Section 139

---

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

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

3 *Offer of supply*

4 (2) A person commits an offence if:

5 (a) the person offers to supply equipment of a particular kind to  
6 another person; and

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

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

9 *Operation*

10 (3) A person commits an offence if:

11 (a) the person operates equipment of a particular kind; and

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

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

14 *Possession*

15 (4) A person commits an offence if:

16 (a) the person has equipment of a particular kind in the person's  
17 possession; and

18 (b) the possession is for the purpose of:

19 (i) operating the equipment; or

20 (ii) supplying the equipment to another person; and

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

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

# EXPOSURE DRAFT

Equipment **Part 10**  
Bans on equipment **Division 4**

## Section 140

---

### **140 Compliance with permanent bans—civil penalties**

#### *Supply*

- (1) A person must not supply equipment of a particular kind to another person if a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

#### *Offer of supply*

- (2) A person must not offer to supply equipment of a particular kind to another person if a permanent ban on equipment of that kind is in force.

Civil penalty: 1,000 penalty units.

#### *Operation*

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

Civil penalty: 1,000 penalty units.

#### *Possession*

- (4) A person must not have equipment of a particular kind in the person's possession if:
- (a) a permanent ban on equipment of that kind is in force; and
  - (b) the possession is for the purpose of:
    - (i) operating the equipment; or
    - (ii) supplying the equipment to another person.

Civil penalty: 1,000 penalty units.

- (5) If:
- (a) a person contravenes subsection (1), (2), (3) or (4); and
  - (b) another person suffers loss or damage because of a reasonably foreseeable use (including a misuse) of the equipment;

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 4 Bans on equipment

#### Section 141

---

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

#### 3 **141 Actions for damages**

4 (1) If:

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

7 (b) the conduct contravened section 140;

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

10 (c) that other person; or

11 (d) any person involved in the contravention.

12 (2) An action under subsection (1) may be commenced at any time  
13 within 6 years after the day on which the cause of action that  
14 relates to the conduct accrued.

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

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

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

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

22 (d) conspired with others to effect the contravention.

#### 23 **142 Presumption relating to possession**

24 (1) For the purposes of subsections 139(4) and 140(4), if:

25 (a) a person has equipment in the person's possession, otherwise  
26 than for the purpose of supply to another person; and

27 (b) the equipment can be operated;

28 it must be presumed, in the absence of evidence to the contrary,  
29 that the person has the equipment in the person's possession for the  
30 purpose of operating the equipment.

# EXPOSURE DRAFT

Equipment **Part 10**  
Bans on equipment **Division 4**

## Section 142

---

- 1           (2) For the purposes of paragraph (1)(b), it is immaterial whether the  
2           equipment can be operated:  
3           (a) immediately; or  
4           (b) after the taking of one or more steps (for example, the  
5           connection of the equipment to a power supply).

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 5 Recall of equipment

#### Section 143

---

1     **Division 5—Recall of equipment**

2     **Subdivision A—Compulsory recall of equipment**

3     **143 Compulsory recall of equipment**

4             *Equipment that will or may cause substantial disruption,*  
5             *substantial disturbance or substantial interference to*  
6             *radiocommunications*

- 7             (1) The ACMA may, by legislative instrument, issue a ***recall notice***  
8             for equipment of a specified kind if:  
9                 (a) a person, in trade or commerce, supplies equipment of that  
10                 kind; and  
11                 (b) the ACMA is satisfied that a reasonably foreseeable use  
12                 (including a misuse) of such equipment will or may cause  
13                 substantial disruption, substantial disturbance or substantial  
14                 interference to radiocommunications; and  
15                 (c) the ACMA is satisfied that one or more suppliers of such  
16                 equipment have not taken satisfactory action to prevent that  
17                 equipment causing substantial disruption, substantial  
18                 disturbance or substantial interference to  
19                 radiocommunications.

20             *Equipment designed to have an adverse effect on*  
21             *radiocommunications*

- 22             (2) The ACMA may, by legislative instrument, issue a ***recall notice***  
23             for equipment of a specified kind if:  
24                 (a) a person, in trade or commerce, supplies equipment of that  
25                 kind; and  
26                 (b) the ACMA is satisfied that equipment of that kind is  
27                 designed to have an adverse effect on radiocommunications.

# EXPOSURE DRAFT

Equipment **Part 10**  
Recall of equipment **Division 5**

## Section 144

---

### *Equipment likely to adversely affect health or safety*

- (3) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) equipment of that kind consists of radiocommunications transmitters; and
  - (b) a person, in trade or commerce, supplies equipment of that kind; and
  - (c) the ACMA is satisfied that radio emissions resulting from a reasonably foreseeable use (including a misuse) of equipment of that kind would be likely to adversely affect the health or safety of individuals.

### *Permanent ban*

- (4) The ACMA may, by legislative instrument, issue a ***recall notice*** for equipment of a specified kind if:
- (a) a person, in trade or commerce, supplies equipment of that kind; and
  - (b) a permanent ban on such equipment is in force; and
  - (c) the ACMA is satisfied that one or more suppliers of such equipment have not taken satisfactory action to recall such equipment so supplied by those suppliers.

### *Other matters*

- (5) It is not necessary for the purposes of paragraph (1)(c) or (4)(c) for the ACMA to know the identities of any of the suppliers of the equipment.
- (6) A recall notice for equipment may be issued under subsection (1), (2), (3) or (4) even if the equipment has become fixtures since the time the equipment was supplied.

## **144 Contents of a recall notice**

- (1) A recall notice for equipment may require one or more suppliers of the equipment to take one or more of the following actions:
- (a) recall the equipment;

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 5 Recall of equipment

#### Section 144

---

- 1 (b) disclose to the public, or to a class of persons specified in the  
2 notice, the reasons for the issue of the recall notice;
- 3 (c) inform the public, or a class of persons specified in the  
4 notice, that the supplier undertakes to do whichever of the  
5 following the supplier thinks is appropriate:  
6 (i) repair the equipment;  
7 (ii) replace the equipment;  
8 (iii) refund to a person to whom the equipment was supplied  
9 (whether by the supplier or by another person), and who  
10 returns the equipment, the price paid for the equipment;
- 11 (d) if an undertaking is given by a supplier in accordance with  
12 paragraph (c):  
13 (i) comply with the undertaking; and  
14 (ii) comply with section 145 in relation to the undertaking;
- 15 (e) disclose to the public, or to a class of persons specified in the  
16 notice, procedures as specified in the notice for disposing of  
17 the equipment.
- 18 (2) The recall notice may specify:  
19 (a) the manner in which the action required to be taken by the  
20 notice must be taken; and  
21 (b) the period within which the action must be taken.
- 22 (3) If the recall notice requires a supplier of the equipment to take  
23 action of a kind referred to in paragraph (1)(c), the ACMA may  
24 specify in the notice that, if:  
25 (a) the supplier undertakes to refund the price paid for  
26 equipment; and  
27 (b) a period of more than 12 months has elapsed since a person  
28 (whether or not the person to whom the refund is to be made)  
29 acquired the equipment from the supplier;  
30 the amount of a refund may be reduced by the supplier by an  
31 amount, calculated in a manner specified in the notice, that is  
32 attributable to the use which a person has had of the equipment.



**145 Obligations of a supplier in relation to a recall notice**

*Scope*

- (1) This section applies if a recall notice for equipment requires a supplier to take action of a kind referred to in paragraph 144(1)(c).

*Obligations—repair*

(2) If:

- (a) the recall notice was issued under subsection 143(1); and
  - (b) the supplier undertakes to repair the equipment;
- the supplier must cause the equipment to be repaired so that:
- (c) a reasonably foreseeable use or misuse of the equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; and
  - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

(3) If:

- (a) the recall notice was issued under subsection 143(2); and
  - (b) the supplier undertakes to repair the equipment;
- the supplier must cause the equipment to be repaired so that:
- (c) the equipment would not be likely to have an adverse effect on radiocommunications; and
  - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

(4) If:

- (a) the recall notice was issued under subsection 143(3); and
  - (b) the supplier undertakes to repair the equipment;
- the supplier must cause the equipment to be repaired so that:
- (c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the equipment would not be likely to adversely affect the health or safety of individuals; and
  - (d) the equipment is not covered by an interim ban, or a permanent ban, that is in force.

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 5 Recall of equipment

#### Section 145

---

##### *Obligations—replacement*

(5) If:

- (a) the recall notice was issued under subsection 143(1); and
- (b) the supplier undertakes to replace the equipment;  
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
  - (c) a reasonably foreseeable use or misuse of the similar equipment will not cause substantial disruption, substantial disturbance or substantial interference to radiocommunications;
  - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(6) If:

- (a) the recall notice was issued under subsection 143(2); and
- (b) the supplier undertakes to replace the equipment;  
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
  - (c) the similar equipment would not be likely to have an adverse effect on radiocommunications;
  - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(7) If:

- (a) the recall notice was issued under subsection 143(3); and
- (b) the supplier undertakes to replace the equipment;  
the supplier must replace the equipment with similar equipment that satisfies the following conditions:
  - (c) radio emissions resulting from a reasonably foreseeable use (including a misuse) of the similar equipment would not be likely to adversely affect the health or safety of individuals;
  - (d) the similar equipment is not covered by an interim ban, or a permanent ban, that is in force.

(8) If the supplier undertakes:

- (a) to repair the equipment; or

# EXPOSURE DRAFT

Equipment **Part 10**  
Recall of equipment **Division 5**

## Section 146

---

- 1 (b) to replace the equipment;  
2 the cost of the repair or replacement, including any necessary  
3 transportation costs, must be paid by the supplier.

### 4 **146 Compliance with recall notices**

#### 5 *Offence*

- 6 (1) A person commits an offence if:  
7 (a) a recall notice for equipment is in force; and  
8 (b) the notice requires the person to do one or more things; and  
9 (c) the person engages in conduct; and  
10 (d) the person's conduct contravenes the notice.

11 Penalty: 1,000 penalty units.

#### 12 *Civil penalty*

- 13 (2) If:  
14 (a) a recall notice for equipment is in force; and  
15 (b) the notice requires a person to do one or more things;  
16 the person must comply with the notice.

17 Civil penalty: 1,000 penalty units.

- 18 (3) If:  
19 (a) a person contravenes subsection (2) in relation to equipment;  
20 and  
21 (b) another person suffers loss or damage:  
22 (i) because of a reasonably foreseeable use (including a  
23 misuse) of the equipment; or  
24 (ii) because, contrary to the recall notice, the other person  
25 was not provided with particular information in relation  
26 to the equipment;  
27 the other person is taken, for the purposes of this Division, to have  
28 suffered the loss or damage because of the contravention.

# EXPOSURE DRAFT

## Part 10 Equipment

### Division 5 Recall of equipment

#### Section 147

---

#### 147 Actions for damages

- (1) If:
- (a) a person (the *claimant*) suffers loss or damage because of conduct engaged in by another person; and
  - (b) the conduct contravened subsection 146(2);
- the claimant may recover the amount of the loss or damage by action in the Federal Court against:
- (c) that other person; or
  - (d) any person involved in the contravention.
- (2) An action under subsection (1) may be commenced at any time within 6 years after the day on which the cause of action that relates to the conduct accrued.
- (3) A reference in this section to a person involved in the contravention is a reference to a person who has:
- (a) aided, abetted, counselled or procured the contravention; or
  - (b) induced the contravention, whether through threats or promises or otherwise; or
  - (c) been in any way (directly or indirectly) knowingly concerned in or a party to the contravention; or
  - (d) conspired with others to effect the contravention.

#### Subdivision B—Voluntary recall of equipment

#### 148 Notification requirements for a voluntary recall of equipment

##### *Scope*

- (1) This section applies if a person voluntarily takes action to recall equipment of a particular kind (including equipment that has become fixtures since being supplied) because:
- (a) a reasonably foreseeable use (including a misuse) of such equipment will or may cause substantial disruption, substantial disturbance or substantial interference to radiocommunications; or

# EXPOSURE DRAFT

Equipment **Part 10**  
Recall of equipment **Division 5**

## Section 148

---

- 1 (b) such equipment would be likely to have an adverse effect on  
2 radiocommunications; or  
3 (c) in a case where such equipment consists of  
4 radiocommunications transmitters—radio emissions resulting  
5 from a reasonably foreseeable use (including a misuse) of  
6 such equipment would be likely to adversely affect the health  
7 or safety of individuals; or  
8 (d) a permanent ban on such equipment is in force.

### 9 *Notifying the ACMA*

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

12 Civil penalty: 20 penalty units.

- 13 (3) The ACMA may publish a copy of the notice on the ACMA's  
14 website.

### 15 *Requirements for notices*

- 16 (4) A notice under subsection (2) must:  
17 (a) state that the equipment is subject to recall; and  
18 (b) if a reasonably foreseeable use or misuse of the equipment  
19 will or may cause substantial disruption, substantial  
20 disturbance or substantial interference to  
21 radiocommunications—set out the circumstances of that use  
22 or misuse; and  
23 (c) if the equipment would be likely to have an adverse effect on  
24 radiocommunications—set out that adverse effect; and  
25 (d) if:  
26 (i) the equipment consists of radiocommunications  
27 transmitters; and  
28 (ii) radio emissions resulting from a reasonably foreseeable  
29 use (including a misuse) of the equipment would be  
30 likely to adversely affect the health or safety of  
31 individuals;  
32 set out:

EXPOSURE DRAFT

Part 10 Equipment  
Division 5 Recall of equipment

Section 148

---

- 1 (iii) the circumstances of that use (including misuse); and
- 2 (iv) the way in which the health or safety of individuals is
- 3 likely to be adversely affected by that use (including
- 4 misuse); and
- 5 (e) if a permanent ban on the equipment is in force—state that
- 6 fact.

1     **Part 11—Emergency orders**

2     **Division 1—Introduction**

3     **149 Simplified outline of this Part**

- 4     • The Governor-General may, by Proclamation, declare a period

5     of emergency.

6     • During a period of emergency, the Minister may make an

7     order that prohibits or regulates:

8     (a) the use, within a specified area, of radiocommunications

9     transmitters; or

10    (b) the operation of transmitters within a specified area if

11    such use is, in the Minister’s view, likely to interfere

12    with radiocommunications.

# EXPOSURE DRAFT

## Part 11 Emergency orders

### Division 2 Declaration of period of emergency

#### Section 150

---

1 **Division 2—Declaration of period of emergency**

2 **150 Declaration of period of emergency**

- 3 (1) The Governor-General may, by Proclamation, declare that a period  
4 specified in the Proclamation will be a period of emergency for the  
5 purposes of this Act.
- 6 (2) The period must not be expressed to commence on a day earlier  
7 than the day on which the Proclamation is entered in the Federal  
8 Register of Legislation established under the *Legislation Act 2003*.
- 9 (3) The period must not exceed 3 months.

10 **151 Circumstances in which Proclamation may be made**

- 11 The Governor-General must not make a Proclamation under  
12 section 150 unless the Minister is satisfied that it is necessary in the  
13 public interest to do so due to an emergency involving:
- 14 (a) prejudice to the security or defence of Australia; or  
15 (b) a serious threat to the environment; or  
16 (c) risk of death of, or injury to, persons; or  
17 (d) risk of substantial loss of, or substantial damage to, property.

18 **152 Termination of period of emergency**

- 19 (1) If, at any time during a period of emergency, the Minister becomes  
20 satisfied that it is no longer necessary in the public interest that the  
21 period of emergency should continue, the Governor-General must,  
22 by a new Proclamation, revoke the Proclamation that declared the  
23 period of emergency.
- 24 (2) The revocation terminates the period of emergency.



## **Division 3—Emergency orders**

### **153 Emergency orders**

- (1) During a period of emergency, the Minister may, by legislative instrument, make an order that prohibits or regulates:
- (a) the use, within a specified area, of radiocommunications transmitters; or
  - (b) the operation of transmitters within a specified area if such use is likely to interfere with radiocommunications.
- (2) An order under subsection (1) is to be known as an ***emergency order***.
- (3) An emergency order has no effect unless it comes into force during a period of emergency.

### **154 Application of emergency orders to broadcasting**

- An emergency order does not apply to:
- (a) a broadcasting station; or
  - (b) a fixed transmitter, where the use or operation of the transmitter is essential to the operation of a broadcasting station;
- unless the order is expressed so to apply.

### **155 Revocation of emergency orders**

- An emergency order is taken to be revoked:
- (a) at the end of the period of emergency during which it came into force; or
  - (b) if the order has an extended operation under section 156—at the end of the last period of emergency during which the order continues to be in force under that section.

# EXPOSURE DRAFT

**Part 11** Emergency orders

**Division 3** Emergency orders

## Section 156

---

1     **156 Emergency orders may have extended operation**

2                     *Scope*

3             (1) This section applies if:

- 4                     (a) during a period of emergency, a Proclamation under  
5                             section 150 declares that a specified period will be a period  
6                             of emergency; and  
7                     (b) the specified period commences immediately after the end of  
8                             the first-mentioned period.

9                     *Extended operation*

10             (2) Any emergency order in force immediately before the end of the  
11                     first-mentioned period (including an order in force by virtue of  
12                     previous applications of this subsection) continues in force unless  
13                     it is:

- 14                     (a) revoked in accordance with subsection 33(3) of the *Acts*  
15                             *Interpretation Act 1901*; or  
16                     (b) disallowed under the *Legislation Act 2003*; or  
17                     (c) set aside by a court.

18     **157 Contravention of emergency orders**

19                     A person commits an offence if:

- 20                             (a) the person engages in conduct; and  
21                             (b) the person's conduct contravenes an emergency order.

22                     Penalty: 300 penalty units.

23     **158 Emergency orders to prevail over inconsistent laws**

24             (1) An emergency order has effect despite:

- 25                     (a) any law of the Commonwealth (excluding this Act but  
26                             including legislative rules made under this Act); or  
27                     (b) any law of a State or Territory;  
28                     that is inconsistent with the order.

# EXPOSURE DRAFT

Emergency orders **Part 11**  
Emergency orders **Division 3**

## Section 158

---

- 1           (2) Subsection (1) has effect subject to subsection (3).
- 2           (3) This Part does not affect the operation of a law of a State or
- 3           Territory so far as the law is capable of operating concurrently with
- 4           this Part.

# EXPOSURE DRAFT

## Part 12 Accreditation

### Section 159

---

## Part 12—Accreditation

### 159 Simplified outline of this Part

- The ACMA may give a person an accreditation of a particular kind.
- An accreditation is subject to conditions.
- The ACMA may withdraw an accreditation.

Note: Powers may be conferred on an accredited person under a licence issue scheme, the Register rules, the equipment rules or the legislative rules.

### 160 ACMA may accredit persons

- (1) The ACMA may, by written notice, give a person an accreditation of a particular kind if:
  - (a) the person applies to the ACMA for an accreditation of that kind; and
  - (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.
- (2) An application under paragraph (1)(a) must be in a form approved, in writing, by the ACMA.
- (3) In deciding whether to give a person an accreditation, the ACMA must comply with the accreditation rules.
- (4) An accreditation comes into force on the day specified in the instrument of accreditation.

Note: A decision to refuse to give an accreditation is reviewable under Part 18.

1 **161 Conditions of accreditation**

2 An accreditation of a particular kind is subject to:

- 3 (a) such conditions relating to accreditations of that kind as are  
4 specified in the accreditation rules; and  
5 (b) such conditions (if any) as the ACMA specifies in the  
6 instrument of accreditation.

7 Note: A decision to include a condition in an instrument of accreditation is  
8 reviewable under Part 18.

9 **162 Withdrawal of accreditation**

10 *Scope*

- 11 (1) This section applies if an accreditation given to a person is in force.

12 *Withdrawal*

- 13 (2) The ACMA may, by written notice given to the person, withdraw  
14 the accreditation if the ACMA is satisfied that:  
15 (a) the accreditation is no longer in accordance with the  
16 accreditation rules, as in force at the time the notice is given  
17 (whether or not the accreditation rules have been amended  
18 since the accreditation was given); or  
19 (b) the person has contravened a condition of the accreditation.

20 Note: A decision to withdraw an accreditation is reviewable under Part 18.

- 21 (3) A notice under subsection (2) must set out the reasons for  
22 withdrawing the accreditation.  
23 (4) In deciding whether to withdraw the accreditation, the ACMA  
24 must comply with the accreditation rules.

25 *Consultation*

- 26 (5) Before withdrawing the accreditation, the ACMA must give the  
27 person a written notice:  
28 (a) stating that the ACMA is considering withdrawing the  
29 accreditation; and

# EXPOSURE DRAFT

## Part 12 Accreditation

### Section 163

---

- 1 (b) inviting the person to make a submission to the ACMA about  
2 the matter on or before the day specified in the notice.
- 3 (6) The day specified under paragraph (5)(b) must be at least 14 days  
4 after the day on which the notice is given.
- 5 (7) The ACMA must have regard to any submissions made by or on  
6 behalf of the person on or before the day specified in the notice.

#### 7 **163 Accreditation rules**

- 8 (1) The ACMA may, by legislative instrument, make rules  
9 (**accreditation rules**) prescribing matters required or permitted by  
10 this Act to be prescribed by the accreditation rules.
- 11 (2) The accreditation rules may deal with the accreditation process.
- 12 (3) The accreditation rules may provide for procedures that must be  
13 followed in relation to deciding whether to accredit persons.
- 14 (4) The accreditation rules may provide for procedures that must be  
15 followed in relation to deciding whether to withdraw the  
16 accreditation of persons.
- 17 (5) The accreditation rules may provide for:  
18 (a) the kinds of accreditation; and  
19 (b) in respect of each kind of accreditation—the qualifications  
20 and other requirements required before a person can be given  
21 that kind of accreditation.

## Part 13—Industry codes

### 164 Simplified outline of this Part

- The ACMA may approve an industry code that relates to the activities of a class of participants in the radiocommunications community.
- The ACMA may approve a variation of an industry code.
- The ACMA may revoke an approval of an industry code.

### 165 Approval of industry code

- (1) The ACMA may, on application, approve a code (an *industry code*) that relates to the activities of a class of participants in the radiocommunications community.
- (2) The approval must be in writing.

### 166 Approval of variation of industry code

- (1) The ACMA may, on application, approve a variation of an industry code.
- (2) The approval must be in writing.

### 167 Criteria for approval or variation of industry code

The ACMA must not approve an industry code, or a variation of an industry code, that relates to the activities of a class of participants in the radiocommunications community unless the ACMA is satisfied that:

- (a) the code, or the code as proposed to be varied, identifies that class of participants; and

# EXPOSURE DRAFT

## Part 13 Industry codes

### Section 168

---

- 1 (b) the applicant for the approval or variation represents that  
2 class of participants; and  
3 (c) the code, or the code as proposed to be varied, is not  
4 inconsistent with:  
5 (i) this Act; or  
6 (ii) any other law of the Commonwealth under which the  
7 ACMA has spectrum management functions or  
8 spectrum management powers; and  
9 (d) it is appropriate to approve the code or the variation, having  
10 regard to the following matters:  
11 (i) whether the applicant is able to ensure that persons who  
12 represent that they will comply with the code will  
13 comply with the code as in force from time to time;  
14 (ii) the desirability of industry codes being harmonised to  
15 the greatest extent possible;  
16 (iii) such other matters (if any) as the ACMA considers  
17 relevant.

### 168 Revocation of approval of industry code

- 19 (1) The ACMA may revoke an approval of an industry code on  
20 application by the person who applied for the approval.  
21 (2) The ACMA may revoke an approval of an industry code if the  
22 ACMA is satisfied that:  
23 (a) the code is inconsistent with:  
24 (i) this Act; or  
25 (ii) any other law of the Commonwealth under which the  
26 ACMA has spectrum management functions or  
27 spectrum management powers; or  
28 (b) it is appropriate to revoke the approval, having regard to the  
29 following matters:  
30 (i) whether the person who applied for the approval is able  
31 to ensure that persons who represent that they will  
32 comply with the code will comply with the code as in  
33 force from time to time;



# EXPOSURE DRAFT

- 1                               (ii) the desirability of industry codes being harmonised to
- 2                               the greatest extent possible;
- 3                               (iii) such other matters (if any) as the ACMA considers
- 4                               relevant.
- 5                               (3) A revocation under subsection (1) or (2) must be in writing.

# EXPOSURE DRAFT

## Part 14 Information-gathering powers

### Section 169

---

## Part 14—Information-gathering powers

### 169 Simplified outline of this Part

- The ACMA may require a person to give the ACMA information, or produce to the ACMA a document, that relates to the supply of radiocommunications devices.

### 170 ACMA may obtain information or documents

#### *Scope*

(1) This section applies to a person if:

(a) the ACMA believes on reasonable grounds that:

- (i) the person has information or a document that relates to the supply of one or more radiocommunications devices; and
- (ii) the information or document is relevant to the operation of this Act or the equipment rules, so far as this Act or the equipment rules relate to interference with radiocommunications; or

(b) the ACMA believes on reasonable grounds that:

- (i) the person has information or a document that relates to the supply of one or more radiocommunications transmitters; and
- (ii) the information or document is relevant to the operation of this Act, so far as this Act relates to radio emissions that result from a reasonably foreseeable use (including a misuse) of those radiocommunications transmitters and that would be likely to adversely affect the health or safety of individuals; or

(c) the ACMA believes on reasonable grounds that:

# EXPOSURE DRAFT

## Section 171

---

- 1 (i) the person has information or a document that relates to  
2 the supply of one or more radiocommunications  
3 transmitters; and  
4 (ii) the information or document is relevant to the operation  
5 of the equipment rules, so far as the equipment rules are  
6 directed towards achieving the object of protecting the  
7 health or safety of individuals from any adverse effect  
8 likely to be attributable to radio emissions resulting  
9 from a reasonably foreseeable use (including a misuse)  
10 of those radiocommunications transmitters.

### 11 *Requirement*

- 12 (2) The ACMA may, by written notice given to the person, require the  
13 person:  
14 (a) to give the ACMA, within the period and in the manner and  
15 form specified in the notice, any such information; or  
16 (b) to produce to the ACMA, within the period and in the  
17 manner specified in the notice, any such documents; or  
18 (c) to make copies of any such documents and to produce to the  
19 ACMA, within the period and in the manner specified in the  
20 notice, those copies.  
21 (3) A period specified under subsection (2) must not be shorter than 14  
22 days after the notice is given.

### 23 *Compliance*

- 24 (4) A person must comply with a requirement under subsection (2).  
25 Civil penalty: 30 penalty units.

## 26 **171 Copying documents—compensation**

- 27 A person is entitled to be paid by the ACMA, on behalf of the  
28 Commonwealth, reasonable compensation for complying with a  
29 requirement covered by paragraph 170(2)(c).

# EXPOSURE DRAFT

## Part 14 Information-gathering powers

### Section 172

---

#### 172 Copies of documents

- (1) The ACMA may:
  - (a) inspect a document or copy produced under subsection 170(2); and
  - (b) make and retain copies of, or take and retain extracts from, such a document.
- (2) The ACMA may retain possession of a copy of a document produced in accordance with a requirement covered by paragraph 170(2)(c).

#### 173 ACMA may retain documents

- (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under subsection 170(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

#### 174 Self-incrimination

- (1) A person is not excused from giving information or producing a document under section 170 on the ground that the information or the production of the document might tend to incriminate the person or expose the person to a penalty.
- (2) However, in the case of an individual:
  - (a) the information given or the document produced; or
  - (b) giving the information or producing the document; or

EXPOSURE DRAFT

- 1                   (c) any information, document or thing obtained as a direct or
- 2                   indirect consequence of giving the information or producing
- 3                   the document;
- 4           is not admissible in evidence against the individual:
- 5                   (d) in civil proceedings for the recovery of a penalty; or
- 6                   (e) in criminal proceedings (other than proceedings for an
- 7                   offence against section 137.1 or 137.2 of the *Criminal Code*
- 8                   that relates to this Part).

# EXPOSURE DRAFT

## Part 15 Enforcement Division 1 Introduction

### Section 175

---

## 1 Part 15—Enforcement

## 2 Division 1—Introduction

## 3 175 Simplified outline of this Part

- 4 • If a person has contravened, or is contravening, a civil penalty  
5 provision in this Act, the ACMA may give the person a  
6 remedial direction.
- 7 • A civil penalty provision in this Act is enforceable under  
8 Part 4 of the Regulatory Powers Act.
- 9 • Infringement notices may be given under Part 5 of the  
10 Regulatory Powers Act for alleged contraventions of certain  
11 provisions of this Act.
- 12 • The ACMA may accept an enforceable undertaking under  
13 Part 6 of the Regulatory Powers Act that relates to a provision  
14 of this Act.
- 15 • Injunctions may be granted under Part 7 of the Regulatory  
16 Powers Act in relation to contraventions of certain provisions  
17 of this Act.
- 18 • An offence against this Act, or a civil penalty provision of this  
19 act, is subject to investigation under Part 3 of the Regulatory  
20 Powers Act.
- 21 • Inspectors appointed under this Act have the following  
22 additional powers:
  - 23 (a) the power to direct a person to operate a transmitter;
  - 24 (b) the power to require a person to produce a licence,  
25 authorisation, certificate or permit;
  - 26 (c) the power to require a person to produce a copy of a  
27 record of an authorisation;

# EXPOSURE DRAFT

Section 175

---

1  
2  
3  
4  
5  
6  
7  
8  
9

- (d) the power to require a person to produce a record the retention of which is required by the equipment rules.
- A court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in:
  - (a) the commission of an offence against this Act; or
  - (b) a contravention of a civil penalty provision in this Act.
- The ACMA may issue a public warning notice.

Note: Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*—see section 5.

# EXPOSURE DRAFT

Part 15 Enforcement

Division 2 Enforcement

Section 176

---

## Division 2—Enforcement

### 176 Remedial directions—breach of civil penalty provision

#### *Scope*

- (1) This section applies if a person has contravened, or is contravening, a civil penalty provision in this Act.

#### *Remedial direction*

- (2) The ACMA may give the person a written direction requiring the person to take specified action directed towards ensuring that the person does not contravene the provision, or is unlikely to contravene the provision, in the future.

Note: A decision to give a direction is reviewable under Part 18.

- (3) The following are examples of the kinds of direction that may be given to a person under subsection (2):
- (a) a direction that the person implement effective administrative systems for monitoring compliance with a civil penalty provision in this Act;
  - (b) a direction that the person implement a system designed to give the person's employees, agents and contractors a reasonable knowledge and understanding of the requirements of a civil penalty provision in this Act, in so far as those requirements affect the employees, agents or contractors concerned.

- (4) A person must not contravene a direction under subsection (2).

Civil penalty: 50 penalty units.



1 **177 Civil penalty provisions—enforcement**

2 *Enforceable civil penalty provision*

- 3 (1) Each civil penalty provision in this Act is enforceable under Part 4  
4 of the Regulatory Powers Act.

5 Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to  
6 be enforced by obtaining an order for a person to pay a pecuniary  
7 penalty for the contravention of the provision.

8 *Authorised applicant*

- 9 (2) For the purposes of Part 4 of the Regulatory Powers Act, the  
10 ACMA is an authorised applicant in relation to the civil penalty  
11 provisions of this Act.

12 *Relevant court*

- 13 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of  
14 the following courts is a relevant court in relation to the civil  
15 penalty provisions of this Act:  
16 (a) the Federal Court;  
17 (b) the Federal Circuit Court.

18 *External Territories*

- 19 (4) Part 4 of the Regulatory Powers Act, as it applies in relation to the  
20 provisions mentioned in subsection (1), extends to every external  
21 Territory.

22 *Geographical application*

- 23 (5) Sections 12, 13, 14 and 15 have effect as if a reference in those  
24 sections to this Act included a reference to Part 4 of the Regulatory  
25 Powers Act, as it applies in relation to the provisions mentioned in  
26 subsection (1) of this section.

# EXPOSURE DRAFT

**Part 15** Enforcement

**Division 2** Enforcement

Section 178

---

## **178 Infringement notices**

*Provisions subject to an infringement notice*

(1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:

- (a) subsection 27(3);
- (b) subsection 28(1);
- (c) subsection 28(2);
- (d) subsection 29(2);
- (e) section 44;
- (f) subsection 45(1);
- (g) subsection 45(2);
- (h) subsection 45(3);
- (i) subsection 45(4);
- (j) subsection 45(5);
- (k) subsection 45(6);
- (l) subsection 52(1);
- (m) subsection 114(3);
- (n) subsection 114(4);
- (o) subsection 117(1);
- (p) subsection 125(2);
- (q) subsection 125(3);
- (r) subsection 129(1);
- (s) subsection 134(1);
- (t) subsection 134(2);
- (u) subsection 134(3);
- (v) subsection 148(2);
- (w) subsection 170(4);
- (x) subsection 184(4);
- (y) subsection 185(5).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

# EXPOSURE DRAFT

Enforcement **Part 15**  
Enforcement **Division 2**

Section 178

*Amount to be stated in an infringement notice*

- (2) The amount to be stated in an infringement notice for the purposes of paragraph 104(1)(f) of the Regulatory Powers Act for an alleged contravention by a person of a provision mentioned in subsection (1) of this section must be worked out using the following table:

Amount to be stated in an infringement notice			
Item	Provision	Amount if the person is an individual	Amount if the person is a body corporate
1	subsection 27(3)	8 penalty units	40 penalty units
2	subsection 28(1)	8 penalty units	40 penalty units
3	subsection 28(2)	8 penalty units	40 penalty units
4	subsection 29(2)	8 penalty units	40 penalty units
5	section 44	4 penalty units	20 penalty units
6	subsection 45(1)	4 penalty units	20 penalty units
7	subsection 45(2)	4 penalty units	20 penalty units
8	subsection 45(3)	4 penalty units	20 penalty units
9	subsection 45(4)	4 penalty units	20 penalty units
10	subsection 45(5)	4 penalty units	20 penalty units
11	subsection 45(6)	4 penalty units	20 penalty units
12	subsection 52(1)	8 penalty units	40 penalty units
13	subsection 114(3)	8 penalty units	40 penalty units
14	subsection 114(4)	8 penalty units	40 penalty units
15	subsection 117(1)	4 penalty units	20 penalty units
16	subsection 125(2)	8 penalty units	40 penalty units
17	subsection 125(3)	4 penalty units	20 penalty units
18	subsection 129(1)	4 penalty units	20 penalty units
19	subsection 134(1)	6 penalty units	30 penalty units
20	subsection 134(2)	6 penalty units	30 penalty units
21	subsection 134(3)	6 penalty units	30 penalty units
22	subsection 148(2)	4 penalty units	20 penalty units

# EXPOSURE DRAFT

## Part 15 Enforcement

### Division 2 Enforcement

#### Section 178

---

**Amount to be stated in an infringement notice**

---

Item	Provision	Amount if the person is an individual	Amount if the person is a body corporate
23	subsection 170(4)	4 penalty units	20 penalty units
24	subsection 184(4)	4 penalty units	20 penalty units
25	subsection 185(5)	4 penalty units	20 penalty units

---

- 1 (3) Subsection 104(2) of the Regulatory Powers Act does not apply in  
2 relation to the amount to be stated in an infringement notice for the  
3 purposes of paragraph 104(1)(f) of that Act for an alleged  
4 contravention by a person of a provision mentioned in  
5 subsection (1) of this section.

6 *Infringement officer*

- 7 (4) For the purposes of Part 5 of the Regulatory Powers Act, a member  
8 of the staff of the ACMA authorised, in writing, by the ACMA for  
9 the purposes of this subsection is an infringement officer in relation  
10 to the provisions mentioned in subsection (1).

11 *Relevant chief executive*

- 12 (5) For the purposes of Part 5 of the Regulatory Powers Act, the Chair  
13 of the ACMA is the relevant chief executive in relation to the  
14 provisions mentioned in subsection (1).

- 15 (6) The relevant chief executive may, in writing, delegate any or all of  
16 his or her powers and functions under Part 5 of the Regulatory  
17 Powers Act to a person who is:

- 18 (a) a member of the staff of the ACMA; and  
19 (b) an SES employee or an acting SES employee.

- 20 (7) A person exercising powers or performing functions under a  
21 delegation under subsection (6) must comply with any directions of  
22 the relevant chief executive.

# EXPOSURE DRAFT

Enforcement **Part 15**  
Enforcement **Division 2**

## Section 179

---

1 *External Territories*

- 2 (8) Part 5 of the Regulatory Powers Act, as it applies in relation to the  
3 provisions mentioned in subsection (1), extends to every external  
4 Territory.

5 *Geographical application*

- 6 (9) Sections 12, 13, 14 and 15 have effect as if a reference in those  
7 sections to this Act included a reference to Part 5 of the Regulatory  
8 Powers Act, as it applies in relation to the provisions mentioned in  
9 subsection (1) of this section.

10 **179 Enforceable undertakings**

11 *Enforceable provisions*

- 12 (1) The provisions of this Act are enforceable under Part 6 of the  
13 Regulatory Powers Act.

14 *Authorised person*

- 15 (2) For the purposes of Part 6 of the Regulatory Powers Act, the  
16 ACMA is an authorised person in relation to the provisions  
17 mentioned in subsection (1).

18 *Relevant court*

- 19 (3) For the purposes of Part 6 of the Regulatory Powers Act, each of  
20 the following courts is a relevant court in relation to the provisions  
21 mentioned in subsection (1):  
22 (a) the Federal Court;  
23 (b) the Federal Circuit Court.

24 *Publication of undertaking*

- 25 (4) The ACMA may publish an undertaking given in relation to a  
26 provision mentioned in subsection (1) on the ACMA's website.

# EXPOSURE DRAFT

## Part 15 Enforcement

### Division 2 Enforcement

#### Section 180

---

1 *External Territories*

2 (5) Part 6 of the Regulatory Powers Act, as it applies in relation to the  
3 provisions mentioned in subsection (1), extends to every external  
4 Territory.

5 *Geographical application*

6 (6) Sections 12, 13, 14 and 15 have effect as if a reference in those  
7 sections to this Act included a reference to Part 6 of the Regulatory  
8 Powers Act, as it applies in relation to the provisions mentioned in  
9 subsection (1) of this section.

## 10 **180 Injunctions**

11 *Enforceable provisions*

12 (1) The following provisions of this Act are enforceable under Part 7  
13 of the Regulatory Powers Act:

- 14 (a) subsection 27(3);  
15 (b) subsection 28(1);  
16 (c) subsection 28(2);  
17 (d) subsection 29(2);  
18 (e) subsection 52(1);  
19 (f) subsection 114(3);  
20 (g) subsection 114(4);  
21 (h) subsection 125(2);  
22 (i) subsection 125(3);  
23 (j) subsection 129(1);  
24 (k) subsection 134(1);  
25 (l) subsection 134(2);  
26 (m) subsection 134(3);  
27 (n) subsection 140(1);  
28 (o) subsection 140(2);  
29 (p) subsection 140(3);  
30 (q) subsection 140(4);

# EXPOSURE DRAFT

Enforcement **Part 15**  
Enforcement **Division 2**

## Section 180

---

- 1 (r) subsection 146(2);
- 2 (s) subsection 148(2);
- 3 (t) section 157;
- 4 (u) subsection 170(4).

5 Note: Part 7 of the Regulatory Powers Act creates a framework for using  
6 injunctions to enforce provisions.

### 7 *Authorised person*

- 8 (2) The ACMA is an authorised person in relation to the provisions
- 9 mentioned in subsection (1) for the purposes of Part 7 of the
- 10 Regulatory Powers Act.

### 11 *Relevant court*

- 12 (3) For the purposes of Part 7 of the Regulatory Powers Act, each of
- 13 the following courts is a relevant court in relation to the provisions
- 14 mentioned in subsection (1):
- 15 (a) the Federal Court;
- 16 (b) the Federal Circuit Court.

### 17 *External Territories*

- 18 (4) Part 7 of the Regulatory Powers Act, as it applies in relation to the
- 19 provisions mentioned in subsection (1), extends to every external
- 20 Territory.

### 21 *Geographical application*

- 22 (5) Sections 12, 13, 14 and 15 have effect as if a reference in those
- 23 sections to this Act included a reference to Part 7 of the Regulatory
- 24 Powers Act, as it applies in relation to the provisions mentioned in
- 25 subsection (1) of this section.

# EXPOSURE DRAFT

## Part 15 Enforcement

### Division 3 Inspectors

#### Section 181

---

## Division 3—Inspectors

### 181 Inspectors

- (1) A person is an *inspector* for the purposes of this Act if the person is:
- (a) a Commonwealth officer appointed by the ACMA, by written instrument, to be an inspector; or
  - (b) a Commonwealth officer included in a class of Commonwealth officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or
  - (c) a State officer appointed by the ACMA, by written instrument, to be an inspector; or
  - (d) a State officer included in a class of State officers appointed by the ACMA, by notifiable instrument, to be inspectors for the purposes of this Act; or
  - (e) a member (other than a special member) of the Australian Federal Police.

(2) Subsection (1) has effect subject to subsection (3).

(3) An instrument under paragraph (1)(a), (b), (c) or (d) may specify provisions of this Act or the Regulatory Powers Act in relation to which appointments made by the instrument are to apply, and any such limitation has effect accordingly.

#### *State officer*

- (4) For the purposes of this section, *State officer* means a person who, whether on a full-time or part-time basis, and whether in a permanent capacity or otherwise:
- (a) is in the service or employment of an eligible State or an authority of an eligible State; or
  - (b) holds or performs the duties of any office or position established by or under a law of an eligible State;
- and includes a member of the police force of an eligible State.



# EXPOSURE DRAFT

Enforcement **Part 15**  
Inspectors **Division 3**

## Section 181

---

- 1                    *Eligible State*
- 2                    (5) If a State, by written notice given to the ACMA, consents to be
- 3                    treated as an eligible State for the purposes of this section, the State
- 4                    is an *eligible State* for the purposes of this section.
- 5                    (6) A notice under subsection (5) may be given on behalf of a State by
- 6                    a Minister of the State.
- 7                    (7) A copy of a notice under subsection (5) must be published on the
- 8                    ACMA’s website.
- 9                    *State*
- 10                   (8) For the purposes of this section, *State* includes:
- 11                   (a) the Australian Capital Territory; and
- 12                   (b) the Northern Territory.

# EXPOSURE DRAFT

Part 15 Enforcement

Division 4 Investigation powers

Section 182

---

1     **Division 4—Investigation powers**

2     **182 Investigation powers—general**

3             *Provisions subject to investigation*

4             (1) A provision is subject to investigation under Part 3 of the  
5                 Regulatory Powers Act if it is:

- 6                 (a) an offence against this Act; or  
7                 (b) a civil penalty provision of this Act.

8             Note:     *Offence against this Act* has an extended meaning—see section 5.

9             *Authorised applicant*

10            (2) For the purposes of Part 3 of the Regulatory Powers Act, an  
11               inspector is an authorised applicant in relation to evidential  
12               material that relates to a provision mentioned in subsection (1).

13            *Authorised person*

14            (3) For the purposes of Part 3 of the Regulatory Powers Act, an  
15               inspector is an authorised person in relation to evidential material  
16               that relates to a provision mentioned in subsection (1).

17            *Issuing officer*

18            (4) For the purposes of Part 3 of the Regulatory Powers Act, each of  
19               the following persons is an issuing officer in relation to evidential  
20               material that relates to a provision mentioned in subsection (1):

- 21               (a) a Judge of the Federal Court;  
22               (b) a Judge of the Federal Circuit Court;  
23               (c) a magistrate.

24            *Relevant chief executive*

25            (5) For the purposes of Part 3 of the Regulatory Powers Act, the Chair  
26               of the ACMA is the relevant chief executive in relation to

# EXPOSURE DRAFT

Enforcement **Part 15**  
Investigation powers **Division 4**

## Section 182

---

- 1                    evidential material that relates to a provision mentioned in  
2                    subsection (1).
- 3                    (6) The relevant chief executive may, in writing, delegate the powers  
4                    and functions mentioned in subsection (7) to a person who is:  
5                    (a) a member of the staff of the ACMA; and  
6                    (b) an SES employee or an acting SES employee.
- 7                    (7) The powers and functions that may be delegated are:  
8                    (a) powers under Part 3 of the Regulatory Powers Act in relation  
9                    to evidential material that relates to a provision mentioned in  
10                    subsection (1); and  
11                    (b) powers and functions under the Regulatory Powers Act that  
12                    are incidental to a power mentioned in paragraph (a).
- 13                    (8) A person exercising powers or performing functions under a  
14                    delegation under subsection (6) must comply with any directions of  
15                    the relevant chief executive.
- 16                    *Relevant court*
- 17                    (9) For the purposes of Part 3 of the Regulatory Powers Act, each of  
18                    the following courts is a relevant court in relation to evidential  
19                    material that relates to a provision mentioned in subsection (1):  
20                    (a) the Federal Court;  
21                    (b) the Federal Circuit Court.
- 22                    *External Territories*
- 23                    (10) Part 3 of the Regulatory Powers Act, as it applies in relation to the  
24                    provisions mentioned in subsection (1), extends to every external  
25                    Territory.
- 26                    *Geographical application*
- 27                    (11) Sections 12, 13, 14 and 15 have effect as if a reference in those  
28                    sections to this Act included a reference to Part 3 of the Regulatory  
29                    Powers Act, as it applies in relation to the provisions mentioned in  
30                    subsection (1) of this section.

# EXPOSURE DRAFT

## Part 15 Enforcement

### Division 4 Investigation powers

#### Section 183

---

##### **183 Retention of thing seized etc.**

(1) Section 66 of the Regulatory Powers Act, as it applies in relation to a provision covered by subsection 182(1) of this Act, has effect subject to subsections (2), (3) and (4) of this section.

(2) If:

(a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision covered by subsection 182(1) of this Act; and

(b) proceedings for an offence against this Act are instituted within the period of 60 days after the seizure; and

(c) the thing may have been used, or otherwise involved, in the alleged commission of the offence;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

(3) If:

(a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision covered by subsection 182(1) of this Act; and

(b) proceedings under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision in this Act are instituted within the period of 60 days after the seizure; and

(c) the thing may have been used, or otherwise involved, in the alleged contravention of the civil penalty provision;

the thing may be retained until the proceedings (and any appeal from those proceedings) have been finalised.

(4) The ACMA may, by written instrument, authorise a thing seized under the Regulatory Powers Act, as it applies in relation to a provision covered by subsection 182(1) of this Act, to be released to the owner, or to the person from whom it was seized, either:

(a) unconditionally; or

(b) on such conditions as the ACMA thinks fit, including conditions as to giving security for payment of its value if it is forfeited under section 187.

**184 Powers of inspectors to require operation of transmitters**

- (1) If an inspector has reasonable grounds to believe that a transmitter has been, is being, or may be, operated so as to cause interference to radiocommunications, the inspector may, for the purpose of investigating:
- (a) interference to radiocommunications; or
  - (b) risk of interference to radiocommunications;
- direct a person to operate the transmitter.
- (2) An inspector must not direct that a transmitter be operated if that operation is likely to:
- (a) endanger the safety of a person; or
  - (b) cause damage to property.
- (3) The operation of a transmitter in accordance with a direction does not give rise to:
- (a) an offence under this Act; or
  - (b) a contravention of a civil penalty provision in this Act.

*Offence*

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

Penalty: 30 penalty units.

- (5) Subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**185 General powers of inspectors**

- (1) If an inspector suspects on reasonable grounds that a person has done an act in respect of which the person is required to hold:
- (a) a licence; or
  - (b) an authorisation under section 41; or

# EXPOSURE DRAFT

## Part 15 Enforcement

### Division 4 Investigation powers

#### Section 185

---

- 1 (c) a certificate of proficiency; or  
2 (d) a permit under the equipment rules;  
3 the inspector may, by written notice given to the person, require  
4 the person to:  
5 (e) produce:  
6 (i) the licence, authorisation, certificate or permit; or  
7 (ii) evidence of its existence and contents; and  
8 (f) do so within the period, and in the manner, specified in the  
9 notice.
- 10 (2) If an inspector suspects on reasonable grounds that the holder of a  
11 licence has given an authorisation under section 41, the inspector  
12 may, by written notice given to the person, require the holder to:  
13 (a) produce a copy of a record of that authorisation; and  
14 (b) do so within the period, and in the manner, specified in the  
15 notice.
- 16 (3) If an inspector suspects on reasonable grounds that a person is  
17 required by the equipment rules to retain a record, the inspector  
18 may, by written notice given to the person, require the person to:  
19 (a) produce the record; and  
20 (b) do so within the period, and in the manner, specified in the  
21 notice.
- 22 (4) A period specified under subsection (1), (2) or (3) must not be  
23 shorter than 14 days after the notice is given.
- 24 *Offence*
- 25 (5) A person commits an offence if:  
26 (a) the person is subject to a requirement under subsection (1),  
27 (2) or (3); and  
28 (b) the person engages in conduct; and  
29 (c) the person's conduct contravenes the requirement.
- 30 Penalty: 30 penalty units.
- 31 (6) Subsection (5) is an offence of strict liability.
-

# EXPOSURE DRAFT

Enforcement **Part 15**  
Investigation powers **Division 4**

## Section 186

---

1                                Note:        For strict liability, see section 6.1 of the *Criminal Code*.

### 2        **186 Self-incrimination**

3                                (1) A person is not excused from producing a document under  
4    section 185 on the ground that the production of the document  
5    might tend to incriminate the person or expose the person to a  
6    penalty.

7                                (2) However, in the case of an individual:

8    (a) the document produced; or

9    (b) producing the document; or

10    (c) any information, document or thing obtained as a direct or  
11    indirect consequence of producing the document;

12                                is not admissible in evidence against the individual:

13    (d) in civil proceedings for the recovery of a penalty; or

14    (e) in criminal proceedings (other than proceedings for an  
15    offence against section 137.1 or 137.2 of the *Criminal Code*  
16    that relates to section 185).

# EXPOSURE DRAFT

**Part 15** Enforcement

**Division 5** Forfeiture

Section 187

---

1     **Division 5—Forfeiture**

2     **187 Court may order forfeiture**

3             (1) If a court convicts a person of an offence against this Act, the court  
4                 may order the forfeiture to the Commonwealth of anything used, or  
5                 otherwise involved, in the commission of the offence.

6             (2) If a court makes a civil penalty order under section 82 of the  
7                 Regulatory Powers Act in relation to a contravention of a civil  
8                 penalty provision in this Act, the court may order the forfeiture to  
9                 the Commonwealth of anything used, or otherwise involved, in the  
10                contravention of the civil penalty provision.

11    **188 Forfeited goods may be sold**

12            A thing forfeited under section 187:

- 13            (a) may be sold or otherwise disposed of in accordance with the  
14               directions of the ACMA; and  
15            (b) pending such directions, must be kept in such custody as the  
16               ACMA directs.



**Division 6—Public warning notices**

**189 Public warning notices**

- (1) The ACMA may issue to the public, in a way that the ACMA thinks fit, a written notice containing a warning about particular conduct engaged in by a person if:
- (a) the ACMA has reasonable grounds to suspect that the conduct may constitute a contravention of:
    - (i) section 114; or
    - (ii) a provision of Part 10; or
    - (iii) the equipment rules; and
  - (b) the ACMA is satisfied that one or more persons have suffered, or are likely to suffer, detriment as a result of the conduct; and
  - (c) the ACMA is satisfied that it is in the public interest to issue the notice.
- (2) A notice under subsection (1) may be issued to the public by being published on the ACMA's website.
- (3) Subsection (2) does not, by implication, limit the ACMA's power to decide a way in which a notice under subsection (1) may be issued to the public.
- (4) A notice issued under subsection (1) is not a legislative instrument.

# EXPOSURE DRAFT

Part 15 Enforcement

Division 7 Miscellaneous

Section 190

---

1     **Division 7—Miscellaneous**

2     **190 Act not to affect performance of duties by inspectors**

3                     Nothing in Part 5, 9 or 10 prohibits the doing of any act or thing by  
4                     an inspector in the performance of his or her duties under this Act  
5                     or Part 3 of the Regulatory Powers Act.

6     **191 Inspectors not authorised to enter or search certain land or**  
7                     **premises used for defence purposes**

8                     Nothing in Division 4 of this Part, or in Part 3 of the Regulatory  
9                     Powers Act, authorises an inspector to enter or to search:

- 10                    (a) land or premises that are:
- 11                         (i) occupied or used for the purposes of defence; and
- 12                         (ii) specified in the legislative rules; or
- 13                    (b) a vessel, aircraft, space object or vehicle that is in the
- 14                         possession or control of the Defence Force or a part of the
- 15                         Defence Force;
- 16                    unless:
- 17                         (c) permission to do so has been given by the person for the time
- 18                                 being in charge of those premises or that land, vessel,
- 19                                 aircraft, space object or vehicle; or
- 20                         (d) if it is not reasonably practicable to obtain permission of the
- 21                                 kind mentioned in paragraph (c)—the entry and search is
- 22                                 supervised by a member of the Defence Force, or an APS
- 23                                 employee in the Defence Department, authorised to have
- 24                                 access to those premises or that land, vessel, aircraft, space
- 25                                 object or vehicle.

26                    Note:         For specification by class, see subsection 13(3) of the *Legislation Act*  
27                                 2003.

## **Part 16—Spectrum access charges**

### **192 Simplified outline of this Part**

- The ACMA may make determinations fixing spectrum access charges payable by licensees for issuing licences.
- The Minister may give directions to the ACMA about the matters dealt with in those determinations.
- A spectrum access charge fixed by a determination must not be such as to amount to taxation.

### **193 Spectrum access charges**

- (1) The ACMA may, by written instrument, make determinations:
  - (a) fixing spectrum access charges payable for issuing licences; and
  - (b) specifying the times when spectrum access charges are payable.
- (2) A determination under subsection (1) is to be published on the ACMA's website.
- (3) A determination made under subsection (1) is not a legislative instrument.

### **194 Ministerial directions**

- (1) The Minister may give written directions to the ACMA about the matters dealt with in section 193 determinations.
- (2) Directions may, for example, require that:
  - (a) the level of spectrum access charges payable in respect of one or more specified classes of public or community

# EXPOSURE DRAFT

## Part 16 Spectrum access charges

### Section 195

---

- 1 services is to be a specified portion only of the level of  
2 spectrum access charges otherwise payable; or  
3 (b) spectrum access charges are not to be payable in respect of a  
4 specified class of public or community services; or  
5 (c) persons are to be permitted to pay in instalments, as specified  
6 in the direction, the spectrum access charges payable in  
7 respect of a specified class of public or community services;  
8 or  
9 (d) a spectrum access charge reflect the amount that the Minister  
10 considers to be the value of the spectrum.
- 11 (3) The ACMA must ensure that its section 193 determinations  
12 comply with any directions in force under this section.
- 13 (4) A direction given under subsection (1) is not a legislative  
14 instrument.

### 195 Collection of charges on behalf of the Commonwealth

- 15 (1) The ACMA may, on behalf of the Commonwealth, enter into  
16 arrangements with persons or bodies under which those persons or  
17 bodies may, on the Commonwealth's behalf, receive payments of  
18 spectrum access charges.  
19
- 20 (2) If an eligible Australian corporation is a delegate under  
21 section 200, the ACMA may, on behalf of the Commonwealth,  
22 enter into an arrangement with the corporation under which the  
23 corporation may, on the Commonwealth's behalf, receive  
24 payments of spectrum access charges that are payable in the  
25 circumstances specified in the arrangement.
- 26 (3) Subsection (2) does not, by implication, limit subsection (1).

### 196 Limits on charges

- 27 A spectrum access charge fixed by a determination must not be  
28 such as to amount to taxation.  
29

**197 Recovery of charges**

A spectrum access charge fixed by a determination:

(a) is a debt due to the ACMA on behalf of the Commonwealth;  
and

(b) may be recovered by the ACMA, on behalf of the  
Commonwealth, in:

(i) the Federal Court; or

(ii) the Federal Circuit Court; or

(iii) a court of a State or Territory that has jurisdiction in  
relation to the matter.

# EXPOSURE DRAFT

## Part 17 Delegation Division 1 Introduction

### Section 198

---

## 1 Part 17—Delegation

### 2 Division 1—Introduction

#### 3 198 Simplified outline of this Part

- 4 • The ACMA may delegate any or all of the ACMA's general  
5 licensing functions or powers to an eligible Australian  
6 corporation.
- 7 • The ACMA may make delegation rules providing for  
8 requirements to be complied with by delegates.
- 9 • The ACMA may enter into a written agreement with an  
10 eligible Australian corporation relating to the delegation to the  
11 corporation of any or all of the ACMA's general licensing  
12 functions or powers.
- 13 • The agreement is to be known as a management rights  
14 agreement.

#### 15 199 General licensing functions or powers

16 For the purposes of this Act, *general licensing functions or*  
17 *powers*, in relation to the ACMA, means:

- 18 (a) a function or power of the ACMA under any of the following  
19 provisions:
- 20 (i) section 33;
  - 21 (ii) section 34;
  - 22 (iii) section 35;
  - 23 (iv) section 46;
  - 24 (v) section 47;
  - 25 (vi) section 48;
  - 26 (vii) section 49;

# EXPOSURE DRAFT

Delegation **Part 17**  
Introduction **Division 1**

## Section 199

---

- 1 (viii) section 50;
- 2 (ix) section 51;
- 3 (x) section 53;
- 4 (xi) section 57;
- 5 (xii) section 60;
- 6 (xiii) section 61;
- 7 (xiv) subsection 64(2);
- 8 (xv) subsection 64(4), so far as that subsection relates to a
- 9 suspension under subsection 64(2);
- 10 (xvi) subsection 67(2);
- 11 (xvii) subsection 74(2);
- 12 (xviii) subsection 75(2);
- 13 (xix) subsection 77(1);
- 14 (xx) section 86;
- 15 (xxi) section 90;
- 16 (xxii) section 91;
- 17 (xxiii) section 92;
- 18 (xxiv) section 99;
- 19 (xxv) section 100;
- 20 (xxvi) section 113;
- 21 (xxvii) section 116;
- 22 (xxviii) section 193; or
- 23 (a) a function or power of the ACMA to specify any of the
- 24 following in a licence:
- 25 (i) a period;
- 26 (ii) a day;
- 27 (iii) a part of the spectrum;
- 28 (iv) an area;
- 29 (v) a location;
- 30 (vi) any other matter or thing; or
- 31 (b) a function or power of the ACMA to include a designated
- 32 statement in a licence; or
- 33 (c) a function or power of the ACMA under the Register rules;

# EXPOSURE DRAFT

**Part 17** Delegation  
**Division 1** Introduction

Section 199

---

1 but does not include the power to give consent for the purposes of  
2 a condition included in a licence under subsection 49(1).



**Division 2—Delegation**

**200 Delegation by the ACMA to eligible Australian corporation**

- (1) The ACMA may, by writing, delegate any or all of the ACMA's general licensing functions or powers to an eligible Australian corporation.

Note 1: For the ACMA's *general licensing functions or powers*, see section 199.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) A delegate must comply with any written directions of the ACMA.
- (3) In deciding whether to delegate, under subsection (1), any or all of the ACMA's general licensing functions or powers to an eligible Australian corporation, the ACMA must have regard to:
- (a) whether the corporation has the capacity to properly perform the role of a delegate; and
  - (b) such other matters (if any) as the ACMA considers relevant.

- (4) A delegation under subsection (1) must be published on the ACMA's website.

*Exercise by the ACMA of delegated functions or powers*

- (5) If, under subsection (1), the ACMA delegates one or more functions or powers to an eligible Australian corporation (other than a power to make, vary or revoke a legislative instrument), the ACMA may, by writing, determine that paragraph 34AB(1)(d) of the *Acts Interpretation Act 1901* does not apply to the delegation.

*Information*

- (6) If, under subsection (1), the ACMA delegates one or more functions or powers to an eligible Australian corporation:
- (a) the corporation may give the ACMA information and documents that are relevant to the performance of the

# EXPOSURE DRAFT

## Part 17 Delegation Division 2 Delegation

### Section 201

---

- 1 ACMA's spectrum management functions or the exercise of  
2 the ACMA's spectrum management powers; and  
3 (b) the ACMA may give the corporation information and  
4 documents that are relevant to the performance of the  
5 functions, or the exercise of the powers, delegated to the  
6 corporation.

#### 7 *Operation of other laws of the Commonwealth*

- 8 (7) The legislative rules may provide that if, under subsection (1), the  
9 ACMA delegates one or more functions or powers to an eligible  
10 Australian corporation, the corporation (in its capacity as such a  
11 delegate) is taken, for the purposes of a specified law of the  
12 Commonwealth (other than this Act) to be a body corporate  
13 established for a public purpose by this Act.

#### 14 *Compliance with management rights agreement*

- 15 (8) In exercising its powers under subsections (1) and (5), the ACMA  
16 must comply with any applicable management rights agreement.

### 17 **201 Sub-delegation by eligible Australian corporation**

- 18 (1) If, under subsection 200(1), the ACMA delegates a function or  
19 power to an eligible Australian corporation, the corporation may,  
20 by writing, sub-delegate the function or power to a person who:  
21 (a) is a director or employee of the corporation; and  
22 (b) satisfies the conditions set out in the legislative rules.
- 23 (2) A sub-delegate must comply with any written directions of:  
24 (a) the corporation; or  
25 (b) the ACMA.
- 26 (3) Sections 34AA, 34AB and 34A of the *Acts Interpretation Act 1901*  
27 apply in relation to a sub-delegation in a corresponding way to the  
28 way in which they apply to the delegation to the corporation.
- 29 (4) Subsection (3) has effect subject to subsection (5).

# EXPOSURE DRAFT

Delegation **Part 17**  
Delegation **Division 2**

## Section 202

(5) If, under subsection 200(5), the ACMA has determined that paragraph 34AB(1)(d) of the *Acts Interpretation Act 1901* does not apply to the delegation to the corporation, a sub-delegation does not prevent the performance of a function, or the exercise of a power, by the corporation.

6      **202 ACMA's other delegation powers not limited by this Division**

7 This Division does not limit section 50 or 51 of the *Australian*  
8 *Communications and Media Authority Act 2005*.

# EXPOSURE DRAFT

## Part 17 Delegation

### Division 3 Delegation rules

#### Section 203

---

1     **Division 3—Delegation rules**

2     **203 Requirements of delegation rules**

- 3             The delegation rules may provide for requirements to be complied  
4             with by persons performing functions, or exercising powers, under:  
5             (a) a delegation under section 200; or  
6             (b) a sub-delegation under section 201.

7     **204 Compliance with delegation rules**

- 8             If a person is subject to a requirement under the delegation rules,  
9             the person must comply with that requirement.

10    **205 Delegation rules**

- 11            (1) The ACMA may, by legislative instrument, make rules (*delegation*  
12            *rules*) prescribing matters required or permitted by this Act to be  
13            prescribed by the delegation rules.
- 14            (2) Subsection (1) of this section does not, by implication, limit:  
15            (a) subsection 200(2); or  
16            (b) subsection 201(2).
- 17            (3) Subsections 200(2) and 201(2) do not, by implication, limit  
18            subsection (1) of this section.
- 19            (4) A provision of the delegation rules may be of general application  
20            or may be limited as provided in the rules. This subsection does not  
21            limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

**Division 4—Management rights agreement**

**206 Management rights agreement**

(1) The ACMA may enter into a written agreement with an eligible Australian corporation relating to the delegation to the corporation, under section 200, of any or all of the ACMA's general licensing functions or powers.

(2) An agreement under subsection (1) is to be known as a *management rights agreement*.

(3) A management rights agreement may provide that the ACMA will make an instrument of delegation under section 200 in the terms set out in the agreement.

*Variation of delegation*

(4) A management rights agreement relating to a delegation may provide for restrictions or limitations on the ACMA's power to vary the delegation.

*Revocation of delegation*

(5) A management rights agreement relating to a delegation may specify the grounds on which the ACMA may revoke the delegation.

*Exercise by the ACMA of delegated functions or powers*

(6) A management rights agreement relating to a delegation may provide that the ACMA will make a determination under subsection 200(5) in relation to the delegation.

*Exclusivity of delegation*

(7) A management rights agreement with an eligible Australian corporation may provide for restrictions or limitations on the

# EXPOSURE DRAFT

## Part 17 Delegation

### Division 4 Management rights agreement

#### Section 207

---

1 ACMA's power to delegate its general licensing functions or  
2 powers to other eligible Australian corporations.

3 *No limitation implied*

4 (8) Subsections (3) to (7) do not, by implication, limit subsection (1).

#### 5 **207 Payments**

6 *Payments by corporation*

7 (1) A management rights agreement with an eligible Australian  
8 corporation may provide for the corporation to pay to the ACMA,  
9 on behalf of the Commonwealth, an amount in respect of the  
10 entering into of the agreement.

11 (2) A management rights agreement with an eligible Australian  
12 corporation may provide for the corporation to pay to the ACMA,  
13 on behalf of the Commonwealth, amounts in respect of the  
14 subsistence of the agreement.

15 *Payments to corporation*

16 (3) A management rights agreement with an eligible Australian  
17 corporation may provide for the making of payments to the  
18 corporation by the ACMA, on behalf of the Commonwealth, in  
19 respect of the performance of the functions, and the exercise of the  
20 powers, delegated to the corporation.

21 (4) A management rights agreement with an eligible Australian  
22 corporation may provide for the making of a payment to the  
23 corporation by the ACMA, on behalf of the Commonwealth, in  
24 respect of the termination of the agreement, if the termination:  
25 (a) occurs before the expiry of the agreement; and  
26 (b) occurs:  
27 (i) in specified circumstances; or  
28 (ii) as the result of a specified event.

EXPOSURE DRAFT

- 1
- Agreement by ACMA on behalf of Commonwealth*
- 2
- (5) A management rights agreement, so far as it deals with a matter
- 3
- covered by this section, is taken to have been entered into by the
- 4
- ACMA on behalf of the Commonwealth.
- 5
- No limitation implied*
- 6
- (6) Subsections (2) to (4) do not, by implication, limit
- 7
- subsection 206(1).

# EXPOSURE DRAFT

## Part 18 Review of decisions

### Section 208

## Part 18—Review of decisions

### 208 Simplified outline of this Part

- Certain decisions of the ACMA may be reviewed by the Administrative Appeals Tribunal following a process of internal reconsideration by the ACMA.

### 209 Reviewable decisions

For the purposes of this Act, each of the following decisions of the ACMA is a *reviewable decision*:

Reviewable decisions	
Item	Decision
1	A decision to refuse to issue a licence under subsection 33(1) or (2).
2	A decision under a licence issue scheme, where the scheme provides that the decision is a reviewable decision for the purposes of this Act.
3	A decision to refuse to give consent for the purposes of a condition included in a licence under subsection 49(1).
4	A decision under section 51 to include a condition in a licence.
5	A decision under section 57 to vary a licence.
6	A decision under section 61 to refuse to renew a licence.
7	A decision under subsection 64(1) to suspend a licence.
8	A decision under subsection 67(1) to cancel a licence.
9	A decision under section 70 to make a determination that an individual is a disqualified person.
10	A decision to refuse to revoke, under section 71, a determination made under section 70.
11	A decision to refuse to give consent to the surrender, under subsection 74(2), of a part of the licence.
12	A decision under section 75 to vary a licence.



## Section 210

### Reviewable decisions

Item	Decision
13	A decision to refuse to waive, under subsection 80(3), compliance with paragraph 80(2)(c).
14	A decision under section 86 to resume a licence or a part of a licence.
15	A decision under section 87 to vary a licence.
16	A decision to refuse to register a radiocommunications device under subsection 92(1), (2), (3) or (4).
17	A decision under subsection 92(5) to deregister a radiocommunications device.
18	A decision under the Register rules to make a change to information in the Register of Radiocommunications Licences.
19	A decision under the Register rules to refuse to correct information in the Register of Radiocommunications Licences.
20	A decision under section 104 to refuse to issue a certificate of proficiency.
21	A decision under section 106 to cancel a certificate of proficiency.
22	A decision under subsection 114(6) to refuse to give permission.
23	A decision under the equipment rules, where the equipment rules provide that the decision is a reviewable decision for the purposes of this Act.
24	A decision under section 160 to refuse to give an accreditation.
25	A decision under paragraph 161(b) to include a condition in an instrument of accreditation.
26	A decision under section 162 to withdraw an accreditation.
27	A decision under subsection 176(2) to give a direction.

### 210 Applications for reconsideration of decisions made by the ACMA

- (1) A person affected by a reviewable decision who is dissatisfied with the decision may apply to the ACMA for the ACMA to reconsider the decision.
- (2) The application must:
  - (a) be in a form approved in writing by the ACMA; and
  - (b) set out the reasons for the application.

# EXPOSURE DRAFT

## Part 18 Review of decisions

### Section 211

---

- 1           (3) The application must be made within:  
2               (a) 28 days after the applicant is informed of the decision; or  
3               (b) if, either before or after the end of that period of 28 days, the  
4               ACMA extends the period within which the application may  
5               be made—the extended period.
- 6           (4) An approved form of an application may provide for verification  
7               by statutory declaration of statements in applications.

#### 8           **211 Reconsideration by the ACMA**

- 9           (1) Upon receiving such an application, the ACMA must:  
10               (a) reconsider the decision; and  
11               (b) affirm, vary or revoke the decision.
- 12           (2) The ACMA's decision on reconsideration of a decision has effect  
13               as if it had been made under the provision under which the original  
14               decision was made.
- 15           (3) The ACMA must give the applicant a written notice stating its  
16               decision on the reconsideration.
- 17           (4) Within 28 days after making its decision on the reconsideration,  
18               the ACMA must give the applicant a written statement of its  
19               reasons for its decision.

#### 20           **212 Deadline for reconsideration**

- 21           (1) The ACMA must make its decision on reconsideration of a  
22               decision within 90 days after receiving an application for  
23               reconsideration.
- 24           (2) The ACMA is taken, for the purposes of this Part, to have made a  
25               decision affirming the original decision if it has not informed the  
26               applicant of its decision on the reconsideration before the end of  
27               the period of 90 days.

1     **213 Review by the Administrative Appeals Tribunal**

2             Applications may be made to the Administrative Appeals Tribunal  
3             to review a reviewable decision if the ACMA has affirmed or  
4             varied the decision under section 211.

# EXPOSURE DRAFT

## Part 19 Provisions extending the concept of radiocommunication

### Section 214

---

1 **Part 19—Provisions extending the concept of**  
2 **radiocommunication**  
3

4 **214 Simplified outline of this Part**

- 5 • This Part gives this Act an extended constitutional basis in  
6 relation to:  
7 (a) measurement transmissions; and  
8 (b) measurement transmitters; and  
9 (c) astronomical or meteorological observations; and  
10 (d) lighthouses, lightships, beacons or buoys.

11 **215 Radio transmissions for the purpose of measurement**

- 12 (1) Without limiting its effect apart from this subsection, this Act also  
13 applies in relation to:  
14 (a) a measurement transmission made in the course of, or in  
15 relation to:  
16 (i) trade and commerce between Australia and places  
17 outside Australia; or  
18 (ii) trade and commerce among the States; or  
19 (iii) trade and commerce within a Territory, between a State  
20 and a Territory or between 2 Territories; or  
21 (iv) an activity engaged in by a constitutional corporation; or  
22 (v) the operation of a lighthouse, lightship, beacon or buoy;  
23 or  
24 (vi) the making of an astronomical or meteorological  
25 observation; or  
26 (b) a measurement transmission made by or on behalf of:  
27 (i) the Commonwealth; or  
28 (ii) an authority or instrumentality of the Commonwealth;  
29 or

EXPOSURE DRAFT

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32
- 33
- 34
- (iii) a body corporate incorporated in a Territory; or
- (c) a measurement transmission made in:
- (i) a Territory; or
- (ii) a place outside Australia; or
- (d) any other measurement transmission;
- in the same way as it applies in relation to radiocommunication.
- Note: Section 6 sets out the general meaning of *radiocommunication*.
- (2) Without limiting its effect apart from this subsection, this Act also applies in relation to:
- (a) a measurement transmitter used in the course of, or in relation to:
- (i) trade and commerce between Australia and places outside Australia; or
- (ii) trade and commerce among the States; or
- (iii) trade and commerce within a Territory, between a State and a Territory or between 2 Territories; or
- (iv) an activity engaged in by a constitutional corporation; or
- (v) the operation of a lighthouse, lightship, beacon or buoy; or
- (vi) the making of an astronomical or meteorological observation; or
- (b) a measurement transmitter used by or on behalf of:
- (i) the Commonwealth; or
- (ii) an authority or instrumentality of the Commonwealth; or
- (iii) a body corporate incorporated in a Territory; or
- (c) a measurement transmitter in:
- (i) a Territory; or
- (ii) a place outside Australia; or
- (d) any other measurement transmitter;
- in the same way as it applies in relation to a radiocommunications transmitter.
- Note: Subsection 7(2) sets out the general meaning of *radiocommunications transmitter*.

# EXPOSURE DRAFT

## Part 19 Provisions extending the concept of radiocommunication

### Section 216

---

- 1                   (3) Subsections (1) and (2) do not have the effect of applying this Act  
2                   with respect to:  
3                   (a) State banking that does not extend beyond the limits of the  
4                   State concerned; or  
5                   (b) State insurance that does not so extend.

### 6                   **216 Astronomical and meteorological observations**

7                   Without limiting its effect apart from this subsection, this Act also  
8                   applies to a radio emission in connection with making an  
9                   astronomical or meteorological observation in the same way as it  
10                  applies to a radiocommunication.

### 11                  **217 Lighthouses etc.**

12                  Without limiting its effect apart from this subsection, this Act also  
13                  applies to a radio emission in connection with the operation of a  
14                  lighthouse, lightship, beacon or buoy in the same way as it applies  
15                  to a radiocommunication.

## **Part 20—Exemptions**

### **218 Simplified outline of this Part**

- This Part provides for exemptions from this Act in relation to:
  - (a) foreign vessels and aircraft; and
  - (b) certain defence and intelligence matters; and
  - (c) certain law enforcement and emergency organisations; and
  - (d) certain things done by the ACMA.

### **219 Exemptions for foreign vessels and aircraft**

- (1) This Act (other than section 114 and Part 15) does not apply to transmitters, or radiocommunications receivers, on board a foreign vessel that is travelling, or is in transit, (whether in or outside Australia) on a voyage:
  - (a) from a point outside Australia to a port in Australia; or
  - (b) from a port in Australia to a point outside Australia; or
  - (c) from a point outside Australia to another point outside Australia.
- (2) This Act (other than section 114 and Part 15) does not apply to transmitters, or radiocommunications receivers, on board a foreign aircraft that is travelling, or is in transit, (whether in or outside Australia) on a voyage:
  - (a) from a point outside Australia to an airport in Australia; or
  - (b) from an airport in Australia to a point outside Australia; or
  - (c) from a point outside Australia to another point outside Australia.
- (3) Subsections (1) and (2) apply subject to the provisions of an agreement, treaty or convention that:
  - (a) is between Australia and any other country; and

# EXPOSURE DRAFT

## Part 20 Exemptions

### Section 220

---

- 1 (b) makes provision in relation to radio emission.

#### 2 **220 Exemptions for defence research and intelligence**

- 3 (1) This Act does not apply in relation to anything done or omitted to  
4 be done by a member of the Defence Force, or by an APS  
5 employee in the Defence Department, in the performance of his or  
6 her functions or duties as such a member or employee in relation to  
7 the operation of an organisation:

- 8 (a) that is part of the Defence Force or part of the Defence  
9 Department; and

- 10 (b) the purpose of which relates to:

- 11 (i) research for purposes connected with defence; or

- 12 (ii) intelligence.

- 13 (2) This Act does not apply in relation to anything done or omitted to  
14 be done by or on behalf of:

- 15 (a) the Australian Secret Intelligence Service; or

- 16 (b) the Australian Security Intelligence Organisation.

#### 17 **221 Exemptions for special defence undertakings**

18 This Act does not apply in relation to anything done or omitted to  
19 be done by a person performing a function or duty in relation to the  
20 operation of a facility that is:

- 21 (a) jointly operated by the Commonwealth and a foreign  
22 country; and

- 23 (b) a special defence undertaking for the purposes of the *Defence*  
24 (*Special Undertakings*) Act 1952.

#### 25 **222 Additional exemption for defence matters**

- 26 (1) Parts 5, 9 and 10, and the equipment rules, do not apply in relation  
27 to anything done or omitted to be done by a member of the  
28 Defence Force, or by an APS employee in the Defence  
29 Department, if:



- 1 (a) the act or omission takes place in the performance of one of  
2 his or her functions or duties as such a member or employee;  
3 and  
4 (b) the function or duty concerned is, under the legislative rules,  
5 taken for the purposes of this subsection to be a function or  
6 duty that relates to:  
7 (i) military command and control; or  
8 (ii) intelligence; or  
9 (iii) weapons systems.
- 10 (2) Subsection (1) has effect subject to subsection (3).
- 11 (3) The legislative rules may provide for the application, in specified  
12 circumstances, of:  
13 (a) all or any of Parts 5, 9 and 10, or any of the provisions of  
14 those Parts; or  
15 (b) the equipment rules, or a provision of the equipment rules;  
16 to a member of the Defence Force, or to an APS employee in the  
17 Defence Department, in the performance of one of his or her  
18 functions or duties as mentioned in subsection (1).

## 223 Exemption for defence, law enforcement and emergency personnel

### *Scope*

- 22 (1) This section applies to an individual performing a function or duty  
23 in relation to:  
24 (a) the defence, security or international relations of:  
25 (i) Australia; or  
26 (ii) a foreign country whose naval, military or air force is  
27 acting in co-operation with the Defence Force of  
28 Australia; or  
29 (b) the Australian Federal Police or the police force of a State or  
30 Territory; or  
31 (c) a designated crime/corruption body; or  
32 (d) a fire-fighting, civil defence or rescue organisation; or

# EXPOSURE DRAFT

## Part 20 Exemptions

### Section 224

---

- 1 (e) an ambulance service; or  
2 (f) the Royal Flying Doctor Service; or  
3 (g) any other organisation whose sole or principal purpose  
4 involves securing the safety of persons during an emergency.

5 *Exemption*

- 6 (2) The ACMA may, by legislative instrument, determine that acts or  
7 omissions by individuals included in a specified class of  
8 individuals are exempt from any of the following:  
9 (a) all or any of Parts 5, 9 and 10;  
10 (b) specified provisions of those Parts;  
11 (c) the equipment rules;  
12 (d) specified provisions of the equipment rules.  
13 The exemption may be expressed to apply generally or in specified  
14 circumstances.

15 **224 Use or possession of equipment by the ACMA**

- 16 Parts 5, 9 and 10, and the equipment rules, do not apply in relation  
17 to anything done or omitted to be done by the ACMA in  
18 connection with the use or possession of equipment in performing  
19 its functions or exercising its powers under this Act.

1 **Part 21—Miscellaneous**  
2

3 **225 Simplified outline of this Part**

- 4
  - This Part deals with miscellaneous matters, such as:

5 (a) the service of documents; and  
6 (b) computerised decision-making; and  
7 (c) the making of legislative rules.

8 **226 Service of documents**

- 9 (1) If:  
10 (a) a person gives an address to the ACMA; and  
11 (b) that address is included in the Register of  
12 Radiocommunications Licences;  
13 a document under:  
14 (c) this Act; or  
15 (d) a legislative instrument under this Act;  
16 may be given to the person at that address.  
17 (2) Subsection (1) has effect in addition to section 28A of the *Acts*  
18 *Interpretation Act 1901*.

19 *Electronic addresses*

- 20 (3) If:  
21 (a) a person gives an electronic address to the ACMA; and  
22 (b) that address is included in the Register of  
23 Radiocommunications Licences;  
24 a document under:  
25 (c) this Act; or  
26 (d) a legislative instrument under this Act;  
27 may be given to the person by sending it to that address.

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 227

---

#### 227 Computerised decision-making

- (1) The ACMA may, by legislative instrument, arrange for the use, under the ACMA's control, of computer programs for any purposes for which the ACMA may, or must, under this Act, or under rules made under this Act:
- (a) make a decision; or
  - (b) exercise any power or comply with any obligation; or
  - (c) do anything else related to making a decision or exercising a power or complying with an obligation.
- (2) For the purposes of this Act, and any rules made under this Act, the ACMA is taken to have:
- (a) made a decision; or
  - (b) exercised a power or complied with an obligation; or
  - (c) done something else related to the making of a decision or the exercise of a power or the compliance with an obligation; that was made, exercised, complied with or done by the operation of a computer program under such an arrangement.
- (3) The ACMA may substitute a decision for a decision (the *initial decision*) made by the operation of a computer program under an arrangement under subsection (1) if the ACMA is satisfied that the initial decision is incorrect.

#### 228 Compilation etc. of information

- (1) The ACMA may:
- (a) conduct research into; and
  - (b) compile information about; and
  - (c) publish on its website, or in any other way it thinks fit, information about;
- any of the following:
- (d) allocation and use of the spectrum;
  - (e) market demand for, and prices paid for, licences;
  - (f) charges fixed by the ACMA, including any discounts or exemptions in respect of public or community services;

- 1 (g) social, economic and environmental effects of radio  
2 transmission;  
3 (h) supply of equipment;  
4 (i) offers to supply equipment;  
5 (j) manufacture of equipment;  
6 (k) operation of equipment;  
7 (l) any other matter relating to radiocommunications;  
8 (m) any other matter relating to radio emissions.
- 9 (2) Subsection (1) has effect only to the extent that it is supported by  
10 one or more of the following provisions of the Constitution:  
11 (a) paragraph 51(i);  
12 (b) paragraph 51(v);  
13 (c) paragraph 51(vi);  
14 (d) paragraph 51(vii);  
15 (e) paragraph 51(viii);  
16 (f) paragraph 51(xiii);  
17 (g) paragraph 51(xiv);  
18 (h) paragraph 51(xv);  
19 (i) paragraph 51(xx);  
20 (j) paragraph 51(xxxix), to the extent to which that paragraph  
21 relates to one or more of the above-mentioned paragraphs;  
22 (k) section 122.

## **229 Compensation for acquisition of property**

- 24 (1) If the operation of this Act, or a legislative instrument under this  
25 Act, would result in an acquisition of property (within the meaning  
26 of paragraph 51(xxxi) of the Constitution) from a person otherwise  
27 than on just terms (within the meaning of that paragraph), the  
28 Commonwealth is liable to pay a reasonable amount of  
29 compensation to the person.
- 30 (2) If the Commonwealth and the person do not agree on the amount  
31 of the compensation, the person may institute proceedings in:  
32 (a) the Federal Court; or

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 230

---

- 1 (b) the Supreme Court of a State or Territory;  
2 for the recovery from the Commonwealth of such reasonable  
3 amount of compensation as the court determines.

4 **230 Instruments under this Act may provide for matters by**  
5 **reference to other instruments**

- 6 (1) An instrument under this Act may make provision in relation to a  
7 matter by applying, adopting or incorporating (with or without  
8 modifications) provisions of any Act:  
9 (a) as in force at a particular time; or  
10 (b) as in force from time to time.
- 11 (2) An instrument under this Act may make provision in relation to a  
12 matter by applying, adopting or incorporating (with or without  
13 modifications) matter contained in any other instrument or writing  
14 whatever:  
15 (a) as in force or existing at a particular time; or  
16 (b) as in force or existing from time to time;  
17 even if the other instrument or writing does not yet exist when the  
18 instrument under this Act is made.
- 19 (3) A reference in subsection (2) to any other instrument or writing  
20 includes a reference to an instrument or writing:  
21 (a) made by any person or body in Australia or elsewhere  
22 (including, for example, the Commonwealth, a State or  
23 Territory, an officer or authority of the Commonwealth or of  
24 a State or Territory or an overseas entity); and  
25 (b) whether of a legislative, administrative or other official  
26 nature or of any other nature; and  
27 (c) whether or not having any legal force or effect;  
28 for example:  
29 (d) regulations or rules under an Act; or  
30 (e) a State Act, a law of a Territory, or regulations or any other  
31 instrument made under such an Act or law; or  
32 (f) an international technical standard or performance indicator;  
33 or

- 1 (g) a written agreement or arrangement or an instrument or  
2 writing made unilaterally.
- 3 (4) Nothing in this section limits the generality of anything else in it.
- 4 (5) Subsections (1) and (2) have effect despite anything in:
- 5 (a) the *Acts Interpretation Act 1901*; or
- 6 (b) the *Legislation Act 2003*.
- 7 (6) In this section:
- 8 *instrument under this Act* means:
- 9 (a) the legislative rules; or
- 10 (b) any other instrument made under this Act.

## 11 **231 Variation or revocation of instruments**

12 A provision of this Act that deals with the variation or revocation  
13 of an instrument does not, by implication, prevent the application  
14 of subsection 33(3) of the *Acts Interpretation Act 1901* to another  
15 instrument under this Act.

## 16 **232 No compensation for suspensions, cancellations or variations** 17 **etc.**

18 A person is not entitled to compensation from the Commonwealth  
19 solely because of:

20 (a) the suspension, cancellation or variation of a licence; or

21 (b) the deregistration of a radiocommunications device in  
22 relation to a licence; or

23 (c) the cancellation of a certificate of proficiency; or

24 (d) the withdrawal of an accreditation under section 162;

25 (e) the cancellation of a permit under the equipment rules; or

26 (f) the substitution of a decision under subsection 227(3).

# EXPOSURE DRAFT

## Part 21 Miscellaneous

### Section 233

---

1     **233 Act not to affect performance of functions by States or certain**  
2             **Territories**

3             A power conferred by or under this Act must not be exercised in  
4             such a way as to prevent the exercise of the powers, or  
5             performance of the functions, of government of a State, the  
6             Australian Capital Territory or the Northern Territory.

7     **234 Implied freedom of political communication**

8             A power conferred by or under this Act must not be exercised in  
9             such a way as to infringe any constitutional doctrine of implied  
10            freedom of political communication.

11    **235 International agreements etc.**

- 12            (1) A person or body exercising a power conferred by or under this  
13            Act (other than Part 11 or 15) must have regard to:  
14            (a) any agreement, treaty or convention that:  
15               (i) is between Australia and another country or countries;  
16               and  
17               (ii) is in force for Australia; and  
18               (iii) makes provision in relation to radio emission; and  
19            (b) any instrument or writing specified in the legislative rules.
- 20            (2) Subsection (1) does not limit the kinds of matters to which the  
21            person or body may have regard in exercising those powers.
- 22            (3) Legislative rules made for the purposes of paragraph (1)(b) may  
23            prescribe a specified instrument or writing:  
24            (a) as in force or existence at the time when the legislative rules  
25            come into effect; or  
26            (b) as amended or altered from time to time.

27    **236 Legislative rules**

- 28            (1) The Minister may, by legislative instrument, make rules  
29            (*legislative rules*) prescribing matters:
-



# EXPOSURE DRAFT

- 1 (a) required or permitted by this Act to be prescribed by the  
2 legislative rules; or  
3 (b) necessary or convenient to be prescribed for carrying out or  
4 giving effect to this Act.
- 5 (2) To avoid doubt, the legislative rules may not do the following:  
6 (a) create an offence or civil penalty;  
7 (b) provide powers of:  
8 (i) arrest or detention; or  
9 (ii) entry, search or seizure;  
10 (c) impose a tax;  
11 (d) set an amount to be appropriated from the Consolidated  
12 Revenue Fund under an appropriation in this Act;  
13 (e) directly amend the text of this Act.
- 14 (3) The legislative rules may make provision in relation to a matter by  
15 conferring a power to make a decision of an administrative  
16 character on the ACMA.
- 17 (4) The legislative rules may make provision in relation to a matter by  
18 conferring a power to make a decision of an administrative  
19 character on a person who holds a specified kind of accreditation.
- 20 (5) The legislative rules may authorise a person who holds a specified  
21 kind of accreditation to charge fees in relation to the exercise by  
22 the person of a power conferred by the legislative rules. A fee must  
23 not be such as to amount to taxation.