

EXPOSURE DRAFT

2019-2020

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020

No. , 2020

(Communications, Cyber Safety and the Arts)

**A Bill for an Act to amend the
Radiocommunications Act 1992, and for other
purposes**

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4 The Parliament of Australia enacts:

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

(1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with

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column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information

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

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
9. Schedule 6, Part 3	The later of: (a) immediately after the commencement of the provisions covered by table item 8; and (b) the commencement of the <i>Federal Circuit and Family Court of Australia Act 2020</i> . However, the provisions do not commence at all if the event mentioned in paragraph (b) does not occur.	
10. Schedule 6, Part 4	At the same time as the provisions covered by table item 2.	
11. Schedules 7 to 10	At the same time as the provisions covered by table item 2.	
1	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		
3		
4	(2)	Any information in column 3 of the table is not part of this Act.
5		Information may be inserted in this column, or information in it
6		may be edited, in any published version of this Act.
7	3 Schedules	
8	Legislation that is specified in a Schedule to this Act is amended or	
9	repealed as set out in the applicable items in the Schedule	
10	concerned, and any other item in a Schedule to this Act has effect	
11	according to its terms.	

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Schedule 1—Object

Radiocommunications Act 1992

1 Section 3

Repeal the section, substitute:

3 Object

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

- (a) facilitates the efficient planning, allocation and use of the spectrum; and
- (b) facilitates the use of the spectrum for:
 - (i) commercial purposes; and
 - (ii) non-commercial purposes (including defence, public safety and community purposes); and
- (c) supports the communications policy objectives of the Commonwealth Government.

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Policy statements and work program **Schedule 2**
Amendment of the Radiocommunications Act 1992 **Part 1**

Schedule 2—Policy statements and work program

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

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

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

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

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

2 At the end of Chapter 1

Add:

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Schedule 2 Policy statements and work program

Part 1 Amendment of the Radiocommunications Act 1992

Part 1.5—Ministerial policy statements

28A Simplified outline of this Part

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

28B Ministerial policy statements

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

28C The ACMA must have regard to Ministerial policy statements

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

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Policy statements and work program **Schedule 2**
Amendment of the Radiocommunications Act 1992 **Part 1**

Part 1.6—The ACMA’s work program

28D Simplified outline of this Part

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

28E The ACMA’s work program

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

28F Consultation

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

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Schedule 2 Policy statements and work program
Part 1 Amendment of the Radiocommunications Act 1992

- 1 (i) considered by the ACMA to be appropriate to
- 2 undertake; and
- 3 (ii) reasonably practicable to undertake.
- 4 (2) A contravention of subsection (1) does not affect the validity of the
- 5 work program.

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Policy statements and work program **Schedule 2**

Other amendments **Part 2**

Part 2—Other amendments

Australian Communications and Media Authority Act 2005

3 At the end of section 57

Add:

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

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

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Schedule 2 Policy statements and work program

Part 3 Application provisions

1 **Part 3—Application provisions**

2 **4 Application—the ACMA’s work program**

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

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

Schedule 3—Licences etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Subparagraph 4(a)(ii)

Omit “and conversion plans”.

2 Section 5 (definition of *conversion plan*)

Repeal the definition.

3 Section 5

Insert:

direct allocation has the meaning given by section 60A.

public interest statement:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

renewal application period:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

renewal application period statement:

- (a) for a spectrum licence—has the meaning given by section 65A; or
- (b) for an apparatus licence—has the meaning given by section 103A.

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

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Schedule 3 Licences etc.

Part 1 Amendment of the Radiocommunications Act 1992

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

3 *renewal statement*:

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

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

8 **4 Paragraph 29(3)(a)**

9 Repeal the paragraph.

10 **5 Part 2.2 (heading)**

11 Omit “**Conversion plans and marketing**”, substitute “**Marketing**”.

12 **6 Section 36**

13 Repeal the section.

14 **7 Section 37**

15 Omit “a conversion plan or”.

16 **8 Section 37**

17 Omit “conversion plan or” (last occurring).

18 **9 Section 38**

19 Repeal the section.

20 **10 Subsections 39(1) and (2)**

21 Repeal the subsections, substitute:

22 (1) The ACMA may, by legislative instrument, prepare a marketing
23 plan for issuing spectrum licences that authorise the operation of
24 radiocommunications devices:

25 (a) at the frequencies specified in the plan; and

26 (b) within the area or areas specified in the plan.

27 (2) If an apparatus licence authorises the operation of
28 radiocommunications devices:

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (a) at one or more frequencies; and
2 (b) within one or more areas;
3 a marketing plan does not apply to the issue of spectrum licences
4 that authorise the operation of radiocommunications devices:
5 (c) at those frequencies; and
6 (d) within those areas.

7 **11 Subsection 39(5)**

8 Repeal the subsection, substitute:

- 9 (5) In indicating the procedures to be followed for issuing spectrum
10 licences, the plan may, for example, indicate whether the licences
11 are to be allocated:
12 (a) by auction; or
13 (b) by tender; or
14 (c) by allocation for a pre-determined price or a negotiated price;
15 or
16 (d) by direct allocation; or
17 (e) by a combination of any or all of the following:
18 (i) auction;
19 (ii) tender;
20 (iii) allocation for a pre-determined price or a negotiated
21 price;
22 (iv) direct allocation.

23 **12 At the end of section 39**

24 Add:

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

29 **13 Subsection 39A(1)**

30 Repeal the subsection, substitute:

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Schedule 3 Licences etc.

Part 1 Amendment of the Radiocommunications Act 1992

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

7 **14 Subsection 39A(7)**

8 Repeal the subsection, substitute:

- 9 (7) In indicating the procedures to be followed for issuing spectrum
10 licences, the plan may, for example, indicate whether the licences
11 are to be allocated:
12 (a) by auction; or
13 (b) by tender; or
14 (c) by allocation for a pre-determined price or a negotiated price;
15 or
16 (d) by direct allocation; or
17 (e) by a combination of any or all of the following:
18 (i) auction;
19 (ii) tender;
20 (iii) allocation for a pre-determined price or a negotiated
21 price;
22 (iv) direct allocation.

23 **15 Section 41 (heading)**

24 After “**preparing**”, insert “**marketing**”.

25 **16 Subsection 41(1)**

26 Omit “a conversion plan or”.

27 **17 Subsection 41(2)**

28 Omit “38,”.

29 **18 Section 42 (heading)**

30 Before “**plans**”, insert “**marketing**”.

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 **19 Subsections 42(1) and (2)**

2 Omit “a conversion plan or”.

3 **20 Section 44**

4 Omit “a conversion plan or”.

5 **21 Paragraph 51(2)(a)**

6 Repeal the paragraph.

7 **22 Subsection 51(5)**

8 Repeal the subsection, substitute:

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

10 (5A) Division 4 is about issuing further spectrum licences (otherwise
11 than by way of renewal).

12 **23 Subdivision A of Division 1 of Part 3.2**

13 Repeal the Subdivision.

14 **24 At the end of subsection 60(1)**

15 Add:

16 ; or (d) by direct allocation; or

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

18 (i) auction;

19 (ii) tender;

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

22 (iv) direct allocation.

23 **25 Subsection 60(2)**

24 Omit “procedures for”, substitute “procedures, so far as they deal with”.

25 **26 After paragraph 60(2)(c)**

26 Insert:

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

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Part 1 Amendment of the Radiocommunications Act 1992

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

2 **27 Subsection 60(3)**

3 Omit “procedures for”, substitute “procedures, so far as they deal with”.

4 **28 After paragraph 60(3)(c)**

5 Insert:

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

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

8 **29 Subsection 60(4)**

9 Omit “procedures for”, substitute “procedures, so far as they deal with”.

10 **30 After paragraph 60(4)(b)**

11 Insert:

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

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

14 **31 Paragraphs 60(5)(a) and (b)**

15 Repeal the paragraphs, substitute:

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

18 (i) under transmitter licences; and

19 (ii) under existing spectrum licences; and

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

22 may be used by:

23 (iv) any one person; or

24 (v) a specified person; or

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

27 (i) under transmitter licences; and

28 (ii) under existing spectrum licences; and

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

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

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

3 **32 After subsection 60(7)**

4 Insert:

5 (7A) Procedures determined under subsection (1), so far as they relate to
6 direct allocation of spectrum licences, may provide for the ACMA
7 to have regard to a frequency assignment certificate issued by a
8 person who holds an accreditation of a kind specified in the
9 legislative rules, stating that the operation of a device under such a
10 licence:

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

13 (b) at a specified constancy; and

14 (c) at a specified location; and

15 (d) subject to specified technical conditions;

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

19 **33 Subsection 60(8)**

20 Omit “(6A) and (7)”, substitute “(6A), (7), (7A) and (7B)”.

21 **34 Subsection 60(9)**

22 Repeal the subsection.

23 **35 After subsection 60(13)**

24 Insert:

25 (13A) Before determining procedures under subsection (1), the ACMA
26 must consult the ACCC about whether the procedures should
27 impose limits as mentioned in subsection (5) and, if so, the nature
28 of those limits.

29 **36 After subsection 60(14)**

30 Insert:

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Schedule 3 Licences etc.

Part 1 Amendment of the Radiocommunications Act 1992

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

3 **37 At the end of section 60**

4 Add:

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

6 **38 After section 60**

7 Insert:

8 **60A Direct allocation of spectrum licences**

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

- 11 (a) a person specified in procedures determined under
12 section 60; or
13 (b) a person ascertained in accordance with procedures
14 determined under section 60.

15 **60B Restriction on allocation of spectrum licences**

16 If a spectrum licence authorises the operation of
17 radiocommunications devices:

- 18 (a) at one or more frequencies; and
19 (b) within one or more areas;

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

- 23 (c) at those frequencies; and
24 (d) within those areas.

25 **39 Subsection 65(3)**

26 Omit “15 years”, substitute “20 years”.

27 **40 After section 65**

28 Insert:

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

65A Renewal statements etc.

Renewal statement

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Schedule 3 Licences etc.

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (8) Subsection (7) does not limit paragraph (5)(c).
2 (9) A determination under subsection (5) has no effect to the extent (if
3 any) to which it is inconsistent with a renewal statement included
4 in a spectrum licence under subsection (1).

5 *Renewal application period*

- 6 (10) If a spectrum licence includes:
7 (a) a statement to the effect that the licence may be renewed at
8 the discretion of the ACMA; or
9 (b) a statement to the effect that the licence may be renewed at
10 the discretion of the ACMA so long as specified
11 circumstances exist;
12 the licence must also include a statement to the effect that a
13 specified period is the ***renewal application period*** for the licence.
14 (11) A statement mentioned in subsection (10) is to be known as a
15 ***renewal application period statement***.
16 (12) The ACMA may, by legislative instrument, determine that each
17 spectrum licence included in a specified class of spectrum licences
18 is taken to include a statement to the effect that a period
19 ascertained in accordance with the determination is the ***renewal***
20 ***application period*** for the licence.
21 (13) A renewal application period for a spectrum licence must:
22 (a) begin at a time when the licence is in force; and
23 (b) end before the licence is due to expire.
24 (14) A determination under subsection (12) has no effect to the extent
25 (if any) to which it is inconsistent with a renewal application
26 period statement included in a spectrum licence under
27 subsection (10).

28 *Renewal decision-making period*

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

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (16) A statement mentioned in subsection (15) is to be known as a
2 ***renewal decision-making period statement***.
- 3 *Public interest statement*
- 4 (17) If a spectrum licence includes:
5 (a) a statement to the effect that the licence may be renewed at
6 the discretion of the ACMA; or
7 (b) a statement to the effect that the licence may be renewed at
8 the discretion of the ACMA so long as specified
9 circumstances exist;
10 the licence may also include a statement to the effect that the
11 ACMA will not renew the licence unless the ACMA is satisfied
12 that it is in the public interest to do so.
- 13 (18) A statement mentioned in subsection (17) is to be known as a
14 ***public interest statement***.
- 15 (19) The ACMA may, by legislative instrument, determine that each
16 spectrum licence included in a specified class of spectrum licences
17 is taken to include a statement to the effect that the ACMA will not
18 renew the licence unless the ACMA is satisfied that it is in the
19 public interest to do so.
- 20 (20) A statement mentioned in subsection (19) is to be known as a
21 ***public interest statement***.
- 22 *Transitional—exceptions*
- 23 (21) Subsections (1) and (5) do not apply to a spectrum licence if:
24 (a) both:
25 (i) a marketing plan was applicable to the issue of the
26 licence; and
27 (ii) the marketing plan was prepared before the
28 commencement of this section; or
29 (b) the licence was issued as the result of an offer under repealed
30 section 56.

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Schedule 3 Licences etc.

Part 1 Amendment of the Radiocommunications Act 1992

41 Subsection 71A(3)

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

42 At the end of section 72

Add:

- (3) Subject to subsections (4), (5) and (6), the ACMA may, with the written agreement of the licensee of a spectrum licence, vary the licence by:
- (a) varying the renewal statement included in the licence; or
 - (b) omitting the renewal statement included in the licence and substituting another renewal statement; or
 - (c) varying the renewal application period statement included in the licence; or
 - (d) omitting the public interest statement included in the licence; or
 - (e) omitting the renewal decision-making period statement included in the licence; or
 - (f) varying the renewal decision-making period statement included in the licence.
- (4) If the renewal statement is varied, the statement as varied must comply with the requirements of section 65A.
- (5) If another renewal statement is substituted, the substituted renewal statement must comply with the requirements of section 65A.
- (6) If the renewal application period statement is varied, the statement as varied must comply with the requirements of section 65A.

43 After subsection 73(2) (before the note)

Insert:

- (3) Subject to subsections (4), (5) and (6), the ACMA may, by written notice given to the licensee of a spectrum licence, vary the licence by:
- (a) varying the renewal statement included in the licence; or

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (b) omitting the renewal statement included in the licence and
2 substituting another renewal statement; or
3 (c) varying the renewal application period statement included in
4 the licence; or
5 (d) omitting the public interest statement included in the licence;
6 or
7 (e) omitting the renewal decision-making period statement
8 included in the licence; or
9 (f) varying the renewal decision-making period statement
10 included in the licence.
- 11 (4) If the renewal statement is varied, the statement as varied must
12 comply with the requirements of section 65A.
- 13 (5) If another renewal statement is substituted, the substituted renewal
14 statement must comply with the requirements of section 65A.
- 15 (6) If the renewal application period statement is varied, the statement
16 as varied must comply with the requirements of section 65A.

44 After Division 3 of Part 3.2

17 Insert:
18

19 Division 3A—Renewal of spectrum licences

20 77A Applications for renewal of spectrum licences

- 21 (1) A licensee of a spectrum licence may apply to the ACMA for the
22 licence to be renewed.
- 23 (2) If there is a renewal application period for the licence, the
24 application must be made within the renewal application period.
- 25 (3) If there is no renewal application period for the licence, the
26 application must be made within the 2-year period ending when the
27 licence is due to expire.
- 28 (4) The application must:
29 (a) be made in a manner approved, in writing, by the ACMA;
30 and

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- 1 (b) be in a form approved, in writing, by the ACMA; and
2 (c) be accompanied by such information (if any) as is specified
3 in an instrument under subsection (6); and
4 (d) be accompanied by such documents (if any) as are specified
5 in an instrument under subsection (7).
- 6 (5) The ACMA may approve different forms for different applications.
- 7 (6) The ACMA may, by legislative instrument, specify information for
8 the purposes of paragraph (4)(c).
- 9 (7) The ACMA may, by legislative instrument, specify documents for
10 the purposes of paragraph (4)(d).
- 11 (8) An instrument under paragraph (4)(a) is a notifiable instrument.
- 12 (9) An approved form of application may provide for verification by
13 statutory declaration of statements in applications.

14 *Deemed applications*

- 15 (10) If:
- 16 (a) the ACMA gives a person a notice that is expressed to be a
17 licence renewal notice; and
18 (b) the notice relates to one or more spectrum licences held by
19 the person; and
20 (c) in response to the notice, the person:
21 (i) pays to the ACMA (on behalf of the Commonwealth)
22 the amount specified in the notice as the amount due;
23 and
24 (ii) does so on or before the day specified in the notice as
25 the payment due date;
- 26 then:
- 27 (d) if the notice relates to a single spectrum licence—the person
28 is taken to have made an application under subsection (1) for
29 the licence to be renewed; and
30 (e) if the notice relates to 2 or more spectrum licences—the
31 person is taken to have made separate applications under
32 subsection (1) for each of those licences to be renewed; and

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

3 **77B Further information**

- 4 (1) If an application is made for the renewal of a spectrum licence, the
5 ACMA may, by written notice given to the applicant, require the
6 applicant to give the ACMA, within the period specified in the
7 notice, further information in connection with the application.
- 8 (2) If the applicant breaches the requirement, the ACMA may, by
9 written notice given to the applicant:
- 10 (a) refuse to consider the application; or
11 (b) refuse to take any action, or any further action, in relation to
12 the application.

13 **77C Renewal of spectrum licences**

- 14 (1) When an application is made for the renewal of a spectrum licence,
15 the ACMA may, without following the procedures determined
16 under section 60, renew the licence by issuing to the applicant a
17 new spectrum licence.
- 18 (2) Subsection (1) does not imply that the ACMA must renew the
19 licence without the applicant:
- 20 (a) paying to the ACMA the spectrum access charge for issuing
21 the new spectrum licence; or
22 (b) reaching an agreement with the ACMA for payment of that
23 spectrum access charge.
- 24 (3) The ACMA must not renew the licence if the licence included a
25 renewal statement to the effect that the licence cannot be renewed.
- 26 (4) If the licence included a renewal statement to the effect that the
27 licence may be renewed at the discretion of the ACMA so long as
28 specified circumstances exist, the ACMA must not renew the
29 licence unless the ACMA is satisfied that the specified
30 circumstances exist.

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- 1 (5) The ACMA must not renew the licence by issuing a new spectrum
2 licence that specifies a period for the purposes of subsection 65(2)
3 that is 10 years or longer unless the ACMA is satisfied that it is in
4 the public interest to do so.
- 5 (6) If the licence included a public interest statement, the ACMA must
6 not renew the licence unless the ACMA is satisfied that it is in the
7 public interest to do so.
- 8 (7) In deciding whether to renew the licence, the ACMA must have
9 regard to:
10 (a) all matters that it considers relevant; and
11 (b) without limiting paragraph (a), the effect on
12 radiocommunications of the proposed operation of the
13 radiocommunications devices that would be authorised under
14 the new spectrum licence.
- 15 (8) In deciding whether to renew the licence, the ACMA may have
16 regard to the following matters:
17 (a) whether the applicant has an outstanding liability to pay an
18 amount of:
19 (i) apparatus licence tax; or
20 (ii) spectrum licence tax; or
21 (iii) spectrum access charge; or
22 (iv) interim tax;
23 (b) whether:
24 (i) the applicant; or
25 (ii) a person authorised by the applicant under section 68 in
26 relation to the licence;
27 has contravened a condition of the licence;
28 (c) whether the applicant held another licence that was cancelled
29 during the previous 2 years (otherwise than under section 87,
30 128B, 153H or 307).
- 31 (9) The new spectrum licence comes into force, or is taken to have
32 come into force, immediately after the expiration of the licence that
33 it replaces.
-

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

3 **77D Notice of refusal to renew spectrum licence etc.**

- 4 (1) If the ACMA:
5 (a) refuses to renew a spectrum licence; or
6 (b) renews a spectrum licence but not on the same conditions;
7 the ACMA must give the licensee a written notice stating that fact.

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

- 10 (2) The notice under subsection (1) must state that:
11 (a) the licensee may request a statement of reasons for the
12 decision; and
13 (b) a request must be made within 28 days of receipt of the
14 notice.
- 15 (3) A person receiving a notice under subsection (1) may request a
16 statement of reasons for the decision within 28 days of receiving
17 the notice.
- 18 (4) If the ACMA receives a request in accordance with subsection (3),
19 it must give the person a statement of reasons within 28 days of
20 receipt of the request.

21 **77E Application of other provisions**

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

25 **45 Division 4 of Part 3.2 (heading)**

26 Repeal the heading, substitute:

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

3 **46 Section 78 (heading)**

4 Repeal the heading, substitute:

5 **78 Notice of spectrum licences that are about to expire**

6 **47 Section 79 (heading)**

7 Repeal the heading, substitute:

8 **79 Preparation of draft further spectrum licences**

9 **48 Section 80**

10 Before “The”, insert “(1)”.

11 **49 At the end of section 80**

12 Add:

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

17 **50 Section 81 (heading)**

18 Repeal the heading, substitute:

19 **81 Issue of further spectrum licences**

20 **51 Section 82**

21 Repeal the section.

22 **52 Subsection 96(2)**

23 Omit “types”, substitute “kinds”.

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1 **53 Division 1 of Part 3.3 (heading)**

2 Omit “**Types**”, substitute “**Kinds**”.

3 **54 Subsections 97(2) and (3)**

4 Repeal the subsections, substitute:

5 (2) A transmitter licence authorises:

- 6 (a) the person specified in the licence as the licensee; and
7 (b) subject to Division 4, any person authorised by that person
8 under section 114;

9 to operate:

- 10 (c) specified radiocommunications transmitters; or
11 (d) radiocommunications transmitters of a specified kind; or
12 (e) if neither paragraph (c) nor (d) applies—
13 radiocommunications transmitters of any kind.

14 (3) A receiver licence authorises:

- 15 (a) the person specified in the licence as the licensee; and
16 (b) subject to Division 4, any person authorised by that person
17 under section 114;

18 to operate:

- 19 (c) specified radiocommunications receivers; or
20 (d) radiocommunications receivers of a specified kind; or
21 (e) if neither paragraph (c) nor (d) applies—
22 radiocommunications receivers of any kind.

23 **55 Subsection 98(2)**

24 Repeal the subsection, substitute:

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

28 **56 Subsection 99(1)**

29 Omit “in writing”.

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1 **57 Subsection 99(1)**

2 Omit “of the type specified in the application”.

3 **58 After subsection 99(1)**

4 Insert:

5 (1A) The application must be made in a manner approved, in writing, by
6 the ACMA.

7 **59 Subsection 99(2)**

8 After “approved”, insert “, in writing,”.

9 **60 Subsection 99(3)**

10 Repeal the subsection, substitute:

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

12 **61 At the end of section 99**

13 Add:

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

15 **62 Subsection 100(1)**

16 Omit “of the type applied for”.

17 **63 Before subsection 100(5)**

18 Insert:

19 (4C) In deciding whether to issue an apparatus licence, the ACMA may
20 also have regard to the aggregate of the parts of the spectrum that,
21 under transmitter licences or spectrum licences, may be used by the
22 applicant.

23 **64 Subsection 103(3)**

24 Omit “5 years”, substitute “20 years”.

25 **65 After section 103**

26 Insert:

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103A Renewal statements etc.

Renewal statement

- (1) An apparatus licence issued after the commencement of this section may include:
 - (a) a statement to the effect that the licence cannot be renewed;
or
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.
- (2) A statement mentioned in paragraph (1)(a) or (b) is to be known as a ***renewal statement***.
- (3) Circumstances specified under paragraph (1)(b) may be an act or omission by the ACMA.
- (4) Subsection (3) does not limit paragraph (1)(b).
- (5) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include one of the following statements:
 - (a) a statement to the effect that the licence cannot be renewed;
 - (b) a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist.
- (6) A statement mentioned in paragraph (5)(a) or (b) is to be known as a ***renewal statement***.
- (7) Circumstances specified under paragraph (5)(b) may be an act or omission by the ACMA.
- (8) Subsection (7) does not limit paragraph (5)(b).
- (9) A determination under subsection (5) has no effect to the extent (if any) to which it is inconsistent with a renewal statement included in an apparatus licence under subsection (1).

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Renewal application period

- (10) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence must also include a statement to the effect that a specified period is the ***renewal application period*** for the licence.
- (11) A statement mentioned in subsection (10) is to be known as a ***renewal application period statement***.
- (12) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that a period ascertained in accordance with the determination is the ***renewal application period*** for the licence.
- (13) A renewal application period for an apparatus licence must:
- (a) begin at a time when the licence is in force; and
 - (b) end not later than 60 days after the licence is due to expire.
- (14) A determination under subsection (12) has no effect to the extent (if any) to which it is inconsistent with a renewal application period statement included in an apparatus licence under subsection (10).

Public interest statement

- (15) If an apparatus licence includes a statement to the effect that the licence may be renewed at the discretion of the ACMA so long as specified circumstances exist, the licence may also include a statement to the effect that the ACMA will not renew the licence unless the ACMA is satisfied that it is in the public interest to do so.
- (16) A statement mentioned in subsection (15) is to be known as a ***public interest statement***.
- (17) The ACMA may, by legislative instrument, determine that each apparatus licence included in a specified class of apparatus licences is taken to include a statement to the effect that the ACMA will not

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1 renew the licence unless the ACMA is satisfied that it is in the
2 public interest to do so.

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

5 *Exceptions*

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

9 **103B Variation of renewal statements etc. with agreement**

10 (1) Subject to subsections (2), (3) and (4), the ACMA may, with the
11 written agreement of the licensee of an apparatus licence, vary the
12 licence by:

- 13 (a) varying the renewal statement included in the licence; or
14 (b) omitting the renewal statement included in the licence and
15 substituting another renewal statement; or
16 (c) omitting the renewal statement included in the licence; or
17 (d) including a renewal statement in the licence; or
18 (e) varying the renewal application period statement included in
19 the licence; or
20 (f) including a renewal application period statement in the
21 licence; or
22 (g) omitting the public interest statement included in the licence.

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

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

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

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

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

3 **103C Variation of renewal statements etc. without agreement**

- 4 (1) Subject to subsections (2), (3) and (4), the ACMA may, by written
5 notice given to the licensee of an apparatus licence, vary the
6 licence by:
7 (a) varying the renewal statement included in the licence; or
8 (b) omitting the renewal statement included in the licence and
9 substituting another renewal statement; or
10 (c) omitting the renewal statement included in the licence; or
11 (d) including a renewal statement in the licence; or
12 (e) varying the renewal application period statement included in
13 the licence; or
14 (f) including a renewal application period statement in the
15 licence; or
16 (g) omitting the public interest statement included in the licence.
- 17 (2) If the renewal statement is varied, the statement as varied must
18 comply with the requirements of section 103A.
- 19 (3) If another renewal statement is substituted, the substituted renewal
20 statement must comply with the requirements of section 103A.
- 21 (4) If a renewal statement is included in the licence, the statement must
22 comply with the requirements of section 103A.
- 23 (5) If the renewal application period statement is varied, the statement
24 as varied must comply with the requirements of section 103A.
- 25 (6) If a renewal application period statement is included in the licence,
26 the statement must comply with the requirements of section 103A.

27 **66 Section 105**

28 Repeal the section, substitute:

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105 Restrictions on issuing apparatus licences

- (1) Subject to subsection (3), if a spectrum licence authorises the operation of radiocommunications devices:
- (a) at one or more frequencies; and
 - (b) within one or more areas;
- the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
- (c) at those frequencies; and
 - (d) within those areas.
- (2) Subject to subsection (3), if a marketing plan is in force in relation to the issue of a spectrum licence that authorises the operation of radiocommunications devices:
- (a) at one or more frequencies; and
 - (b) within one or more areas;
- the ACMA must not issue an apparatus licence that authorises the operation of radiocommunications devices:
- (c) at those frequencies; and
 - (d) within those areas.
- (3) The ACMA may issue an apparatus licence mentioned in subsection (1) or (2):
- (a) to a body or person covered by any of paragraphs 27(1)(b) to (be) for the purpose of investigations or operations conducted by the body or person; or
 - (b) if it is satisfied that the special circumstances of the particular case justify the issuing of the licence.

105A Notice of apparatus licences that are about to expire

The ACMA may publish on its website a notice that:

- (a) states where information may be obtained about:
 - (i) the apparatus licences that are included in a specified class and that will expire during a specified period; and
 - (ii) the parts of the spectrum to which the licences relate; and

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

4 **67 After paragraph 106(2)(b)**

5 Insert:

- 6 (ba) may provide for eligibility requirements (if any) for
7 prospective licensees; and
8 (bb) may provide for credits (if any) for prospective licensees; and

9 **68 Subsections 106(3) and (4)**

10 Repeal the subsections, substitute:

11 (3) A system so determined may:

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

14 (i) under spectrum licences; and

15 (ii) under existing transmitter licences; and

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

18 may be used by:

19 (iv) any one person; or

20 (v) a specified person; or

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

23 (i) under spectrum licences; and

24 (ii) under existing transmitter licences; and

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

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

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

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

33 (a) a specified part of the spectrum;

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- 1 (b) a specified area;
2 (c) a specified population reach.
3 For example, a system might specify an aggregate limit of 15 MHz
4 per person in the band between 1800 MHz and 1900 MHz
5 (inclusive) for a particular area. This subsection does not, by
6 implication, limit subsection (3).
7 (4A) A system that imposes limits as mentioned in subsection (3) may
8 impose limits of nil in relation to specified persons or to the
9 members of specified groups of persons.

10 **69 Subsection 106(8)**

11 Repeal the subsection.

12 **70 Subsection 106(11)**

13 After “with”, insert “any”.

14 **71 After subsection 106(11)**

15 Insert:

- 16 (11A) Before determining a price-based allocation system under
17 subsection (1), the ACMA must consult the ACCC about whether
18 the system should impose limits as mentioned in subsection (3)
19 and, if so, the nature of those limits.

20 **72 After subsection 106(12)**

21 Insert:

- 22 (12A) A price-based allocation system determined under subsection (1)
23 may confer a power to make a decision of an administrative
24 character on the ACMA.

25 **73 At the end of section 106**

26 Add:

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

28 **74 Section 129**

29 Repeal the section, substitute:

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129 Applications for renewal of apparatus licences

- (1) A licensee of an apparatus licence (other than a transmitter licence issued under section 101A or 102 or a non-foundation digital radio multiplex transmitter licence) may apply to the ACMA for the licence to be renewed.
- (2) If there is a renewal application period for the licence, the application must be made within the renewal application period.
- (3) If there is no renewal application period for the licence, the application must be made within the period:
 - (a) beginning 6 months before the licence is due to expire; and
 - (b) ending 60 days after the licence expires.
- (4) The application must:
 - (a) be made in a manner approved, in writing, by the ACMA; and
 - (b) be in a form approved, in writing, by the ACMA; and
 - (c) be accompanied by such information (if any) as is specified in an instrument under subsection (6); and
 - (d) be accompanied by such documents (if any) as are specified in an instrument under subsection (7).
- (5) The ACMA may approve different forms for different applications.
- (6) The ACMA may, by legislative instrument, specify information for the purposes of paragraph (4)(c).
- (7) The ACMA may, by legislative instrument, specify documents for the purposes of paragraph (4)(d).
- (8) An instrument under paragraph (4)(a) is a notifiable instrument.
- (9) An approved form of application may provide for verification by statutory declaration of statements in applications.

Deemed applications

- (10) If:

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- 1 (a) the ACMA gives a person a notice that is expressed to be a
2 licence renewal notice; and
3 (b) the notice relates to one or more apparatus licences held by
4 the person; and
5 (c) in response to the notice, the person:
6 (i) pays to the ACMA (on behalf of the Commonwealth)
7 the amount specified in the notice as the amount due;
8 and
9 (ii) does so on or before the day specified in the notice as
10 the payment due date;
11 then:
12 (d) if the notice relates to a single apparatus licence—the person
13 is taken to have made an application under subsection (1) for
14 the licence to be renewed; and
15 (e) if the notice relates to 2 or more apparatus licences—the
16 person is taken to have made separate applications under
17 subsection (1) for each of those licences to be renewed; and
18 (f) subsection (4) does not apply to that application or those
19 applications, as the case requires.

20 **129A Further information**

- 21 (1) If an application is made for the renewal of an apparatus licence,
22 the ACMA may, by written notice given to the applicant, require
23 the applicant to give the ACMA, within the period specified in the
24 notice, further information in connection with the application.
25 (2) If the applicant breaches the requirement, the ACMA may, by
26 written notice given to the applicant:
27 (a) refuse to consider the application; or
28 (b) refuse to take any action, or any further action, in relation to
29 the application.

30 **75 Subsection 130(1)**

31 After “made”, insert “for the renewal of an apparatus licence”.

32 **76 After subsection 130(2B)**

33 Insert:

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1 (2C) The ACMA must not renew the licence if the licence included a
2 renewal statement to the effect that the licence cannot be renewed.

3 (2D) If the licence included a renewal statement to the effect that the
4 licence may be renewed at the discretion of the ACMA so long as
5 specified circumstances exist, the ACMA must not renew the
6 licence unless the ACMA is satisfied that the specified
7 circumstances exist.

8 (2E) The ACMA must not renew the licence by issuing a new apparatus
9 licence that specifies a period for the purposes of subsection 103(2)
10 that is 10 years or longer unless the ACMA is satisfied that it is in
11 the public interest to do so.

12 (2F) If the licence included a public interest statement, the ACMA must
13 not renew the licence unless the ACMA is satisfied that it is in the
14 public interest to do so.

15 **77 Paragraph 130(3)(b)**

16 Omit “subsection 100(5)”, substitute “subsections 100(4C) and (5)”.

17 **78 After subsection 130(3)**

18 Insert:

19 (3A) In deciding whether to renew the licence, the ACMA may have
20 regard to the following matters:

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

23 (i) apparatus licence tax; or

24 (ii) spectrum licence tax; or

25 (iii) spectrum access charge; or

26 (iv) interim tax;

27 (b) whether:

28 (i) the applicant; or

29 (ii) a person authorised by the applicant under section 114
30 in relation to the licence;

31 has contravened a condition of the licence;

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- 1 (c) whether the applicant held another licence that was cancelled
2 during the previous 2 years (otherwise than under section 87,
3 128B, 153H or 307).

4 **79 Subsection 131AA(3)**

5 Repeal the subsection, substitute:

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

7 **80 Subsection 138(1)**

8 Repeal the subsection, substitute:

- 9 (1) If a spectrum licence authorises the operation of
10 radiocommunications devices:
11 (a) at one or more frequencies; and
12 (b) within one or more areas;
13 the ACMA must not issue a class licence that authorises the
14 operation of radiocommunications devices:
15 (c) at those frequencies; and
16 (d) within those areas;
17 unless subsection (2) is satisfied.
- 18 (1A) If a marketing plan is in force in relation to the issue of a spectrum
19 licence that authorises the operation of radiocommunications
20 devices:
21 (a) at one or more frequencies; and
22 (b) within one or more areas;
23 the ACMA must not issue a class licence that authorises the
24 operation of radiocommunications devices:
25 (c) at those frequencies; and
26 (d) within those areas;
27 unless subsection (2) is satisfied.

28 **81 Subsection 138(2)**

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

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1 **82 Subsection 153A(2)**

2 Omit “Minister”, substitute “ACMA”.

3 **83 At the end of subsection 153A(3)**

4 Add:

5 ; or (c) by a combination of:

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

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

10 **84 Subsection 153B(1)**

11 Omit “Minister”, substitute “ACMA”.

12 **85 Subsection 153B(4)**

13 Repeal the subsection, substitute:

14 (4) The re-allocation period must:

15 (a) begin at a time specified in the declaration; and

16 (b) run for at least 12 months.

17 (4A) The re-allocation period must not begin before the commencement
18 of the declaration.

19 **86 Subsection 153B(5)**

20 Omit “That time must be at least 12 months before the end of the
21 re-allocation period.”, substitute “That time must not be later than the
22 end of the re-allocation period.”.

23 **87 At the end of subsection 153B(6)**

24 Add:

25 ; or (c) by a combination of:

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

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

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Licences etc. **Schedule 3**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 **88 At the end of section 153B**

2 Add:

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

4 **89 Section 153C**

5 Repeal the section.

6 **90 Sections 153E, 153F and 153G**

7 Repeal the sections.

8 **91 Subsections 153J(1) and (2)**

9 Omit “Minister”, substitute “ACMA”.

10 **92 After subsection 153J(2)**

11 Insert:

12 (2A) Subsection (2) does not prevent the ACMA from varying a
13 spectrum re-allocation declaration if the ACMA considers that
14 there are exceptional circumstances that warrant the variation.

15 **93 Subsection 153J(4)**

16 Repeal the subsection, substitute:

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

20 **94 Subsection 153K(5)**

21 Omit “Minister’s”, substitute “ACMA’s”.

22 **95 Subsection 153L(1)**

23 Repeal the subsection, substitute:

24 (1) This section applies if a spectrum re-allocation declaration states
25 that a part or parts of the spectrum should be re-allocated:

26 (a) by issuing spectrum licences; or

27 (b) by a combination of:

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- 1 (i) issuing spectrum licences; and
2 (ii) issuing apparatus licences.

3 **96 Subsection 153L(2)**

4 After “The”, insert “spectrum”.

5 **97 Subsection 153M(1)**

6 Repeal the subsection, substitute:

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

13 **98 Subsection 153M(2)**

14 After “The”, insert “apparatus”.

15 **99 Subsection 153N(1)**

16 Omit “Minister”, substitute “ACMA”.

17 **100 Subsection 153P(3)**

18 Repeal the subsection.

19 **101 Paragraph 285(d)**

20 Repeal the paragraph, substitute:

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

23 **102 Before paragraph 285(f)**

24 Insert:

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

26 **103 Subsection 286(1)**

27 After “this Act”, insert “(other than section 77A)”.

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Licences etc. **Schedule 3**
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1 **104 After paragraph 286(1)(a)**

2 Insert:

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

9 **105 Paragraph 286(1)(b)**

10 Omit “if”, substitute “in the case of an application not made under
11 section 129 where”.

12 **106 Subsection 286(2)**

13 After “application”, insert “mentioned in subsection (1)”.

14 **107 At the end of section 286**

15 Add:

- 16 (3) If a renewal decision-making period statement is included in a
17 spectrum licence, the ACMA must make a decision under section
18 77C in response to an application for the renewal of the spectrum
19 licence:
20 (a) before the end of the renewal decision-making period
21 specified in the statement; or
22 (b) if the ACMA has, within that period, given the applicant a
23 notice under section 77B requiring the applicant to give the
24 ACMA further information in connection with the
25 application—within that period, as extended by one day for
26 each day in the period:
27 (i) beginning when the notice was given; and
28 (ii) ending when that further information was received.
- 29 (4) The ACMA is taken, for the purposes of this Part, to have made a
30 decision to refuse the application mentioned in subsection (3) if the
31 ACMA has not informed the applicant of its decision before the
32 end of the period within which the ACMA was required, under that
33 subsection, to make the decision.

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- 1 (5) If a renewal decision-making period statement is not included in a
2 spectrum licence, the ACMA must make a decision under section
3 77C in response to an application for the renewal of the spectrum
4 licence:
5 (a) within 6 months after receiving the application; or
6 (b) if the ACMA has, within that 6 months, given the applicant a
7 notice under section 77B requiring the applicant to give the
8 ACMA further information in connection with the
9 application—within 6 months after receiving that further
10 information.
- 11 (6) The ACMA is taken, for the purposes of this Part, to have made a
12 decision to refuse the application mentioned in subsection (5) if the
13 ACMA has not informed the applicant of its decision before the
14 end of the relevant period of 6 months.

108 Section 304

Repeal the section, substitute:

304 Applications in electronic form

- 18 (1) If a provision of this Act provides that an application must be made
19 in a manner approved, in writing, by the ACMA, a manner
20 approved by the ACMA may have the effect of requiring an
21 application to be in an electronic form (for example, requiring an
22 application to be made using an online system).
- 23 (2) Subsection (1) has effect despite anything in the *Electronic*
24 *Transactions Act 1999*.

304A Service of notices and instruments by electronic means

- 26 Paragraphs 9(1)(d) and (2)(d) of the *Electronic Transactions Act*
27 *1999* do not apply to a notice or instrument under:
28 (a) this Act; or
29 (b) a legislative instrument made under this Act; or
30 (c) the Regulatory Powers Act, so far as that Act relates to this
31 Act.

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Licences etc. **Schedule 3**

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- 1
- 2
- 3

Note:

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

No. , 2020

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Schedule 3 Licences etc.

Part 2 Application and transitional provisions

Part 2—Application and transitional provisions

109 Transitional—marketing plans

Scope

- (1) This item applies to a marketing plan if:
- (a) the plan was in force immediately before the commencement of this item; and
 - (b) the plan was prepared under subsection 39(1) of the *Radiocommunications Act 1992*.

Effect of plan

- (2) The plan has effect, after the commencement of this item, as if:
- (a) it had been prepared under subsection 39(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the preparation of the plan (including a requirement about the form of words) had been satisfied; and
 - (c) a reference in the plan to a particular notice under subsection 36(1) of the *Radiocommunications Act 1992* were a reference to the notice as in force immediately before the commencement of this item.

Sunsetting

- (3) Section 50 of the *Legislation Act 2003* has effect as if the plan had been registered (within the meaning of that Act) immediately after the commencement of this item.

1 **110 Transitional—paragraphs 60(5)(a) and (b) of the**
2 ***Radiocommunications Act 1992***

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

8 **111 Transitional—spectrum licences issued under**
9 **Subdivision A of Division 1 of Part 3.2 of the**
10 ***Radiocommunications Act 1992***

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

15 **112 Transitional—issuing spectrum licences under**
16 **Subdivision A of Division 1 of Part 3.2 of the**
17 ***Radiocommunications Act 1992***

18 *Scope*

- 19 (1) This item applies if, before the commencement of this item:
- 20 (a) the ACMA gave the licensee of an apparatus licence an offer
21 to issue a spectrum licence to replace the apparatus licence;
22 and
 - 23 (b) the offer was given under section 56 of the
24 *Radiocommunications Act 1992*; and
 - 25 (c) the spectrum licence was not issued under Subdivision A of
26 Division 1 of Part 3.2 of the *Radiocommunications Act 1992*
27 before the commencement of this item.

28 *Issuing spectrum licences etc.*

- 29 (2) Despite the repeal of Subdivision A of Division 1 of Part 3.2 of the
30 *Radiocommunications Act 1992* by this Schedule, that Subdivision
31 (other than subsection 59(1)) continues to apply, in relation to:
- 32 (a) any acceptance, or non-acceptance, of the offer by the
33 licensee; and

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Schedule 3 Licences etc.

Part 2 Application and transitional provisions

- 1 (b) the issue of the spectrum licence in response to any
2 acceptance of the offer by the licensee; and
3 (c) the allocation and issue of the spectrum licence as a
4 consequence of any non-acceptance of the offer by the
5 licensee;

6 as if that repeal had not happened.

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

10 **113 Transitional—subsection 71A(3) of the**
11 ***Radiocommunications Act 1992***

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

17 **114 Transitional—spectrum licences re-issued under**
18 **section 82 of the *Radiocommunications Act 1992***

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

23 **115 Application—section 99 of the *Radiocommunications Act***
24 ***1992***

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

28 **116 Transitional—subsection 99(2) of the**
29 ***Radiocommunications Act 1992***

30 The amendment of subsection 99(2) of the *Radiocommunications Act*
31 *1992* made by this Schedule does not affect the continuity of a written
32 approval that was:

- 1 (a) in force immediately before the commencement of this item;
2 and
3 (b) given under that subsection.

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

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

11 **118 Transitional—section 129 of the *Radiocommunications***
12 ***Act 1992***

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

17 **119 Application—section 131AA of the**
18 ***Radiocommunications Act 1992***

19 The amendment of section 131AA of the *Radiocommunications Act*
20 *1992* made by this Schedule applies in relation to an application made
21 after the commencement of this item.

22 **120 Transitional—spectrum re-allocation declarations**

23 *Scope*

- 24 (1) This item applies to a spectrum re-allocation declaration if:
25 (a) the declaration was in force immediately before the
26 commencement of this item; and
27 (b) the declaration was made under subsection 153B(1) of the
28 *Radiocommunications Act 1992*.

29 *Effect of declaration*

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

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Part 2 Application and transitional provisions

- (a) it had been made by the ACMA under subsection 153B(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
- (b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the declaration (including a requirement about the form of words) had been satisfied.

8 *Sunsetting*

- 9 (3) Section 50 of the *Legislation Act 2003* has effect as if the declaration
10 had been registered (within the meaning of that Act) immediately after
11 the commencement of this item.

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Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

Schedule 4—Equipment etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Subparagraph 4(d)(i)

Omit “standards”, substitute “equipment rules”.

2 Section 5 (definition of *apply*)

Repeal the definition.

3 Section 5

Insert:

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

4 Section 5 (definition of *device*)

Repeal the definition, substitute:

device means an item of equipment.

5 Section 5 (definition of *EMC standard*)

Repeal the definition.

6 Section 5

Insert:

equipment means:

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

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

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

3 *equipment rules* means rules made under section 156.

4 **7 Section 5 (definition of *interference*)**

5 Repeal the definition, substitute:

6 *interference* means:

- 7 (a) in relation to radiocommunications—interference to, or with,
8 radiocommunications that is attributable, whether wholly or
9 partly and whether directly or indirectly, to an emission of
10 electromagnetic energy by equipment; or
11 (b) in relation to the uses or functions of equipment—
12 interference to, or with, those uses or functions that is
13 attributable, whether wholly or partly and whether directly or
14 indirectly, to an emission of electromagnetic energy by
15 equipment.

16 **8 Section 5**

17 Insert:

18 *interim ban* has the meaning given by section 167.

19 **9 Section 5 (definition of *label*)**

20 Repeal the definition, substitute:

21 *label* includes:

- 22 (a) a statement; and
23 (b) a QR code, or a similar thing, if the relevant link is to
24 information on a website.

25 **10 Section 5**

26 Repeal the following definitions:

- 27 (a) definition of *non-standard device*;
28 (b) definition of *non-standard transmitter*.

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Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

11 Section 5

Insert:

offer to supply includes:

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

operate:

- (a) when used in relation to:
 - (i) a radiocommunications transmitter; or
 - (ii) a radiocommunications receiver; or
 - (iii) a radiocommunications device; or
 - (iv) a transmitter that is a radiocommunications transmitter;
or
 - (v) equipment that is a radiocommunications transmitter; or
 - (vi) equipment that is a radiocommunications receiver;
means operate for the purposes of, or in connection with,
radiocommunications; or
- (b) when used in relation to a transmitter that is not a
radiocommunications transmitter—means operate (within the
ordinary meaning of that expression); or
- (c) when used in relation to equipment that is neither a
radiocommunications transmitter nor a radiocommunications
receiver—means operate (within the ordinary meaning of that
expression).

12 Section 5

Insert:

permanent ban has the meaning given by section 172.

13 Section 5 (definition of *permit*)

Repeal the definition, substitute:

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

1 *permit* means a permit issued by the ACMA under the equipment
2 rules.

3 **14 Section 5**

4 Insert:

5 *protected symbol* has the meaning given by section 166.

6 **15 Section 5**

7 Insert:

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

10 **16 Section 5 (definition of *Register*)**

11 Omit “, except in section 183,”.

12 **17 Section 5 (definition of *standard*)**

13 Repeal the definition.

14 **18 Subsection 6(2)**

15 Omit “a radar device”, substitute “radar equipment”.

16 **19 After section 7**

17 Insert:

18 **7A Designated radiocommunications receiver**

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

23 **20 Sections 9 and 9A**

24 Repeal the sections, substitute:

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Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

9 Application of labels

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

- (a) the label is affixed to the thing; or
- (b) the label is woven in, impressed on, worked into or annexed to the thing; or
- (c) the label is affixed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or
- (d) the label is woven in, impressed on, worked into or annexed to a container, covering, package, case, box or other thing in or with which the first-mentioned thing is, or is to be, supplied; or
- (e) the label is affixed to, or incorporated in, an instruction or other document that accompanies the first-mentioned thing.

21 Paragraph 107(1)(d)

After “it”, insert “under the equipment rules”.

22 Paragraph 133(2)(e)

After “it”, insert “under the equipment rules”.

23 Subsection 154(2)

Repeal the subsection, substitute:

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

24 Part 4.1

Repeal the Part, substitute:

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

Part 4.1—Equipment

Division 1—Introduction

155 Simplified outline of this Part

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

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Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

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

Division 2—Equipment rules

156 Equipment rules

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

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

1 (j) an objective that is incidental or ancillary to any of the above
2 objectives.

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

7 **157 Constitutional limits**

8 The equipment rules may only be made to the extent that they are
9 supported by one or more of the following provisions of the
10 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(xxix);
- 21 (k) paragraph 51(xxxix);
- 22 (l) section 52;
- 23 (m) section 122.

24 **158 Standards**

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

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Equipment etc. **Schedule 4**
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1 (4) This section does not, by implication, limit subsection 156(1).

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

3 **159 Obligations, prohibitions and permits**

4 *Obligations and prohibitions*

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

7 (2) The equipment rules may impose obligations:

- 8 (a) to ensure that quality assurance programs in relation to
9 equipment are conducted; or
10 (b) to ensure that tests in relation to equipment are conducted; or
11 (c) to ensure that labels are applied to equipment; or
12 (d) to ensure that records are kept or retained; or
13 (e) to ensure that a thing specified in the legislative rules is done.

14 (3) The equipment rules may impose obligations or prohibitions that
15 relate to:

- 16 (a) the operation of equipment; or
17 (b) the supply of equipment; or
18 (c) offers to supply equipment; or
19 (d) the possession of equipment; or
20 (e) the import of equipment.

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

24 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
25 *2003*.

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

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (6) If the equipment rules impose an obligation on a person to cause a
2 thing to be done, the equipment rules may require that the thing be
3 done by another person who:
4 (a) satisfies the conditions specified in the equipment rules; and
5 (b) is approved, in writing, by a person holding an accreditation
6 of a specified kind.
- 7 (7) If the equipment rules impose an obligation on a person to cause a
8 thing to be done, the equipment rules may require that the thing be
9 done by another person who is approved, in writing, by a person
10 holding an accreditation of a specified kind.
- 11 (8) The equipment rules may prohibit a person from:
12 (a) supplying; or
13 (b) offering to supply;
14 a specified kind of equipment unless the person satisfies one or
15 more specified conditions.
- 16 (9) The equipment rules may require that, if:
17 (a) the supply of equipment to a person; or
18 (b) an offer to supply equipment to a person;
19 involves the person accessing the supplier's website, the supplier
20 must ensure that, before the equipment is supplied to the person,
21 the person's attention is drawn to material that:
22 (c) is on the website; and
23 (d) complies with specified requirements.
- 24 (10) The equipment rules may prohibit a person from applying a
25 specified kind of label to equipment unless the person does so in
26 specified circumstances.
- 27 (11) The equipment rules may prohibit a person who supplies, or offers
28 to supply, equipment from publishing a specified kind of material
29 about the equipment on the person's website unless the person does
30 so in specified circumstances.
- 31 (12) The equipment rules may prohibit a person from doing an act or
32 thing specified in the legislative rules.
-

EXPOSURE DRAFT

Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

Permits

- (13) The equipment rules may prohibit the doing of an act or thing by a person unless:
- (a) the person holds a permit issued by the ACMA under the equipment rules; and
 - (b) the permit authorises the person to do that act or thing.
- (14) An act or thing is not authorised by a permit if it is not in accordance with the conditions of the permit.
- (15) The equipment rules may make provision for:
- (a) the issue of permits by the ACMA; and
 - (b) the inclusion by the ACMA of conditions in a permit; and
 - (c) the cancellation of permits by the ACMA.

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

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

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

- (16) The equipment rules may make provision for ACMA to vary a permit by:
- (a) including one or more further conditions; or
 - (b) varying any conditions of the permit; or
 - (c) revoking any conditions of the permit.

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

Other matters

- (17) Subsections (2) to (16) do not limit subsection (1).
- (18) Subsections (2) to (16) do not limit each other.
- (19) This section does not, by implication, limit subsection 156(1).
- (20) This section has effect subject to subsection 156(3).

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160 Breach of equipment rules and permit conditions

Offence

(1) A person commits an offence if:

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

Penalty: 500 penalty units.

(2) A person commits an offence if:

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

Penalty: 500 penalty units.

(3) A person commits an offence if:

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

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- 1 (d) the obligation is not an obligation to comply with a condition
2 of a permit; and
3 (e) the person engages in conduct; and
4 (f) the person's conduct contravenes the obligation.

5 Penalty: 500 penalty units.

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

9 *Civil penalties*

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

16 Civil penalty: 500 penalty units.

- 17 (6) If:
18 (a) a person is subject to an obligation imposed by the equipment
19 rules; and
20 (b) the obligation is not an obligation to do an act or thing:
21 (i) within a particular period; or
22 (ii) before a particular time; and
23 (c) the obligation is not an obligation to keep or retain records;
24 and
25 (d) the obligation is not an obligation to comply with a condition
26 of a permit;
27 the person must not contravene the obligation.

28 Civil penalty: 500 penalty units.

- 29 (7) If:
30 (a) a person is subject to an obligation imposed by the equipment
31 rules; and

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- 1 (b) the obligation is an obligation to do an act or thing:
2 (i) within a particular period; or
3 (ii) before a particular time; and
4 (c) the obligation is not an obligation to keep or retain records;
5 and
6 (d) the obligation is not an obligation to comply with a condition
7 of a permit;
8 the person must not contravene the obligation.

9 Civil penalty: 500 penalty units.

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

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

- 15 (9) If:

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

18 (b) the obligation is an obligation to keep or retain records;
19 the person must not contravene the obligation.

20 Civil penalty: 30 penalty units.

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

23 Civil penalty: 100 penalty units.

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

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

28 **161 Equipment rules may confer powers on the ACMA**

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

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162 Equipment rules may confer powers on accredited persons

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

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

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

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

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

Division 3—Protected symbols

165 Use or application of protected symbols

General prohibition

- (1) A person must not:
 - (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

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- 1 (ii) the promotion (by any means) of the supply or use of
2 goods or services;
3 a protected symbol, or a symbol so closely resembling a protected
4 symbol as to be likely to be mistaken for it.

5 Civil penalty: 50 penalty units.

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

7 *Use or application—corporations power*

- 8 (3) A constitutional corporation must not:

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

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

14 (c) use in relation to:

15 (i) goods or services; or

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

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

20 Civil penalty: 50 penalty units.

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

22 *Use or application—other legislative powers*

- 23 (5) A person must not:

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

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

29 (c) use in relation to:

30 (i) goods or services; or

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- 1 (ii) the promotion (by any means) of the supply or use of
2 goods or services;
3 a protected symbol, or a symbol so closely resembling a protected
4 symbol as to be likely to be mistaken for it, if the use or application
5 is in the course of, or in relation to:
6 (d) trade or commerce between Australia and places outside
7 Australia; or
8 (e) trade or commerce among the States; or
9 (f) trade or commerce within a Territory, between a State and a
10 Territory or between 2 Territories; or
11 (g) the supply of goods or services to:
12 (i) the Commonwealth; or
13 (ii) a Territory; or
14 (iii) an authority or instrumentality of the Commonwealth;
15 or
16 (iv) an authority or instrumentality of a Territory; or
17 (h) the defence of Australia; or
18 (i) the operation of lighthouses, lightships, beacons or buoys; or
19 (j) astronomical or meteorological observations; or
20 (k) an activity of a constitutional corporation; or
21 (l) banking, other than State banking; or
22 (m) insurance, other than State insurance; or
23 (n) weighing or measuring.

24 Civil penalty: 50 penalty units.

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

26 *Exceptions*

- 27 (7) Subsections (1), (3) and (5) do not apply to a person who uses or
28 applies a protected symbol for the purposes of:
29 (a) labelling equipment in accordance with the equipment rules;
30 or
31 (b) labelling customer equipment (within the meaning of the
32 *Telecommunications Act 1997*) or customer cabling (within
33 the meaning of that Act), in accordance with section 407 of
34 that Act.
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- 1 (8) Subsections (1), (3) and (5) do not apply to a person who uses or
2 applies a protected symbol for a purpose of a kind specified in a
3 determination under subsection (9).
- 4 (9) The ACMA may, by legislative instrument, determine one or more
5 specified kinds of purpose for the purposes of subsection (8).
- 6 (10) The equipment rules may provide that subsections (1), (3) and (5)
7 do not apply in relation to a specified use or application of a
8 protected symbol.

9 166 Protected symbol

- 10 (1) For the purposes of this Act, *protected symbol* means a symbol:
11 (a) the design of which is set out in a determination under
12 subsection (2); and
13 (b) a purpose of which, after the commencement of this section,
14 is to indicate compliance by equipment with any standards
15 that:
16 (i) are prescribed by the equipment rules; and
17 (ii) are applicable to the equipment.
- 18 (2) The ACMA may, by legislative instrument, determine one or more
19 designs for the purposes of paragraph (1)(a).

20 *Labels applied to equipment*

- 21 (3) For the purposes of this Act, if:
22 (a) a label is applied to equipment; and
23 (b) the label embodies a symbol referred to in subsection (1);
24 the label is taken to indicate that the equipment meets the
25 requirements of any standards that:
26 (c) are prescribed by the equipment rules; and
27 (d) are applicable to the equipment.

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Division 4—Bans on equipment

Subdivision A—Interim bans

167 Interim bans on equipment

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

Publication

- (2) If the ACMA makes a notifiable instrument imposing an interim ban, the ACMA must publish a notice that sets out:
- (a) a statement to the effect that the ban has been imposed; and
 - (b) the time when the ban came, or is to come, into force; and
 - (c) the kind of equipment to which the ban relates; and
 - (d) the reason or reasons for imposing the ban.
- (3) The following provisions have effect:
- (a) the ACMA must publish a notice under subsection (2) on the ACMA's website;

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

4 **168 Duration of interim bans**

- 5 (1) An interim ban imposed by the ACMA:
6 (a) comes into force on the day specified in the instrument
7 imposing the ban; and
8 (b) subject to this Act, remains in force for 60 days.
- 9 (2) If an interim ban is in force, the ACMA may, by notifiable
10 instrument, extend the period for which the ban is in force by a
11 period of up to 30 days.

12 **169 Revocation of interim bans**

- 13 (1) If an interim ban is in force:
14 (a) the ACMA may, by notifiable instrument, revoke the ban;
15 and
16 (b) the revocation takes effect on the day specified in the
17 instrument.
- 18 (2) If:
19 (a) an interim ban on equipment of a particular kind is in force;
20 and
21 (b) a permanent ban on equipment of that kind comes into force;
22 the interim ban is revoked when the permanent ban comes into
23 force.

24 **170 Compliance with interim bans**

25 *Supply*

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

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1 Civil penalty: 200 penalty units.

2 *Offer to supply*

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

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

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

7 Civil penalty: 200 penalty units.

8 *Operation*

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

11 Civil penalty: 200 penalty units.

12 (4) If:

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

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

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

19 **171 Actions for damages**

20 (1) If:

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

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

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

27 (c) that other person; or

28 (d) any person involved in the contravention.

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- 1 (2) An action under subsection (1) may be commenced at any time
2 within 6 years after the day on which the cause of action that
3 relates to the conduct accrued.
- 4 (3) A reference in this section to a person involved in the
5 contravention is a reference to a person who has:
6 (a) aided, abetted, counselled or procured the contravention; or
7 (b) induced the contravention, whether through threats or
8 promises or otherwise; or
9 (c) been in any way (directly or indirectly) knowingly concerned
10 in or a party to the contravention; or
11 (d) conspired with others to effect the contravention.

Subdivision B—Permanent bans

172 Permanent bans on equipment

- 14 (1) The ACMA may, by legislative instrument, impose a ***permanent***
15 ***ban*** on equipment of a specified kind if:
16 (a) the ACMA is satisfied that equipment of that kind is
17 designed to have an adverse effect on radiocommunications;
18 or
19 (b) the ACMA is satisfied that a reasonably foreseeable use
20 (including a misuse) of equipment of that kind would be
21 likely to substantially:
22 (i) interfere with radiocommunications; or
23 (ii) disrupt or disturb radiocommunications in any other
24 way; or
25 (c) both:
26 (i) equipment of that kind consists of radiocommunications
27 transmitters; and
28 (ii) the ACMA is satisfied that radio emissions resulting
29 from the operation of equipment of that kind would be
30 likely to adversely affect the health or safety of
31 individuals.

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

4 *Publication*

- 5 (3) If the ACMA makes a legislative instrument imposing a permanent
6 ban, the ACMA must publish a notice that sets out:
7 (a) a statement to the effect that the ban has been imposed; and
8 (b) the time when the ban came, or is to come, into force; and
9 (c) the kind of equipment to which the ban relates; and
10 (d) the reason or reasons for imposing the ban.
- 11 (4) The following provisions have effect:
12 (a) the ACMA must publish a notice under subsection (3) on the
13 ACMA's website;
14 (b) the legislative rules may provide that the ACMA must also
15 publish a notice under subsection (3) in accordance with the
16 legislative rules.

17 **173 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 **174 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 **175 Compliance with permanent bans—offences**

27 *Supply*

- 28 (1) A person commits an offence if:

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1 (a) the person supplies equipment of a particular kind to another
2 person who intends to operate the equipment; and

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

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

5 *Offer to supply*

6 (2) A person commits an offence if:

7 (a) the person offers to supply equipment of a particular kind to
8 another person who intends to operate the equipment; and

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

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

11 *Operation*

12 (3) A person commits an offence if:

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

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

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

16 *Possession*

17 (4) A person commits an offence if:

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

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

21 (i) operating the equipment; or

22 (ii) supplying the equipment to another person who intends
23 to operate the equipment; and

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

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

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176 Compliance with permanent bans—civil penalties

Supply

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

Civil penalty: 1,000 penalty units.

Offer to supply

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

Civil penalty: 1,000 penalty units.

Operation

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

Civil penalty: 1,000 penalty units.

Possession

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

Civil penalty: 1,000 penalty units.

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

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- 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 **177 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 subsection 176(1), (2), (3) or (4);
11 the claimant may recover the amount of the loss or damage by
12 action in the Federal Court or the Federal Circuit Court of
13 Australia against:
14 (c) that other person; or
15 (d) any person involved in the contravention.
- 16 (2) An action under subsection (1) may be commenced at any time
17 within 6 years after the day on which the cause of action that
18 relates to the conduct accrued.
- 19 (3) A reference in this section to a person involved in the
20 contravention is a reference to a person who has:
21 (a) aided, abetted, counselled or procured the contravention; or
22 (b) induced the contravention, whether through threats or
23 promises or otherwise; or
24 (c) been in any way (directly or indirectly) knowingly concerned
25 in or a party to the contravention; or
26 (d) conspired with others to effect the contravention.

27 **Subdivision C—Presumptions**

28 **178 Presumptions**

29 *Presumption relating to supply or offer to supply*

- 30 (1) For the purposes of subsections 170(1) and (2), 175(1) and (2) and
31 176(1) and (2), if:
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- 1 (a) at a particular time, a person (the **first person**) supplies, or
2 offers to supply, equipment to another person; and
3 (b) the equipment can be operated;
4 it must be presumed that the other person intends to operate the
5 equipment, unless the first person adduces or points to evidence
6 that suggests a reasonable possibility that, at that time, the other
7 person did not intend to operate the equipment.

8 *Presumptions relating to possession*

- 9 (2) For the purposes of subsections 175(4) and 176(4), if:
10 (a) at a particular time, a person has equipment in the person's
11 possession, otherwise than for the purpose of supplying the
12 equipment to another person; and
13 (b) the equipment can be operated;
14 it must be presumed that the person has the equipment in the
15 person's possession for the purpose of operating the equipment,
16 unless the person adduces or points to evidence that suggests a
17 reasonable possibility that, at that time, the person did not have the
18 equipment in the person's possession for the purpose of operating
19 the equipment.
- 20 (3) For the purposes of subsections 175(4) and 176(4), if:
21 (a) at a particular time, a person (the **first person**) has equipment
22 in the person's possession for the purpose of supplying the
23 equipment to another person; and
24 (b) the equipment can be operated;
25 it must be presumed that the other person intends to operate the
26 equipment, unless the first person adduces or points to evidence
27 that suggests a reasonable possibility that, at that time, the other
28 person did not intend to operate the equipment.

29 *When equipment can be operated*

- 30 (4) For the purposes of paragraphs (1)(b), (2)(b) and (3)(b), it is
31 immaterial whether the equipment can be operated:
32 (a) immediately; or
33 (b) after taking one or more steps (for example, the connection of
34 the equipment to a power supply).
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Subdivision D—Amnesty for banned equipment

179 Amnesty for banned equipment

Amnesty period

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

Amnesty

- (2) If:

- (a) a permanent ban on equipment of a particular kind is in force; and
(b) an amnesty period has been declared under subsection (1) for the ban;

then:

- (c) the owner of equipment of that kind may, during the amnesty period for the ban, agree with the ACMA (on behalf of the Commonwealth) to forfeit the equipment to the Commonwealth; and
(d) if the owner does so—subsections 175(4) and 176(4), to the extent to which they relate to the ban, do not apply, and are taken never to have applied, to the possession of the equipment by:
(i) the owner; or
(ii) any other person.

180 The ACMA may take possession of equipment

- (1) If the owner of equipment agrees, in accordance with section 179, to forfeit the equipment to the Commonwealth:
(a) the ACMA may take possession of the equipment; and
(b) if the ACMA does so—the ACMA must give the owner a receipt for the equipment taken into possession.

- (2) If:

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- 1 (a) the ACMA has purported to take possession of equipment
2 under subsection (1); and
3 (b) the ACMA was not entitled to take possession of the
4 equipment under that subsection;
5 the ACMA must take all reasonable steps to return the equipment
6 to the owner of the equipment.

7 **181 Forfeiture of equipment to the Commonwealth**

- 8 (1) If:
9 (a) the ACMA has taken possession of equipment under
10 subsection 180(1); and
11 (b) at least 90 days have passed since the ACMA gave the owner
12 a receipt under paragraph 180(1)(b) for the equipment;
13 the ACMA may declare, in writing, that the equipment is forfeited
14 to the Commonwealth.
15 (2) The ACMA must give a copy of the declaration to the owner of the
16 equipment.

17 *Deemed forfeiture*

- 18 (3) If:
19 (a) the owner of equipment agrees, in accordance with section
20 179, to forfeit the equipment to the Commonwealth; and
21 (b) the ACMA has taken possession of the equipment under
22 subsection 180(1); and
23 (c) the ACMA has not, within the 120-day period beginning at
24 the start of the day when the ACMA gave the owner a receipt
25 under paragraph 180(1)(b) for the equipment, made a
26 declaration under subsection (1) of this section that the
27 equipment is forfeited to the Commonwealth;
28 then, at the end of the 120-day period, the equipment is forfeited to
29 the Commonwealth.

30 **182 Forfeited equipment may be sold, destroyed or otherwise** 31 **disposed of**

32 Equipment forfeited under section 181:

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- 1 (a) may be sold, destroyed or otherwise disposed of in
2 accordance with the directions of the ACMA; and
3 (b) pending such directions, must be kept in such custody as the
4 ACMA directs.

5 Division 5—Recall of equipment

6 Subdivision A—Compulsory recall of equipment

7 183 Compulsory recall of equipment

8 *Equipment that will or may cause substantial disruption,*
9 *substantial disturbance or substantial interference to*
10 *radiocommunications*

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

24 *Equipment designed to have an adverse effect on*
25 *radiocommunications*

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

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

Permanent ban

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

Publication

- (5) If the ACMA, by legislative instrument, issues a recall notice under subsection (1), (2), (3) or (4), the ACMA must publish a notice that sets out:
- (a) a statement to the effect that the recall notice has been issued; and
 - (b) the time when the recall notice commences, or is to commence; and
 - (c) the kind of equipment to which the recall notice relates; and
 - (d) the reason or reasons for issuing the recall notice.
- (6) The following provisions have effect:
- (a) the ACMA must publish a notice under subsection (5) on the ACMA's website;

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

4 *Other matters*

- 5 (7) It is not necessary, for the purposes of paragraph (1)(a) or (c),
6 (2)(a), (3)(b) or (4)(a) or (c), for the ACMA to know the identities
7 of any of the suppliers of the equipment.
- 8 (8) A recall notice for equipment may be issued under subsection (1),
9 (2), (3) or (4) even if the equipment has become fixtures since the
10 time the equipment was supplied.

11 **184 Contents of a recall notice**

- 12 (1) A recall notice for equipment may require one or more suppliers of
13 the equipment to take one or more of the following actions:
- 14 (a) recall the equipment;
- 15 (b) disclose to the public, or to a class of persons specified in the
16 notice, the reasons for the issue of the recall notice;
- 17 (c) inform the public, or a class of persons specified in the
18 notice, that the supplier undertakes to do whichever of the
19 following the supplier thinks is appropriate:
- 20 (i) repair or modify the equipment;
- 21 (ii) replace the equipment;
- 22 (iii) refund to a person to whom the equipment was supplied
23 (whether by the supplier or by another person), and who
24 returns the equipment, the price paid for the equipment;
- 25 (d) if an undertaking is given by a supplier in accordance with
26 paragraph (c):
- 27 (i) comply with the undertaking; and
- 28 (ii) comply with section 185 in relation to the undertaking;
- 29 (e) disclose to the public, or to a class of persons specified in the
30 notice, procedures as specified in the notice for disposing of
31 the equipment.
- 32 (2) The recall notice may specify:

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- 1 (a) the manner in which the action required to be taken by the
2 notice must be taken; and
3 (b) the period within which the action must be taken.
- 4 (3) If the recall notice requires a supplier of the equipment to take
5 action of a kind referred to in paragraph (1)(c), the ACMA may
6 specify in the notice that, if:
7 (a) the supplier undertakes to refund the price paid for
8 equipment; and
9 (b) a period of more than 12 months has elapsed since a person
10 (whether or not the person to whom the refund is to be made)
11 acquired the equipment from the supplier;
12 the amount of a refund may be reduced by the supplier by an
13 amount, calculated in a manner specified in the notice, that is
14 attributable to the use which a person has had of the equipment.

185 Obligations of a supplier in relation to a recall notice

Scope

- 16
17 (1) This section applies if a recall notice for equipment requires a
18 supplier to take action of a kind referred to in paragraph 184(1)(c).

Obligations—repair or modify

- 19
20 (2) If:
21 (a) the recall notice was issued under subsection 183(1); and
22 (b) the supplier undertakes to repair or modify the equipment;
23 the supplier must cause the equipment to be repaired or modified
24 so that:
25 (c) a reasonably foreseeable use or misuse of the equipment will
26 not cause substantial disruption, substantial disturbance or
27 substantial interference to radiocommunications; and
28 (d) the equipment is not covered by an interim ban, or a
29 permanent ban, that is in force.
- 30 (3) If:
31 (a) the recall notice was issued under subsection 183(2); and
32 (b) the supplier undertakes to repair or modify the equipment;
-

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

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

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

7 (4) If:

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

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

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

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

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

17 *Obligations—replacement*

18 (5) If:

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

20 (b) the supplier undertakes to replace the equipment;

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

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

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

29 (6) If:

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

31 (b) the supplier undertakes to replace the equipment;

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

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- 1 (c) the similar equipment would not be likely to have an adverse
2 effect on radiocommunications;
3 (d) the similar equipment is not covered by an interim ban, or a
4 permanent ban, that is in force.
- 5 (7) If:
6 (a) the recall notice was issued under subsection 183(3); and
7 (b) the supplier undertakes to replace the equipment;
8 the supplier must replace the equipment with similar equipment
9 that satisfies the following conditions:
10 (c) radio emissions resulting from a reasonably foreseeable use
11 (including a misuse) of the similar equipment would not be
12 likely to adversely affect the health or safety of individuals;
13 (d) the similar equipment is not covered by an interim ban, or a
14 permanent ban, that is in force.
- 15 (8) If the supplier undertakes:
16 (a) to repair or modify the equipment; or
17 (b) to replace the equipment;
18 the cost of the repair, modification or replacement, including any
19 necessary transportation costs, must be paid by the supplier.

186 Compliance with recall notices

21 *Offence*

- 22 (1) A person commits an offence if:
23 (a) a recall notice for equipment is in force; and
24 (b) the notice requires the person to do one or more things; and
25 (c) the person engages in conduct; and
26 (d) the person's conduct contravenes the notice.

27 Penalty: 1,000 penalty units.

28 *Civil penalty*

- 29 (2) If:
30 (a) a recall notice for equipment is in force; and

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- 1 (b) the notice requires a person to do one or more things;
2 the person must comply with the notice.
- 3 Civil penalty: 1,000 penalty units.
- 4 (3) If:
- 5 (a) a person contravenes subsection (2) in relation to equipment;
6 and
7 (b) another person suffers loss or damage:
8 (i) because of a reasonably foreseeable use (including a
9 misuse) of the equipment; or
10 (ii) because, contrary to the recall notice, the other person
11 was not provided with particular information in relation
12 to the equipment;
13 the other person is taken, for the purposes of this Division, to have
14 suffered the loss or damage because of the contravention.

187 Actions for damages

- 16 (1) If:
- 17 (a) a person (the *claimant*) suffers loss or damage because of
18 conduct engaged in by another person; and
19 (b) the conduct contravened subsection 186(2);
20 the claimant may recover the amount of the loss or damage by
21 action in the Federal Court or the Federal Circuit Court of
22 Australia against:
23 (c) that other person; or
24 (d) any person involved in the contravention.
- 25 (2) An action under subsection (1) may be commenced at any time
26 within 6 years after the day on which the cause of action that
27 relates to the conduct accrued.
- 28 (3) A reference in this section to a person involved in the
29 contravention is a reference to a person who has:
30 (a) aided, abetted, counselled or procured the contravention; or
31 (b) induced the contravention, whether through threats or
32 promises or otherwise; or

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- 1 (c) been in any way (directly or indirectly) knowingly concerned
2 in or a party to the contravention; or
3 (d) conspired with others to effect the contravention.

4 **Subdivision B—Voluntary recall of equipment**

5 **188 Notification requirements for a voluntary recall of equipment**

6 *Scope*

- 7 (1) This section applies if a person voluntarily takes action to recall
8 equipment of a particular kind (including equipment that has
9 become fixtures since being supplied) because:
10 (a) a reasonably foreseeable use (including a misuse) of such
11 equipment will or may cause substantial disruption,
12 substantial disturbance or substantial interference to
13 radiocommunications; or
14 (b) such equipment would be likely to have an adverse effect on
15 radiocommunications; or
16 (c) in a case where such equipment consists of
17 radiocommunications transmitters—radio emissions resulting
18 from a reasonably foreseeable use (including a misuse) of
19 such equipment would be likely to adversely affect the health
20 or safety of individuals; or
21 (d) a permanent ban on such equipment is in force.

22 *Notifying the ACMA*

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

25 Civil penalty: 20 penalty units.

- 26 (3) The following provisions have effect:
27 (a) the ACMA must publish a copy of the notice on the ACMA's
28 website;
29 (b) the legislative rules may provide that the ACMA must also
30 publish a copy of the notice in accordance with the legislative
31 rules.

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1 *Requirements for notice*

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

- 3 (a) state that the equipment is subject to recall; and
- 4 (b) if a reasonably foreseeable use or misuse of the equipment
- 5 will or may cause substantial disruption, substantial
- 6 disturbance or substantial interference to
- 7 radiocommunications—set out the circumstances of that use
- 8 or misuse; and
- 9 (c) if the equipment would be likely to have an adverse effect on
- 10 radiocommunications—set out that adverse effect; and
- 11 (d) if:
- 12 (i) the equipment consists of radiocommunications
- 13 transmitters; and
- 14 (ii) radio emissions resulting from a reasonably foreseeable
- 15 use (including a misuse) of the equipment would be
- 16 likely to adversely affect the health or safety of
- 17 individuals;
- 18 set out:
- 19 (iii) the circumstances of that use (including misuse); and
- 20 (iv) the way in which the health or safety of individuals is
- 21 likely to be adversely affected by that use (including
- 22 misuse); and
- 23 (e) if a permanent ban on the equipment is in force—state that
- 24 fact.

25 *Continuing contravention of civil penalty provision*

26 (5) The maximum civil penalty for each day that a contravention of

27 subsection (2) continues is 10% of the maximum civil penalty that

28 can be imposed in respect of a contravention of that subsection.

29 Note: Subsection (2) is a continuing civil penalty provision under section 93

30 of the Regulatory Powers Act.

31 **25 Subsection 238(2)**

32 Omit “or to make standards under Part 4.1”.

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Amendment of the Radiocommunications Act 1992 **Part 1**

1 **26 Paragraph 262(2)(a)**

2 Omit “standards may be made under Part 4.1”, substitute “equipment
3 rules may be made”.

4 **27 Paragraph 279(1)(d)**

5 Omit “300; and”, substitute “300.”.

6 **28 Paragraph 279(1)(e)**

7 Repeal the paragraph.

8 **29 Paragraphs 285(p) to (s)**

9 Repeal the paragraphs, substitute:

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

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

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

14 (s) a decision of the ACMA:

15 (i) made under the equipment rules; and

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

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

19 **30 Subsection 300(4) (penalty)**

20 Omit “Penalty”, substitute “Civil penalty”.

21 **31 After section 300**

22 Insert:

23 **300A Transitional—failure to comply with requirements to be met**
24 **after a label has been applied to a device**

25 *General rule*

26 (1) If:

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

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1 (b) the notice specified requirements to be met after a label has
2 been applied to a device;
3 a manufacturer or importer must comply with those requirements
4 in relation to a label that was applied to a device before the
5 commencement of this section.

6 Civil penalty: 20 penalty units.

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

9 *Corporations power*

10 (3) If:

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

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

15 (c) a manufacturer or importer is a constitutional corporation;
16 the manufacturer or importer must comply with those requirements
17 in relation to a label that was applied to a device before the
18 commencement of this section.

19 Civil penalty: 20 penalty units.

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

22 *Other legislative powers*

23 (5) If:

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

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

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

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

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Equipment etc. **Schedule 4**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (ii) to the Commonwealth; or
2 (iii) to a Territory; or
3 (iv) to an authority or instrumentality of the
4 Commonwealth; or
5 (v) to an authority or instrumentality of a Territory;
6 the manufacturer or importer must comply with those requirements
7 in relation to a label that was applied to the device before the
8 commencement of this section.

9 Civil penalty: 20 penalty units.

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

12 *Constitutional trade or commerce*

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

- 15 (a) trade or commerce between Australia and places outside
16 Australia; or
17 (b) trade or commerce among the States; or
18 (c) trade or commerce within a Territory, between a State and a
19 Territory or between 2 Territories.

20 *Transitional*

- 21 (8) If:
22 (a) a notice was in force under repealed section 182 immediately
23 before the commencement of this section; and
24 (b) the notice specified requirements to be met after a label has
25 been applied to a device;
26 then, despite the repeal of that section by the *Radiocommunications*
27 *Legislation Amendment (Reform and Modernisation) Act 2020*, the
28 notice, so far as it specified those requirements, continues in force,
29 in relation to a label applied to a device before the commencement
30 of this section, as if that section had not been repealed.

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Schedule 4 Equipment etc.

Part 1 Amendment of the Radiocommunications Act 1992

300B Transitional—general powers of inspectors

(1) An inspector may:

- (a) if the inspector suspects a person on reasonable grounds of having recorded particulars relating to the supply of a radiocommunications device in a document under repealed section 301—require the person to produce that document; or
- (b) require a person who has been required to retain records by a notice under repealed subsection 182(1) for a specified period to produce such records at any time during that period.

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

Civil penalty: 20 penalty units.

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

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

If:

- (a) a person supplied a radiocommunications device during the 2-year period ending at the commencement of this section; and
- (b) the person was required by repealed section 301 to cause particulars relating to the supply of the device to be recorded in a document;

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

Civil penalty: 20 penalty units.

32 Section 301

Repeal the section.

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

Repeal the definition, substitute:

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1 *radiocommunications instrument* means:

2 (a) a licence; or

3 (b) a permit; or

4 (c) a certificate.

5 **34 Subparagraph 314(3)(b)(i)**

6 Omit “standards”, substitute “legislative rules, equipment rules”.

7 **35 Subsection 314A(6) (after paragraph (a) of the definition of**
8 ***instrument under this Act*)**

9 Insert:

10 (aa) the legislative rules; or

11 (ab) the equipment rules; or

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Schedule 4 Equipment etc.

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

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

4 ***Radiocommunications Act 1992***

5 **36 Subsections 171(1), 177(1) and 187(1)**

6 Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit
7 and Family Court of Australia”.

1 **Part 3—Other amendments**

2 *Australian Communications and Media Authority Act 2005*

3 **37 Subsection 66(5)**

4 Omit “or section 182 of the *Radiocommunications Act 1992*”, substitute
5 “or equipment rules made under the *Radiocommunications Act 1992*”.

6 *Telecommunications Act 1997*

7 **38 Subsection 417(6)**

8 Omit all the words after “407”.

9 **39 After subsection 417(6)**

10 Insert:

11 (6A) This section does not apply to a person who uses or applies a
12 protected symbol for the purposes of labelling equipment in
13 accordance with equipment rules made under the
14 *Radiocommunications Act 1992*.

15 *Trans-Tasman Mutual Recognition Act 1997*

16 **40 Clause 3 of Schedule 2 (table item dealing with**
17 **radiocommunications devices)**

18 Repeal the item.

19 **41 Clause 3 of Schedule 2 (before the table item dealing with**
20 **road vehicles)**

21 Insert:

Radiocommunications

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

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Schedule 4 Equipment etc.

Part 4 Application and transitional provisions

Part 4—Application and transitional provisions

42 Transitional—standards

Scope

- (1) This item applies to an instrument if:
- (a) the instrument was in force immediately before the commencement of this item; and
 - (b) the instrument was made under subsection 162(1) of the *Radiocommunications Act 1992*.

Effect of instrument

- (2) The instrument has effect, after the commencement of this item, as if:
- (a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and
 - (b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and
 - (c) in a case where the instrument has a paragraph of an explanatory note that:
 - (i) is about the expression “device”; and
 - (ii) includes the words “and subsection 9(1) of the Act”; those words were omitted from that paragraph; and
 - (d) in a case where the instrument includes the words “For paragraph 162(1)(a) of the Act”—those words were omitted from the instrument; and
 - (e) in a case where the instrument includes:
 - (i) the words “another standard made under section 162 of the Act”; or
 - (ii) the words “another standard under section 162 of the Act”; those words were omitted from the instrument and the words “another standard prescribed by the equipment rules” were substituted; and

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Application and transitional provisions **Part 4**

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

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

6 *Sunsetting*

- 7 (3) Section 50 of the *Legislation Act 2003* has effect as if the instrument
8 had been registered (within the meaning of that Act) immediately after
9 the commencement of this item.

10 **43 Transitional—*Radiocommunications (Compliance*** 11 ***Labelling—Devices) Notice 2014***

12 *Scope*

- 13 (1) This item applies to an instrument if:
14 (a) the instrument was in force immediately before the
15 commencement of this item; and
16 (b) the instrument was given under subsection 182(1) of the
17 *Radiocommunications Act 1992*; and
18 (c) the instrument was known as the *Radiocommunications*
19 *(Compliance Labelling—Devices) Notice 2014*.

20 *Effect of instrument*

- 21 (2) The instrument has effect, after the commencement of this item, as if:
22 (a) it had been made as equipment rules under subsection 156(1)
23 of the *Radiocommunications Act 1992*; and
24 (b) any requirement imposed by the *Radiocommunications Act*
25 *1992* or the *Legislation Act 2003* in relation to the making of
26 the instrument (including a requirement about the form of
27 words) had been satisfied; and
28 (c) the words “for Division 7 of Part 4.1 of the Act” in:
29 (i) the definition of ***agent*** in subsection 4(1) of the
30 instrument; and
31 (ii) paragraph 8(2)(c) of the instrument;

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Schedule 4 Equipment etc.

Part 4 Application and transitional provisions

- 1 were omitted and the words “the provisions of the equipment
2 rules that relate to obligations to apply labels to devices”
3 were substituted; and
4 (d) the note to the definition of *applicable standard* in
5 subsection 4(1) of the instrument were omitted; and
6 (e) the reference to subsection 267(1) of the
7 *Radiocommunications Act 1992* in paragraph (a) of the
8 definition of *authorised officer* in subsection 4(1) of the
9 instrument were a reference to subsection 284(1) of that Act;
10 and
11 (f) the reference to subsection 9(1) of the *Radiocommunications*
12 *Act 1992* in the note to subsection 4(1) of the instrument were
13 a reference to section 5 of that Act; and
14 (g) the words “**instruments made under section 182 of the**
15 **Act**” were omitted from the heading to section 7 of the
16 instrument and the words “**another set of equipment rules**”
17 were substituted; and
18 (h) the words “another notice made under section 182 of the
19 Act” were omitted from section 7 of the instrument and the
20 words “another set of equipment rules” were substituted; and
21 (i) the words “that notice” were omitted from section 7 of the
22 instrument and the words “that set of equipment rules” were
23 substituted; and
24 (j) the words “other notice made under section 182 of the Act”
25 were omitted from the note to section 7 of the instrument and
26 the words “other set of equipment rules” were substituted;
27 and
28 (k) the note were omitted from subsection 11(1) of the
29 instrument; and
30 (l) all the words after “requirement.” were omitted from note 1
31 to the definition of *officer of the supplier* in
32 subsection 11A(4) of the instrument; and
33 (m) the note were omitted from Part 1 of Schedule 1 to the
34 instrument; and
35 (n) the note were omitted from Part 2 of Schedule 1 to the
36 instrument.
-

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Equipment etc. **Schedule 4**
Application and transitional provisions **Part 4**

Sunset

- (3) Section 50 of the *Legislation Act 2003* has effect as if the instrument had been registered (within the meaning of the *Radiocommunications Act 1992*) immediately after the commencement of this item.

44 Transitional—*Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*

Scope

- (1) This item applies to an instrument if:
- (a) the instrument was in force immediately before the commencement of this item; and
 - (b) the instrument was given under subsection 182(1) of the *Radiocommunications Act 1992*; and
 - (c) the instrument was known as the *Radiocommunications Labelling (Electromagnetic Compatibility) Notice 2017*.

Effect of instrument

- (2) The instrument has effect, after the commencement of this item, as if:
- (a) it had been made as equipment rules under subsection 156(1) of the *Radiocommunications Act 1992*; and
 - (b) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied; and
 - (c) the words “for Division 7 of Part 4.1 of the Act” in the definition of **agent** in subsection 1.5(1) of the instrument were omitted and the words “the provisions of the equipment rules that relate to obligations to apply labels to devices” were substituted; and
 - (d) the reference to subsection 267(1) of the *Radiocommunications Act 1992* in paragraph (a) of the definition of **authorised officer** in subsection 1.5(1) of the instrument were a reference to subsection 284(1) of that Act; and

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Part 4 Application and transitional provisions

- 1 (e) the words “accredited by NATA under subsection 183(3) of
2 the Act” were omitted from the definition of **competent body**
3 in subsection 1.5(1) of the instrument and the words
4 “determined under subitem 44(3) of Schedule 4 to the
5 *Radiocommunications Legislation Amendment (Reform and*
6 *Modernisation) Act 2020*” were substituted; and
7 (f) the reference to subsection 9(1) of the *Radiocommunications*
8 *Act 1992* in note 1 to subsection 1.5(1) of the instrument
9 were a reference to section 5 of that Act; and
10 (g) the reference to section 267 of the *Radiocommunications Act*
11 *1992* in note 1 to subsection 1.5(1) of the instrument were a
12 reference to subsection 284(1) of that Act; and
13 (h) the words “**labelling notice made under the Act**” were
14 omitted from the heading to section 2.5 of the instrument and
15 the words “**set of equipment rules**” were substituted; and
16 (i) the words “another notice made under subsection 182(1) of
17 the Act” were omitted from section 2.5 of the instrument and
18 the words “another set of equipment rules” were substituted;
19 and
20 (j) the words “other notice made under subsection 182(1) of the
21 Act” were omitted from the note to section 2.5 of the
22 instrument and the words “other set of equipment rules” were
23 substituted; and
24 (k) the note to section 4.2 of the instrument were omitted; and
25 (l) the words “Under section 187A of the Act, a supplier that
26 fails to comply with a specific requirement that must be met
27 after a label has been applied to a device may commit an
28 offence.” were omitted from:
29 (i) note 1 to section 4.2A of the instrument; and
30 (ii) the note to subsection 6.2(2) of the instrument; and
31 (m) the words “knowingly or recklessly causing substantial” were
32 omitted from the note at the start of Schedule 2 to the
33 instrument and the words “engaging in conduct that will
34 result, or is likely to result, in” were substituted; and
35 (n) the words “The RCM is a protected symbol for section 188A
36 of the Act.” were omitted from the note to Schedule 3 to the
37 instrument.
-

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Equipment etc. **Schedule 4**
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Competent body

- (3) The National Association of Testing Authorities Australia (ACN 004 379 748) may, by writing, determine that a specified body is a ***competent body*** for the purposes of the instrument.
- (4) Subject to subitem (5), if, immediately before the commencement of this item, a body was the subject of a determination under subsection 183(3) of the *Radiocommunications Act 1992*, subitem (3) has effect, after the commencement of this item, as if the body were the subject of a determination under that subitem.
- (5) The National Association of Testing Authorities Australia (ACN 004 379 748) may, by writing, determine that subitem (5) ceases to apply to a specified body.
- (6) A determination under subitem (3) or (5) is a notifiable instrument.

Sunsetting

- (7) Section 50 of the *Legislation Act 2003* has effect as if the instrument had been registered (within the meaning of the *Radiocommunications Act 1992*) immediately after the commencement of this item.

45 Transitional—*Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014*

Scope

- (1) This item applies to an instrument if:
- (a) the instrument was in force immediately before the commencement of this item; and
 - (b) the instrument was given under subsection 182(1) of the *Radiocommunications Act 1992*; and
 - (c) the instrument was known as the *Radiocommunications (Compliance Labelling—Electromagnetic Radiation) Notice 2014*.

Effect of instrument

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

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- 1 (a) it had been made as equipment rules under subsection 156(1)
2 of the *Radiocommunications Act 1992*; and
- 3 (b) any requirement imposed by the *Radiocommunications Act*
4 *1992* or the *Legislation Act 2003* in relation to the making of
5 the instrument (including a requirement about the form of
6 words) had been satisfied; and
- 7 (c) the words “for Division 7 of Part 4.1 of the Act” in the
8 definition of **agent** in subsection 4(1) of the instrument were
9 omitted and the words “the provisions of the equipment rules
10 that relate to obligations to apply labels to devices” were
11 substituted; and
- 12 (d) the reference to subsection 267(1) of the
13 *Radiocommunications Act 1992* in paragraph (a) of the
14 definition of **authorised officer** in subsection 4(1) of the
15 instrument were a reference to subsection 284(1) of that Act;
16 and
- 17 (e) the words “a notice made by the ACMA under section 182 of
18 the Act” in paragraph (b) of the definition of **supplier code**
19 **number** in subsection 4(1) of the instrument were omitted
20 and the words “the equipment rules” were substituted; and
- 21 (f) the words “**labelling notice made under the**
22 **Radiocommunications Act 1992**” were omitted from the
23 heading to section 8A of the instrument and the words “**set of**
24 **equipment rules**” were substituted; and
- 25 (g) the words “another notice made under subsection 182(1) of
26 the Act, as in force from time to time,” were omitted from
27 section 8A of the instrument and the words “another set of
28 equipment rules” were substituted; and
- 29 (h) the words “other notice made under subsection 182(1) of the
30 Act” were omitted from the note to section 8A of the
31 instrument and the words “other set of equipment rules” were
32 substituted; and
- 33 (i) the note to subsection 10(1) of the instrument were omitted;
34 and
- 35 (j) the words “Under section 187A of the Act, a supplier that
36 fails to comply with a specific requirement that must be met
37 after a label has been applied to a device may be subject to a

EXPOSURE DRAFT

Equipment etc. **Schedule 4**
Application and transitional provisions **Part 4**

- 1 pecuniary penalty.” were omitted from note 1 to section 10A
2 of the instrument; and
3 (k) the note were omitted from Part 1 of Schedule 1 to the
4 instrument; and
5 (l) the note were omitted from Part 2 of Schedule 1 to the
6 instrument.

7 *Sunsetting*

- 8 (3) Section 50 of the *Legislation Act 2003* has effect as if the instrument
9 had been registered (within the meaning of the *Radiocommunications*
10 *Act 1992*) immediately after the commencement of this item.

11 **46 Transitional—Telecommunications (Labelling Notice for** 12 **Customer Equipment and Customer Cabling)** 13 **Instrument 2015**

14 *Scope*

- 15 (1) This item applies to an instrument if:
16 (a) the instrument was in force immediately before the
17 commencement of this item; and
18 (b) the instrument was made under subsection 407(1) of the
19 *Telecommunications Act 1997*; and
20 (c) the instrument was known as the *Telecommunications*
21 *(Labelling Notice for Customer Equipment and Customer*
22 *Cabling) Instrument 2015*.

23 *Effect of instrument*

- 24 (2) The instrument has effect, after the commencement of this item, as if:
25 (a) the words “a notice made by the ACMA under section 182 of
26 the *Radiocommunications Act 1992*” in paragraph (b) of the
27 definition of **supplier code number** in subsection 4(1) of the
28 instrument were omitted and the words “the equipment rules
29 (within the meaning of the *Radiocommunications Act 1992*)”
30 were substituted; and
31 (b) the words “a notice under section 182 of the
32 *Radiocommunications Act 1992*” were omitted from note 2 to

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Schedule 4 Equipment etc.

Part 4 Application and transitional provisions

- 1 section 7 of the instrument and the words “a set of equipment
2 rules (within the meaning of the *Radiocommunications Act*
3 *1992*)” were substituted; and
4 (c) the words “that notice” (whether occurring) were omitted
5 from note 2 to section 7 of the instrument and the words “that
6 set of equipment rules” were substituted.

7 **47 Transitional—permits**

8 *Scope*

- 9 (1) This item applies to a permit if:
10 (a) the permit was in force immediately before the
11 commencement of this item; and
12 (b) the permit was issued under subsection 167(2) of the
13 *Radiocommunications Act 1992*.

14 *Effect of permit*

- 15 (2) The permit has effect, after the commencement of this item, as if:
16 (a) it had been issued by the ACMA under equipment rules made
17 for the purposes of subsection 159(15) of the
18 *Radiocommunications Act 1992*; and
19 (b) any requirement imposed by the equipment rules in relation
20 to the issue of the permit (including a requirement about the
21 form of words) had been satisfied; and
22 (c) any reference in the permit to a non-standard device were a
23 reference to a device that:
24 (i) if the device has not been altered or modified in a
25 material respect after its manufacture or, if it has been
26 imported, after its importation—does not comply with a
27 standard that was applicable to it when it was
28 manufactured or imported, as the case may be; or
29 (ii) if the device was so altered or modified—does not
30 comply with a standard that was applicable to it when it
31 was so altered or modified; and
32 (d) any reference in the permit to non-standard devices were a
33 reference to devices that:

EXPOSURE DRAFT

Equipment etc. **Schedule 4**
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- 1 (i) if the devices have not been altered or modified in a
2 material respect after their manufacture or, if they have
3 been imported, after their importation—do not comply
4 with a standard that was applicable to them when they
5 were manufactured or imported, as the case may be; or
6 (ii) if the devices were so altered or modified—do not
7 comply with a standard that was applicable to them
8 when they were so altered or modified.
- 9 (3) For the purposes of paragraphs (2)(c) and (d), the standard that was
10 applicable to a device at a particular time is:
11 (a) if that time occurred before the commencement of this
12 item—the standard that:
13 (i) was made under section 162 of the
14 *Radiocommunications Act 1992* before the
15 commencement of this item; and
16 (ii) was applicable to the device at that time; or
17 (b) if that time occurred at or after the commencement of this
18 item—the standard that:
19 (i) was prescribed by the equipment rules; and
20 (ii) was applicable to the device at that time.
- 21 (4) If the permit authorises radio emission, the permit remains in force until
22 the end of the day of expiration specified in the permit.
- 23 (5) If the permit does not authorise radio emission, the permit remains in
24 force:
25 (a) if the permit specifies a day of expiration—until the end of
26 that day; or
27 (b) otherwise—indefinitely.
- 28 (6) Subitems (4) and (5) have effect subject to:
29 (a) the provisions of the equipment rules relating to cancellation
30 of permits; and
31 (b) section 307 of the *Radiocommunications Act 1992*.
- 32 (7) Despite the repeal of subsection 169(6) of the *Radiocommunications*
33 *Act 1992* by this Schedule, if a declaration made under that subsection
34 in relation to the permit was in force immediately before the
-

EXPOSURE DRAFT

Schedule 4 Equipment etc.

Part 4 Application and transitional provisions

1 commencement of this item, the declaration continues to apply in
2 relation to the permit, after the commencement of this item, as if the
3 repeal had not happened.

4 **48 Transitional—*Protected Symbols Determination 2013***

5 *Scope*

- 6 (1) This item applies to a determination if:
- 7 (a) the determination was in force immediately before the
8 commencement of this item; and
 - 9 (b) the determination was made under section 188A of the
10 *Radiocommunications Act 1992* and section 417 of the
11 *Telecommunications Act 1997*; and
 - 12 (c) the determination was known as the *Protected Symbols*
13 *Determination 2013*.

14 *Effect of determination*

- 15 (2) The determination, so far as it was made under subsection 188A(7) of
16 the *Radiocommunications Act 1992*, has effect, after the commencement
17 of this item, as if:
- 18 (a) it had been made under subsection 165(9) of the
19 *Radiocommunications Act 1992*; and
 - 20 (b) any requirement imposed by the *Radiocommunications Act*
21 *1992* or the *Legislation Act 2003* in relation to the making of
22 the determination (including a requirement about the form of
23 words) had been satisfied.
- 24 (3) The determination, so far as it was made under
25 subparagraph 188A(8)(a)(i) or (b)(i) of the *Radiocommunications Act*
26 *1992*, has effect, after the commencement of this item, as if:
- 27 (a) it had been made under subsection 166(2) of the
28 *Radiocommunications Act 1992*; and
 - 29 (b) any requirement imposed by the *Radiocommunications Act*
30 *1992* or the *Legislation Act 2003* in relation to the making of
31 the determination (including a requirement about the form of
32 words) had been satisfied.

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Equipment etc. **Schedule 4**
Application and transitional provisions **Part 4**

- 1 (4) The determination has effect, after the commencement of this item, as
2 if:
- 3 (a) the words “standard made under section 162 of the
4 Radiocommunications Act” in the definition of *applicable*
5 *standard* in section 4 of the determination were omitted and
6 the words “standard prescribed by equipment rules made
7 under the Radiocommunications Act” were substituted; and
- 8 (b) the words “a notice made under section 182 of the
9 Radiocommunications Act” in paragraph 5(2)(b) of the
10 determination were omitted and the words “equipment rules
11 made under the Radiocommunications Act” were substituted;
12 and
- 13 (c) a reference to subsection 188A(7) of the
14 *Radiocommunications Act 1992* in sections 5 and 8 of the
15 determination were a reference to subsection 165(8) of that
16 Act; and
- 17 (d) the reference to subparagraph 188A(8)(b)(i) of the
18 *Radiocommunications Act 1992* in subsection 6(1) of the
19 determination were a reference to subsection 166(2) of that
20 Act; and
- 21 (e) the reference to subparagraph 188A(8)(a)(i) of the
22 *Radiocommunications Act 1992* in subsection 6(2) of the
23 determination were a reference to subsection 166(2) of that
24 Act.

25 *Sunsetting*

- 26 (5) Section 50 of the *Legislation Act 2003* has effect as if the determination
27 had been registered (within the meaning of the *Radiocommunications*
28 *Act 1992*) immediately after the commencement of this item.

29 **49 Transitional—permanent bans**

30 *Scope*

- 31 (1) This item applies to an instrument if:
32 (a) the instrument was in force immediately before the
33 commencement of this item; and

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Schedule 4 Equipment etc.

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- 1 (b) the instrument was made under subsection 190(1) of the
2 *Radiocommunications Act 1992*; and
3 (c) the instrument declares that operation or supply, or
4 possession for the purpose of operation or supply, of a
5 specified kind of device is prohibited (for this purpose, it is
6 immaterial whether the word “kind”, or a similar word, is
7 used in the instrument); and
8 (d) a device of that kind was covered by paragraph 190(2)(a) or
9 (b) of the *Radiocommunications Act 1992* as in force
10 immediately before the commencement of this item; and
11 (e) a device of that kind is equipment (within the meaning of the
12 *Radiocommunications Act 1992*).

13 *Effect of instrument*

- 14 (2) The instrument has effect, after the commencement of this item, as if:
15 (a) it had been made under subsection 172(1) of the
16 *Radiocommunications Act 1992*; and
17 (b) the instrument had imposed a permanent ban on equipment of
18 that kind; and
19 (c) the instrument had not made the declaration mentioned in
20 paragraph (1)(c); and
21 (d) any requirement imposed by the *Radiocommunications Act*
22 *1992* or the *Legislation Act 2003* in relation to the making of
23 the instrument (including a requirement about the form of
24 words) had been satisfied.

25 *Sunsetting*

- 26 (3) Section 50 of the *Legislation Act 2003* has effect as if the instrument
27 had been registered (within the meaning of that Act) immediately after
28 the commencement of this item.

29 **50 Transitional and application—protected names and** 30 **protected symbols**

- 31 (1) Despite the amendment of subsection 66(5) of the *Australian*
32 *Communications and Media Authority Act 2005* by this Schedule, that
33 subsection continues to apply, in relation to anything done in

EXPOSURE DRAFT

Equipment etc. **Schedule 4**
Application and transitional provisions **Part 4**

1 accordance with repealed section 182 of the *Radiocommunications Act*
2 *1992*, as if that amendment had not been made.

3 (2) Despite the amendment of subsection 417(6) of the *Telecommunications*
4 *Act 1997* by this Schedule, that subsection continues to apply, in
5 relation to anything done in accordance with repealed section 182 of the
6 *Radiocommunications Act 1992*, as if that amendment had not been
7 made.

8 (3) Subsections 165(1), (3) and (5) of the *Radiocommunications Act 1992*
9 do not apply to a person who uses or applies a protected symbol for the
10 purposes of labelling equipment in accordance with repealed
11 section 182 of the *Radiocommunications Act 1992*.

12 **51 Transitional—recall of equipment**

13 For the purposes of subsection 183(1), (2), (3) or (4) of the
14 *Radiocommunications Act 1992*, it is immaterial whether the supply of
15 equipment occurred before, at or after the commencement of this item.

16 **52 Application—section 305 of the *Radiocommunications Act*** 17 **1992**

18 The amendment of section 305 of the *Radiocommunications Act 1992*
19 made by this Schedule applies in relation to a certificate issued under
20 that section after the commencement of this item.

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 1 Amendment of the Radiocommunications Act 1992

Schedule 5—Accreditation etc.

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

accreditation means an accreditation given under section 263.

accreditation rules means rules made under section 266.

2 Section 5 (definition of *conciliator*)

Repeal the definition, substitute:

conciliator has the meaning given by section 202.

3 After section 69A

Insert:

70 Conditions determined by the ACMA

- (1) The ACMA may, by legislative instrument, determine that each spectrum licence is taken to include one or more specified conditions.
- (2) The ACMA may, by legislative instrument, determine that each spectrum licence included in a specified class of spectrum licences is taken to include one or more specified conditions.
- (3) The ACMA's power under subsection (1) or (2) is not limited by sections 67 to 69A.
- (4) Conditions determined under this section are in addition to the conditions in sections 67 to 69A.

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (5) A determination under subsection (1) or (2) may confer a power to
2 make a decision of an administrative character on the ACMA.
- 3 (6) A determination under subsection (1) or (2) may confer a power to
4 make a decision of an administrative character on a person who
5 holds a specified kind of accreditation.
- 6 (7) A determination under subsection (1) or (2) may authorise a person
7 who holds a specified kind of accreditation to charge fees in
8 relation to the exercise by the person of a power conferred by the
9 determination. A fee must not be such as to amount to taxation.

4 At the end of section 71

11 Add:

- 12 (3) A condition included in a spectrum licence under subsection (1)
13 may confer a power to make a decision of an administrative
14 character on the ACMA.
- 15 (4) A condition included in a spectrum licence under subsection (1)
16 may confer a power to make a decision of an administrative
17 character on a person who holds a specified kind of accreditation.
- 18 (5) The legislative rules may authorise a person who holds a specified
19 kind of accreditation to charge fees in relation to the exercise by
20 the person of a power conferred by a condition included in a
21 spectrum licence under subsection (1). A fee must not be such as to
22 amount to taxation.

5 Subsection 100(4A)

24 Omit “a person accredited under section 263 to issue such certificates
25 for the purposes of this section”, substitute “a person who holds an
26 accreditation of a kind specified in the legislative rules”.

6 After subsection 100(4A)

28 Insert:

- 29 (4B) The legislative rules may authorise a person who holds a kind of
30 accreditation mentioned in subsection (4A) to charge fees in

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 1 Amendment of the Radiocommunications Act 1992

1 relation to the issue of frequency assignment certificates under
2 subsection (4A). A fee must not be such as to amount to taxation.

3 **7 Paragraph 107(1)(f)**

4 Repeal the paragraph.

5 **8 Subsection 107(2)**

6 Omit “(1)(f) or (g)”, substitute “(1)(g)”.

7 **9 Paragraph 108A(1)(e)**

8 Repeal the paragraph.

9 **10 After section 110**

10 Insert:

11 **110A Conditions determined by the ACMA**

- 12 (1) The ACMA may, by legislative instrument, determine that each
13 apparatus licence is taken to include one or more specified
14 conditions.
- 15 (2) The ACMA may, by legislative instrument, determine that each
16 apparatus licence included in a specified class of apparatus licences
17 is taken to include one or more specified conditions.
- 18 (3) The ACMA’s power under subsection (1) or (2) is not limited by
19 sections 107 to 109D.
- 20 (4) Conditions determined under this section are in addition to the
21 conditions in sections 107 to 109D.
- 22 (5) A determination under subsection (1) or (2) may confer a power to
23 make a decision of an administrative character on the ACMA.
- 24 (6) A determination under subsection (1) or (2) may confer a power to
25 make a decision of an administrative character on a person who
26 holds a specified kind of accreditation.
- 27 (7) A determination under subsection (1) or (2) may authorise a person
28 who holds a specified kind of accreditation to charge fees in

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 relation to the exercise by the person of a power conferred by the
2 determination. A fee must not be such as to amount to taxation.

3 **11 After section 111**

4 Insert:

5 **111A Licence conditions may confer powers on the ACMA or a** 6 **person who holds an accreditation**

7 *Scope*

- 8 (1) This section applies to:
9 (a) a condition specified under paragraph 107(1)(g), 108A(1)(f),
10 109(1)(f), 109A(1)(k) or 109B(1)(t); or
11 (b) a condition imposed under paragraph 111(1)(a).

12 *The ACMA*

- 13 (2) A condition may confer a power to make a decision of an
14 administrative character on the ACMA.

15 *Person who holds an accreditation*

- 16 (3) A condition may confer a power to make a decision of an
17 administrative character on a person who holds a specified kind of
18 accreditation.
19 (4) The legislative rules may authorise a person who holds a specified
20 kind of accreditation to charge fees in relation to the exercise by
21 the person of a power conferred by a condition. A fee must not be
22 such as to amount to taxation.

23 **12 Subsection 145(3)**

24 Omit “a person accredited under section 263 to issue certificates for the
25 purposes of this section”, substitute “a person who holds an
26 accreditation of a kind specified in the legislative rules”.

27 **13 After subsection 145(3)**

28 Insert:

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (3A) The legislative rules may authorise a person who holds a kind of
2 accreditation mentioned in subsection (3) to charge fees in relation
3 to the issue of certificates under subsection (3). A fee must not be
4 such as to amount to taxation.

5 **14 Sections 202 to 204**

6 Repeal the sections, substitute:

7 **202 Conciliator**

8 For the purposes of this Act, *conciliator* means a person who holds
9 an accreditation of a kind specified in the legislative rules.

10 **15 Sections 263 and 264**

11 Repeal the sections, substitute:

12 **263 ACMA may accredit persons**

- 13 (1) The ACMA may, by written notice, give a person an accreditation
14 of a particular kind.
- 15 (2) An accreditation is to be given in accordance with the accreditation
16 rules.
- 17 (3) An accreditation comes into force on the day specified in the notice
18 of accreditation.

19 Note: A decision to refuse to give an accreditation is reviewable under
20 Part 5.6.

21 **264 Conditions of accreditation**

22 An accreditation of a particular kind is subject to:

- 23 (a) such conditions relating to accreditations of that kind as are
24 specified in the accreditation rules; and
25 (b) such conditions (if any) as the ACMA specifies in the
26 instrument of accreditation.

27 Note: A decision to specify a condition in an instrument of accreditation is
28 reviewable under Part 5.6.

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Amendment of the Radiocommunications Act 1992 **Part 1**

264A Withdrawal of accreditation

Scope

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

Withdrawal

- (2) The ACMA may, by written notice given to the person, withdraw the accreditation if the ACMA is satisfied that:

- (a) the accreditation is no longer in accordance with the accreditation rules, as in force at the time the notice is given (whether or not the accreditation rules have been amended since the accreditation was given); or
(b) the person has contravened a condition of the accreditation.

Note: A decision to withdraw an accreditation is reviewable under Part 5.6.

- (3) A notice under subsection (2) must set out the reasons for withdrawing the accreditation.

- (4) In deciding whether to withdraw the accreditation, the ACMA must comply with the accreditation rules.

16 Section 266

Repeal the section, substitute:

266 Accreditation rules

- (1) The ACMA may, by legislative instrument, make rules (***accreditation rules***) prescribing matters required or permitted by this Act to be prescribed by the accreditation rules.
- (2) The accreditation rules may deal with the accreditation process.
- (3) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to accredit persons.
- (4) The accreditation rules may provide for procedures that must be followed in relation to deciding whether to withdraw the accreditation of persons.

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (5) The accreditation rules may provide for:
2 (a) the kinds of accreditation; and
3 (b) in respect of each kind of accreditation—the qualifications
4 and other requirements required before a person can be given
5 that kind of accreditation.

- 6 (6) The accreditation rules may make provision in relation to a matter
7 by conferring a power on the ACMA.

8 Example: The power to approve a form.

9 **17 After paragraph 285(v)**

10 Insert:

- 11 (va) a decision under paragraph 264(b) to specify a condition in
12 an instrument of accreditation;

13 **18 Paragraph 285(w)**

14 Omit “264”, substitute “264A”.

15 **19 After paragraph 285(w)**

16 Insert:

- 17 (waa) a decision of the ACMA:
18 (i) made under the accreditation rules; and
19 (ii) declared by the accreditation rules to be a decision to
20 which this section applies;

21 **20 Section 298A**

22 Repeal the section, substitute:

23 **298A Fees imposed by bodies or organisations**

- 24 (1) The ACMA may, by notifiable instrument, determine that a
25 specified body or organisation approved by the ACMA as
26 mentioned in paragraph (b) of the definition of ***approved***
27 ***examination*** in subsection 122(2) may charge fees for performing
28 its functions under this Act.

- 29 (2) Such a fee must not be such as to amount to taxation.

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 **21 Paragraph 308(b)**
- 2 Omit “264”, substitute “264A”.

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 2 Application and transitional provisions

Part 2—Application and transitional provisions

22 Definitions

In this Part:

transitional accreditation rules means rules made under item 29.

23 Application—frequency assignment certificates

The amendments of section 100 of the *Radiocommunications Act 1992* made by this Schedule apply in relation to a certificate issued after the commencement of this item.

24 Transitional—conditions of apparatus licences

Scope

(1) This item applies to a determination if:

- (a) the determination was in force immediately before the commencement of this item; and
- (b) the determination was made under paragraph 107(1)(f) of the *Radiocommunications Act 1992*.

Effect of determination

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

- (a) it had been made under subsection 110A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
- (b) it were expressed not to apply to:
 - (i) transmitter licences issued under section 101A or 102; or
 - (ii) digital radio multiplex transmitter licences; and
- (c) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Application and transitional provisions **Part 2**

25 Transitional—conditions of transmitter licences for temporary community broadcasters

Scope

- (1) This item applies to a determination if:
- (a) the determination was in force immediately before the commencement of this item; and
 - (b) the determination was made under paragraph 108A(1)(e) of the *Radiocommunications Act 1992*.

Effect of determination

- (2) The determination has effect, after the commencement of this item, as if:
- (a) it had been made under subsection 110A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (b) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

26 Transitional—accreditation

Scope

- (1) This item applies to an accreditation if:
- (a) the accreditation was in force immediately before the commencement of this item; and
 - (b) the accreditation was given under subsection 263(1) of the *Radiocommunications Act 1992*; and
 - (c) under the transitional accreditation rules, the accreditation is taken, for the purposes of this item, to correspond to an accreditation of a specified kind that could be given under subsection 263(1) of the *Radiocommunications Act 1992* (as amended by this Schedule).

EXPOSURE DRAFT

Schedule 5 Accreditation etc.

Part 2 Application and transitional provisions

Effect of accreditation

- (2) The accreditation has effect, after the commencement of this item, as if:
- (a) it were an accreditation of that kind; and
 - (b) it had been given under subsection 263(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (c) any requirement imposed by the *Radiocommunications Act 1992* (as amended by this Schedule) in relation to the giving of the accreditation (including a requirement about the form of words) had been satisfied.

27 Transitional—fees determination

Scope

- (1) This item applies to a determination if:
- (a) the determination was in force immediately before the commencement of this item; and
 - (b) the determination was made under subsection 298A(1) of the *Radiocommunications Act 1992*.

Effect of determination

- (2) Subject to subitem (3), the determination, so far as it relates to a body or organisation approved by the ACMA as mentioned in paragraph (b) of the definition of ***approved examination*** in subsection 122(2) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
- (a) it had been made under subsection 298A(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (b) its operation was expressly confined to fees for performing a function after the commencement of this item; and
 - (c) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the determination (including a requirement about the form of words) had been satisfied.

EXPOSURE DRAFT

Accreditation etc. **Schedule 5**
Application and transitional provisions **Part 2**

1 (3) The determination continues to apply, in relation to fees for performing
2 a function before the commencement of this item, as if section 298A of
3 the *Radiocommunications Act 1992* had not been repealed by this
4 Schedule.

5 **28 Transitional—no compensation for withdrawal of**
6 **accreditation**

7 Despite the amendment of section 308 of the *Radiocommunications Act*
8 *1992* by this Schedule, that section continues to apply, in relation to a
9 withdrawal that occurred before the commencement of this item, as if
10 that amendment had not been made.

11 **29 Transitional—accreditation rules**

12 The Australian Communications and Media Authority may, by
13 legislative instrument, make rules (*transitional accreditation rules*)
14 prescribing matters required or permitted by this Part to be prescribed
15 by the transitional accreditation rules.

EXPOSURE DRAFT

Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

Schedule 6—Compliance and enforcement

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

designated forfeiture officer has the meaning given by section 283.

forfeiture notice means a notice under section 274.

2 Section 5 (definition of *inspector*)

Omit “section 267”, substitute “section 284”.

3 Section 5

Insert:

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

4 Subsection 11(1)

Omit “section 6 of the *Crimes Act 1914*, or an ancillary offence (within the meaning of the *Criminal Code*)”, substitute “the *Crimes Act 1914* or the *Criminal Code*”.

5 Subsection 11(1A)

Repeal the subsection.

6 Paragraph 11(2)(b)

Repeal the paragraph, substitute:

(b) payment of the amount stated in an infringement notice given under Part 5 of the *Regulatory Powers Act*, so far as it applies

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 to the provision mentioned in subsection 270(1) of this Act
2 that creates the offence.

3 **7 Division 1 of Part 3.1 (at the end of the heading)**

4 Add “**and civil penalties**”.

5 **8 Before subsection 46(1)**

6 Insert:

7 *Offence*

8 **9 At the end of section 46**

9 Add:

10 *Civil penalty*

11 (3) Subject to section 49, a person must not operate a
12 radiocommunications device otherwise than as authorised by:

- 13 (a) a spectrum licence; or
14 (b) an apparatus licence; or
15 (c) a class licence.

16 Civil penalty:

- 17 (a) if the radiocommunications device is a radiocommunications
18 transmitter—300 penalty units; or
19 (b) if the radiocommunications device is not a
20 radiocommunications transmitter—20 penalty units.

21 (4) Subsection (3) does not apply if the person has a reasonable
22 excuse.

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

25 **10 Before subsection 47(1)**

26 Insert:

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

Offence

11 At the end of section 47

Add:

Civil penalty

- (3) Subject to section 49, a person must not have a radiocommunications device in the person's possession for the purpose of operating the device otherwise than as authorised by:
- (a) a spectrum licence; or
 - (b) an apparatus licence; or
 - (c) a class licence.

Civil penalty:

- (a) if the radiocommunications device is a radiocommunications transmitter—300 penalty units; or
 - (b) if the radiocommunications device is not a radiocommunications transmitter—20 penalty units.
- (4) Subsection (3) does not apply if the person has a reasonable excuse.

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

12 Subsection 49(2)

Omit “section 46 or 47”, substitute “subsection 46(1) or 47(1)”.

13 After subsection 49(2)

Insert:

- (2A) In proceedings for a civil penalty order for a contravention of subsection 46(3) or 47(3), the burden of proving any of the matters referred to in subsection (1) of this section lies on the defendant.

14 Section 113

Repeal the section, substitute:

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

113 Contravention of conditions

(1) If a person:

(a) is the holder of an apparatus licence; or

(b) has been authorised under section 114 in relation to an apparatus licence;

the person must not contravene a condition of the licence.

Civil penalty: 100 penalty units.

(2) Subsection (1) does not apply if the person has a reasonable excuse.

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

15 At the end of subsection 116(3)

Add:

Civil penalty: 30 penalty units.

16 At the end of subsection 116(4)

Add:

Civil penalty: 30 penalty units.

17 Subsection 117(1)

Omit “(1)”.

18 Subsection 117(1) (penalty)

Repeal the penalty, substitute:

Civil penalty: 20 penalty units.

19 Subsection 117(2)

Repeal the subsection (including the note).

20 Subsection 118(1) (penalty)

Repeal the penalty, substitute:

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

1 Civil penalty: 20 penalty units.

2 **21 Subsection 118(1A)**

3 Repeal the subsection.

4 **22 Subsection 124(4)**

5 Omit “fail to return the certificate to the ACMA, either by hand or by
6 certified mail, within 7 days after receiving notification of the
7 cancellation”, substitute “falsely represent that the person holds the
8 certificate”.

9 **23 Subsection 124(4) (penalty)**

10 Repeal the penalty, substitute:

11 Civil penalty: 20 penalty units.

12 **24 Subsections 124(5) and (6)**

13 Repeal the subsections.

14 **25 Subsection 195(1) (penalty)**

15 Repeal the penalty, substitute:

16 Civil penalty: 300 penalty units.

17 **26 Subsection 196(2)**

18 Omit “193, 194 or 195”, substitute “193 or 194”.

19 **27 At the end of section 196**

20 Add:

21 (3) In proceedings for a civil penalty order for a contravention of
22 subsection 195(1), the burden of proving any of the matters
23 referred to in subsection (1) of this section lies on the defendant.

24 **28 Section 197**

25 Repeal the section, substitute:

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

197 Causing interference etc.

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

- (a) substantial interference; or
- (b) substantial disruption; or
- (c) substantial disturbance;

to radiocommunications:

- (d) within Australia; or
- (e) between a place in Australia and a place outside Australia.

Civil penalty: 500 penalty units.

29 Subsection 231(6)

Repeal the subsection, substitute:

- (6) Part 5.5 deals with matters relating to the enforcement of this Act.

30 Subsection 231(9)

Repeal the subsection.

31 Part 5.5

Repeal the Part, substitute:

Part 5.5—Enforcement

Division 1—Introduction

267 Simplified outline of this Part

- If a person has contravened, or is contravening, a civil penalty provision of this Act, the ACMA may give the person a remedial direction.
- A civil penalty provision of this Act is enforceable under Part 4 of the Regulatory Powers Act.

EXPOSURE DRAFT

Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

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- Infringement notices may be given under Part 5 of the Regulatory Powers Act for alleged contraventions of certain provisions of this Act.
- The ACMA may accept an enforceable undertaking under Part 6 of the Regulatory Powers Act that relates to a provision of this Act.
- Injunctions may be granted under Part 7 of the Regulatory Powers Act in relation to contraventions of certain provisions of this Act.
- Forfeiture notices may be given for alleged contraventions of certain provisions of this Act.
- A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:
 - (a) an offence against Part 4.1 of this Act; or
 - (b) a civil penalty provision of this Act; or
 - (c) an offence against subsection 284J(8) of this Act.
- Information given in compliance, or purported compliance, with subsection 284J(8) or a provision of Part 4.1 is subject to monitoring under Part 2 of the Regulatory Powers Act.
- An offence against this Act, or a civil penalty provision of this Act, is subject to investigation under Part 3 of the Regulatory Powers Act.
- Inspectors appointed under this Act have the following additional powers:
 - (a) the power to give directions to a holder of an apparatus licence or a spectrum licence in relation to managing interference with radiocommunications;
 - (b) the power to enter premises to adjust transmitters in emergencies;
 - (c) the power to direct a person to operate a transmitter;

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Compliance and enforcement **Schedule 6**
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- (d) the power to require a person to produce an apparatus licence, a spectrum licence, a third party authorisation, a certificate or a permit;
 - (e) the power to require a person to produce a copy of a record of an authorisation;
 - (f) the power to require a person to produce a record the retention of which is required by the equipment rules.
- A court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in:
 - (a) the commission of an offence against this Act; or
 - (b) a contravention of a civil penalty provision of this Act.
 - The ACMA may issue a public warning notice.

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

Division 2—Enforcement

268 Remedial directions—breach of civil penalty provision

Scope

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

Remedial direction

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

Note: A decision to give a direction is reviewable under Part 5.6.

- (3) The following are examples of the kinds of direction that may be given to a person under subsection (2):

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (a) a direction that the person implement effective administrative
2 systems for monitoring compliance with a civil penalty
3 provision of this Act;
4 (b) a direction that the person implement a system designed to
5 give the person's employees, agents and contractors a
6 reasonable knowledge and understanding of the requirements
7 of a civil penalty provision of this Act, in so far as those
8 requirements affect the employees, agents or contractors
9 concerned.

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

11 Civil penalty: 50 penalty units.

12 **269 Civil penalty provisions—enforcement**

13 *Enforceable civil penalty provision*

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

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

19 *Authorised applicant*

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

23 *Relevant court*

- 24 (3) For the purposes of Part 4 of the Regulatory Powers Act, each of
25 the following courts is a relevant court in relation to the civil
26 penalty provisions of this Act:
27 (a) the Federal Court;
28 (b) the Federal Circuit Court of Australia.

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

External Territories

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

Geographical application

- (5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 4 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

Sudden or extraordinary emergency

- (6) A person is not liable under Part 4 of the Regulatory Powers Act to have a civil penalty order made against the person for a contravention of a civil penalty provision of this Act if:

- (a) the person carries out the conduct constituting the contravention in response to circumstances of sudden or extraordinary emergency; and
- (b) the person believes on reasonable grounds that:
 - (i) circumstances of sudden or extraordinary emergency exist; and
 - (ii) contravening the provision is the only reasonable way to deal with the emergency; and
 - (iii) the conduct is a reasonable response to the emergency.

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

270 Infringement notices

Provisions subject to an infringement notice

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
- (a) subsection 46(3);
 - (b) subsection 47(3);
 - (c) subsection 113(1);

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- 1 (d) section 117;
- 2 (e) subsection 118(1);
- 3 (f) subsection 160(5);
- 4 (g) subsection 160(6);
- 5 (h) subsection 160(7);
- 6 (i) subsection 160(9);
- 7 (j) subsection 165(1);
- 8 (k) subsection 170(1);
- 9 (l) subsection 170(2);
- 10 (m) subsection 170(3);
- 11 (n) subsection 188(2);
- 12 (o) subsection 195(1);
- 13 (p) section 197;
- 14 (q) subsection 284F(4);
- 15 (r) subsection 284S(4);
- 16 (s) subsection 300(4);
- 17 (t) subsection 300A(1);
- 18 (u) subsection 300A(3);
- 19 (v) subsection 300A(5);
- 20 (w) subsection 300B(2);
- 21 (x) section 300C.

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

24 *Infringement officer*

- 25 (2) For the purposes of Part 5 of the Regulatory Powers Act, each of
26 the following:
- 27 (a) a member of the staff of the ACMA authorised, in writing, by
28 the ACMA for the purposes of this subsection;
 - 29 (b) the Chair of the ACMA;
- 30 is an infringement officer in relation to the provisions mentioned in
31 subsection (1).

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Relevant chief executive

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The relevant chief executive may, in writing, delegate any or all of the relevant chief executive's powers and functions under Part 5 of the Regulatory Powers Act to a person who is:
- (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the relevant chief executive.

Withdrawal of notice

- (6) For the purposes of Part 5 of the Regulatory Powers Act, as it applies to the provisions mentioned in subsection (1), if:
- (a) an infringement notice has been given to a person under that Part, as it applies to those provisions; and
 - (b) the relevant chief executive is deciding whether or not to withdraw the infringement notice;
- section 106 of that Act has effect as if it provided that, when so deciding, the relevant chief executive may (in addition to the matters set out in paragraph 106(3)(b) of that Act) take into account whether:
- (c) the owner of a thing has agreed, in accordance with a forfeiture notice, to forfeit the thing to the Commonwealth; and
 - (d) the forfeiture notice relates to a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute the contravention in the infringement notice.

Effect of payment of amount

- (7) If:

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (a) a person is given an infringement notice for an alleged
2 contravention of a civil penalty provision of this Act; and
3 (b) the person pays the amount stated in the notice before the end
4 of the period referred to in paragraph 104(1)(h) of the
5 Regulatory Powers Act; and
6 (c) the notice has not been withdrawn;
7 the person may not be prosecuted in a court for an offence that is
8 constituted by conduct that is the same, or substantially the same,
9 as the conduct alleged to constitute the contravention in the notice.

- 10 (8) Subsection (7) has effect in addition to section 107 of the
11 Regulatory Powers Act.

12 *External Territories*

- 13 (9) Part 5 of the Regulatory Powers Act, as it applies in relation to the
14 provisions mentioned in subsection (1), extends to every external
15 Territory.

16 *Geographical application*

- 17 (10) Sections 16, 17, 17A and 18 have effect as if a reference in those
18 sections to this Act included a reference to Part 5 of the Regulatory
19 Powers Act, as it applies in relation to the provisions mentioned in
20 subsection (1) of this section.

21 **271 Enforceable undertakings**

22 *Enforceable provisions*

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

25 *Authorised person*

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

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

Relevant court

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

Publication of undertaking

- (4) The following provisions have effect:
- (a) the ACMA must publish an undertaking given in relation to a provision mentioned in subsection (1) on the ACMA's website;
 - (b) the legislative rules may provide that the ACMA must also publish an undertaking given in relation to a provision mentioned in subsection (1) in accordance with the legislative rules.

External Territories

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

Geographical application

- (6) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 6 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

272 Injunctions

Enforceable provisions

- (1) The following provisions of this Act are enforceable under Part 7 of the Regulatory Powers Act:
- (a) subsection 46(3);
 - (b) subsection 47(3);

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (c) subsection 113(1);
- 2 (d) section 117;
- 3 (e) subsection 160(5);
- 4 (f) subsection 160(6);
- 5 (g) subsection 160(7);
- 6 (h) subsection 160(9);
- 7 (i) subsection 165(1);
- 8 (j) subsection 170(1);
- 9 (k) subsection 170(2);
- 10 (l) subsection 170(3);
- 11 (m) subsection 176(1);
- 12 (n) subsection 176(2);
- 13 (o) subsection 176(3);
- 14 (p) subsection 176(4);
- 15 (q) subsection 186(2);
- 16 (r) subsection 188(2);
- 17 (s) subsection 195(1);
- 18 (t) section 197;
- 19 (u) subsection 227(1);
- 20 (v) subsection 284S(4);
- 21 (w) subsection 300A(1);
- 22 (x) subsection 300A(3);
- 23 (y) subsection 300A(5);
- 24 (z) subsection 300B(2);
- 25 (za) section 300C.

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

28 *Authorised person*

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

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Compliance and enforcement **Schedule 6**
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Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

- (a) the Federal Court;
- (b) the Federal Circuit Court of Australia.

External Territories

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

Geographical application

(5) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 7 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

Division 3—Forfeiture notices

273 Provisions subject to a forfeiture notice

The following provisions of this Act are subject to a forfeiture notice under this Division:

- (a) subsection 46(3);
- (b) subsection 47(3);
- (c) subsection 160(5);
- (d) subsection 160(6);
- (e) subsection 160(7);
- (f) subsection 165(1);
- (g) subsection 170(1);
- (h) subsection 170(2);
- (i) subsection 170(3);
- (j) subsection 176(1);
- (k) subsection 176(2);

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- 1 (l) subsection 176(3);
- 2 (m) subsection 176(4);
- 3 (n) subsection 195(1);
- 4 (o) section 197.

5 **274 When a forfeiture notice may be given**

- 6 (1) If a designated forfeiture officer believes on reasonable grounds
- 7 that:
- 8 (a) a person has contravened a provision subject to a forfeiture
- 9 notice under this Division; and
- 10 (b) a thing was used, or otherwise involved, in the contravention
- 11 of the provision;
- 12 the designated forfeiture officer may give to the person a forfeiture
- 13 notice for the alleged contravention.
- 14 (2) The forfeiture notice must be expressed to relate to the thing.
- 15 (3) The forfeiture notice must be given within 12 months after the day
- 16 on which the contravention is alleged to have taken place.
- 17 (4) A designated forfeiture officer may give a person a single
- 18 forfeiture notice relating to multiple alleged contraventions
- 19 (whether of the same provision or different provisions).
- 20 (5) A person must not be given:
- 21 (a) a forfeiture notice; and
- 22 (b) an infringement notice under Part 5 of the Regulatory Powers
- 23 Act;
- 24 that relate to the same alleged contravention.

25 **275 Matters to be included in a forfeiture notice**

- 26 (1) A forfeiture notice must:
- 27 (a) be identified by a unique number; and
- 28 (b) state the day on which the notice is given; and
- 29 (c) state the name of the person to whom the notice is given; and
- 30 (d) state:

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- 1 (i) the name and contact details of the person who gave the
2 notice; and
3 (ii) that the person is a designated forfeiture officer; and
4 (e) give brief details of the alleged contravention or
5 contraventions to which the notice relates, including:
6 (i) the provision or the provisions that were allegedly
7 contravened; and
8 (ii) the maximum penalty that a court could impose for each
9 contravention, if the provision or those provisions were
10 contravened; and
11 (iii) the time (if known) and day of, and the place of, each
12 alleged contravention; and
13 (f) describe the thing to which the notice relates; and
14 (g) state that, if, within 28 days after the day the notice is given,
15 the owner of the thing agrees with the ACMA (on behalf of
16 the Commonwealth) to forfeit the thing to the
17 Commonwealth, then (unless the notice is withdrawn)
18 proceedings seeking a civil penalty order or orders will not
19 be brought in relation to the alleged contravention or
20 contraventions; and
21 (h) state that agreeing to forfeit the thing to the Commonwealth
22 is not an admission of guilt or liability; and
23 (i) state that the person to whom the notice is given may apply
24 to the ACMA to have the period specified in the notice
25 extended; and
26 (j) state that the owner of the thing may choose not to agree to
27 forfeit the thing to the Commonwealth and, if the owner so
28 chooses, proceedings seeking a civil penalty order or orders
29 may be brought in relation to the alleged contravention or
30 contraventions; and
31 (k) set out how the notice can be withdrawn; and
32 (l) state that if the notice is withdrawn, proceedings seeking a
33 civil penalty order or orders may be brought in relation to the
34 alleged contravention or contraventions; and
35 (m) state that the person to whom the notice is given may make
36 written representations to the ACMA seeking the withdrawal
37 of the notice.
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EXPOSURE DRAFT

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- 1 (2) To avoid doubt, the person to whom a forfeiture notice is given
2 may be the owner of the thing to which the notice relates.
- 3 (3) If:
4 (a) a forfeiture notice relating to a thing is given to a person; and
5 (b) the owner of the thing agrees, in accordance with the notice,
6 to forfeit the thing to the Commonwealth;
7 the owner is not entitled to revoke the agreement.

8 **276 Extension of time to agree to forfeit a thing to the** 9 **Commonwealth**

- 10 (1) A person to whom a forfeiture notice has been given may apply to
11 the ACMA for an extension of the period referred to in paragraph
12 275(1)(g).
- 13 (2) If the application is made before the end of that period, the ACMA
14 may, in writing, extend that period. The ACMA may do so before
15 or after the end of that period.
- 16 (3) If the ACMA extends that period, a reference in this Division, or in
17 a notice or other instrument under this Division, to the period
18 referred to in paragraph 275(1)(g) is taken to be a reference to that
19 period so extended.
- 20 (4) If the ACMA does not extend that period, a reference in this
21 Division, or in a notice or other instrument under this Division, to
22 the period referred to in paragraph 275(1)(g) is taken to be a
23 reference to the period that ends on the later of the following days:
24 (a) the day that is the last day of the period referred to in
25 paragraph 275(1)(g);
26 (b) the day that is 7 days after the day the person was given
27 notice of the ACMA's decision not to extend.
- 28 (5) The ACMA may extend that period more than once under
29 subsection (2).

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277 Withdrawal of a forfeiture notice

Representations seeking withdrawal of notice

- (1) A person to whom a forfeiture notice has been given may make written representations to the ACMA seeking the withdrawal of the notice.

Withdrawal of notice

- (2) The ACMA may withdraw a forfeiture notice given to a person, so long as the thing to which the notice relates has not been forfeited to the Commonwealth.

Note: For forfeiture, see section 280.

- (3) For the purposes of subsection (2), it is immaterial whether the person has made representations seeking the withdrawal of the notice.

- (4) In deciding whether or not to withdraw a forfeiture notice (the **relevant forfeiture notice**), the ACMA:

- (a) must take into account any written representations seeking the withdrawal that were given by the person to the ACMA; and
- (b) may take into account the following:
 - (i) whether a court has previously imposed a penalty on the person for a contravention of a provision subject to a forfeiture notice under this Division;
 - (ii) the circumstances of the alleged contravention or contraventions;
 - (iii) whether the person has paid an amount, stated in an infringement notice under Part 5 of the Regulatory Powers Act, for a contravention that is constituted by conduct that is substantially the same as the conduct alleged to constitute a contravention in the relevant forfeiture notice;
 - (iv) whether the owner of the thing has agreed to forfeit another thing to the Commonwealth, in accordance with another forfeiture notice, for a contravention that is

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- 1 constituted by conduct that is the same, or substantially
2 the same, as the conduct alleged to constitute a
3 contravention in the relevant forfeiture notice;
4 (v) any other matter the ACMA considers relevant.

5 *Notice of withdrawal*

- 6 (5) Notice of the withdrawal of a forfeiture notice must be given to the
7 person to whom the forfeiture notice was given. The withdrawal
8 notice must state:
9 (a) the person's name and address; and
10 (b) the day the forfeiture notice was given; and
11 (c) the identifying number of the forfeiture notice; and
12 (d) that the forfeiture notice is withdrawn; and
13 (e) that proceedings seeking a civil penalty order or orders may
14 be brought in relation to the alleged contravention or
15 contraventions.

16 **278 Effect of agreeing to forfeit a thing to the Commonwealth**

- 17 If:
18 (a) a person is given a forfeiture notice for:
19 (i) an alleged contravention; or
20 (ii) multiple alleged contraventions; and
21 (b) the owner of the thing to which the notice relates agrees, in
22 accordance with the notice, to forfeit the thing to the
23 Commonwealth; and
24 (c) the notice has not been withdrawn;
25 then:
26 (d) any liability of the person for the alleged contravention or
27 contraventions is discharged; and
28 (e) proceedings seeking a civil penalty order or orders may not
29 be brought in relation to the alleged contravention or
30 contraventions; and
31 (f) the person is not regarded as having admitted guilt or liability
32 for the alleged contravention or contraventions; and

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- 1 (g) the person may not be prosecuted in a court for an offence
2 that is constituted by conduct that is the same, or
3 substantially the same, as the conduct alleged to constitute a
4 contravention in the notice.

5 **279 The ACMA may take possession of a thing**

- 6 (1) If:
7 (a) a forfeiture notice relating to a thing is given to a person; and
8 (b) the owner of the thing agrees, in accordance with the notice,
9 to forfeit the thing to the Commonwealth; and
10 (c) the notice has not been withdrawn;
11 then:
12 (d) the ACMA may take possession of the thing; and
13 (e) if the ACMA does so—the ACMA must give the owner a
14 receipt for the thing taken into possession.

- 15 (2) If:
16 (a) the ACMA withdraws a forfeiture notice relating to a thing;
17 and
18 (b) the owner of the thing has already agreed, in accordance with
19 the notice, to forfeit the thing to the Commonwealth; and
20 (c) the ACMA has taken possession of the thing under
21 subsection (1);
22 then:
23 (d) the ACMA must take all reasonable steps to return the thing
24 to the owner; and
25 (e) the agreement ceases to have effect.

- 26 (3) If:
27 (a) a forfeiture notice relating to a thing is given to a person; and
28 (b) the owner of the thing does not have possession of the thing
29 when the notice is given; and
30 (c) the owner of the thing agrees, in accordance with the notice,
31 to forfeit the thing to the Commonwealth; and
32 (d) the owner of the thing takes possession of the thing so as to
33 enable the ACMA to take possession of the thing under
34 subsection (1); and
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- 1 (e) at the time when the owner takes possession of the thing, the
2 notice had not been withdrawn;
3 sections 47 and 160 and subsections 175(4) and 176(4) do not
4 apply to the owner's possession of the thing until whichever of the
5 following events happens first:
6 (f) the ACMA takes possession of the thing under
7 subsection (1);
8 (g) the notice is withdrawn.
- 9 (4) If:
10 (a) the ACMA has purported to take possession of a thing under
11 subsection (1); and
12 (b) the ACMA was not entitled to take possession of the thing
13 under that subsection;
14 the ACMA must take all reasonable steps to return the thing to the
15 owner of the thing.

280 Forfeiture of a thing to the Commonwealth

- 17 (1) If:
18 (a) a forfeiture notice relating to a thing is given to a person; and
19 (b) the owner of the thing agrees, in accordance with the notice,
20 to forfeit the thing to the Commonwealth; and
21 (c) the notice has not been withdrawn; and
22 (d) the ACMA has taken possession of the thing under
23 subsection 279(1); and
24 (e) at least 90 days have passed since the ACMA gave the owner
25 a receipt under paragraph 279(1)(e) for the thing;
26 the ACMA may declare, in writing, that the thing is forfeited to the
27 Commonwealth.
- 28 (2) The ACMA must give a copy of the declaration to the owner of the
29 thing.
- 30 *Deemed forfeiture*
- 31 (3) If:
32 (a) a forfeiture notice relating to a thing is given to a person; and

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- 1 (b) the owner of the thing agrees, in accordance with the notice,
2 to forfeit the thing to the Commonwealth; and
3 (c) the ACMA has taken possession of the thing under
4 subsection 279(1); and
5 (d) the ACMA has not, within the 120-day period beginning at
6 the start of the day when the ACMA gave the owner a receipt
7 under paragraph 279(1)(e) for the thing, made a declaration
8 under subsection (1) of this section that the thing is forfeited
9 to the Commonwealth; and
10 (e) the notice has not been withdrawn before the end of the
11 120-day period;
12 then, at the end of the 120-day period, the thing is forfeited to the
13 Commonwealth.

14 **281 Forfeited things may be sold, destroyed or otherwise disposed of**

15 A thing forfeited under section 280:

- 16 (a) may be sold, destroyed or otherwise disposed of in
17 accordance with the directions of the ACMA; and
18 (b) pending such directions, must be kept in such custody as the
19 ACMA directs.

20 **282 Effect of this Division**

21 This Division does not:

- 22 (a) require a forfeiture notice to be given to a person for one or
23 more alleged contraventions of one or more provisions
24 subject to a forfeiture notice under this Division; or
25 (b) affect the liability of a person for one or more alleged
26 contraventions of one or more provisions subject to a
27 forfeiture notice under this Division if:
28 (i) the person does not comply with a forfeiture notice
29 given to the person for those contraventions; or
30 (ii) a forfeiture notice is not given to the person for those
31 contraventions; or
32 (iii) a forfeiture notice is given to the person for those
33 contraventions and is subsequently withdrawn; or

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- 1 (c) prevent the giving of 2 or more forfeiture notices to a person
2 for one or more alleged contraventions of one or more
3 provisions subject to a forfeiture notice under this Division;
4 or
5 (d) limit a court's discretion to order the forfeiture to the
6 Commonwealth of a thing used, or otherwise involved, in the
7 contravention of a provision subject to a forfeiture notice
8 under this Division.

9 **283 Designated forfeiture officer**

10 A person is a *designated forfeiture officer* for the purposes of this
11 Act if the person is:

- 12 (a) a member of the staff of the ACMA authorised, in writing, by
13 the ACMA for the purposes of this section; or
14 (b) the Chair of the ACMA.

15 **Division 4—Inspectors**

16 **284 Inspectors**

- 17 (1) A person is an *inspector* for the purposes of this Act if the person
18 is:
19 (a) a Commonwealth officer appointed by the ACMA, by written
20 instrument, to be an inspector for the purposes of this Act; or
21 (b) a Commonwealth officer included in a class of
22 Commonwealth officers appointed by the ACMA, by
23 notifiable instrument, to be inspectors for the purposes of this
24 Act; or
25 (c) an eligible State officer appointed by the ACMA, by written
26 instrument, to be an inspector for the purposes of this Act; or
27 (d) an eligible State officer included in a class of eligible State
28 officers appointed by the ACMA, by notifiable instrument, to
29 be inspectors for the purposes of this Act; or
30 (e) a member (other than a special member) of the Australian
31 Federal Police.
32 (2) Subsection (1) has effect subject to subsection (3).

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

5 *Eligible State officer*

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

14 *Eligible State*

- 15 (5) A State may, by written notice given to the ACMA, consent to be
16 treated as an eligible State for the purposes of this section.
17 (6) A notice under subsection (5) may be given on behalf of a State by
18 a Minister of the State.
19 (7) If a State consents under subsection (5) to be treated as an eligible
20 State for the purposes of this section, the ACMA must, by
21 notifiable instrument, declare that the State is an ***eligible State*** for
22 the purposes of this section.

23 *State*

- 24 (8) For the purposes of this section, ***State*** includes:
25 (a) the Australian Capital Territory; and
26 (b) the Northern Territory.

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Division 5—Monitoring and investigation powers

284A Monitoring powers

Provisions subject to monitoring

- (1) A provision is subject to monitoring under Part 2 of the Regulatory Powers Act if it is:

- (a) an offence against a provision of Part 4.1 of this Act; or
- (b) a civil penalty provision of Part 4.1 of this Act; or
- (c) an offence against subsection 284J(8) of this Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

- (2) Information given in compliance or purported compliance with:

- (a) a provision of Part 4.1; or
- (b) subsection 284J(8);

is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Authorised applicant

- (3) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:

- (a) is covered by paragraph 284(1)(a), (b), (c) or (d); and
- (b) is not a member of the police force of a State or Territory;

is an authorised applicant in relation to the provisions mentioned in subsection (1) of this section and information mentioned in subsection (2) of this section.

Authorised person

- (4) For the purposes of Part 2 of the Regulatory Powers Act, an inspector who:

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- 1 (a) is covered by paragraph 284(1)(a), (b), (c) or (d); and
2 (b) is not a member of the police force of a State or Territory;
3 is an authorised person in relation to the provisions mentioned in
4 subsection (1) of this section and information mentioned in
5 subsection (2) of this section.

6 *Issuing officer*

- 7 (5) For the purposes of Part 2 of the Regulatory Powers Act, each of
8 the following persons is an issuing officer in relation to the
9 provisions mentioned in subsection (1) and information mentioned
10 in subsection (2):
11 (a) a Judge of the Federal Court;
12 (b) a Judge of the Federal Circuit Court of Australia;
13 (c) a magistrate.

14 *Relevant chief executive*

- 15 (6) For the purposes of Part 2 of the Regulatory Powers Act, the Chair
16 of the ACMA is the relevant chief executive in relation to the
17 provisions mentioned in subsection (1) and information mentioned
18 in subsection (2).
- 19 (7) The relevant chief executive may, in writing, delegate the powers
20 and functions mentioned in subsection (8) to a person who is:
21 (a) a member of the staff of the ACMA; and
22 (b) an SES employee or an acting SES employee.
- 23 (8) The powers and functions that may be delegated are:
24 (a) powers under Part 2 of the Regulatory Powers Act in relation
25 to the provisions mentioned in subsection (1) and information
26 mentioned in subsection (2); and
27 (b) powers and functions under the Regulatory Powers Act that
28 are incidental to a power mentioned in paragraph (a).
- 29 (9) A person exercising powers or performing functions under a
30 delegation under subsection (7) must comply with any directions of
31 the relevant chief executive.

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Relevant court

- (10) For the purposes of Part 2 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2):
- (a) the Federal Court;
 - (b) the Federal Circuit Court of Australia.

Premises

- (11) For the purposes of Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), each of the following is taken to be premises:
- (a) a vessel;
 - (b) an aircraft;
 - (c) a space object.
- (12) An authorised person must not enter premises under Part 2 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2), if the premises are used solely or primarily as a residence.

Person assisting

- (13) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and information mentioned in subsection (2).

Use of force in executing a warrant

- (14) In executing a monitoring warrant:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and

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- 1 (b) a person assisting the authorised person may use such force
2 against things as is necessary and reasonable in the
3 circumstances.

4 *External Territories*

- 5 (15) Part 2 of the Regulatory Powers Act, as it applies in relation to the
6 provisions mentioned in subsection (1) and information mentioned
7 in subsection (2), extends to every external Territory.

8 *Geographical application*

- 9 (16) Sections 16, 17, 17A and 18 have effect as if a reference in those
10 sections to this Act included a reference to Part 2 of the Regulatory
11 Powers Act, as it applies in relation to the provisions mentioned in
12 subsection (1) of this section and information mentioned in
13 subsection (2) of this section.

14 **284B Investigation powers—general**

15 *Provisions subject to investigation*

- 16 (1) A provision is subject to investigation under Part 3 of the
17 Regulatory Powers Act if it is:
18 (a) an offence provision of this Act; or
19 (b) a civil penalty provision of this Act.

20 Note: *Offence against this Act* has an extended meaning—see section 11.

21 *Authorised applicant*

- 22 (2) For the purposes of Part 3 of the Regulatory Powers Act, an
23 inspector is an authorised applicant in relation to evidential
24 material that relates to a provision mentioned in subsection (1).

25 *Authorised person*

- 26 (3) For the purposes of Part 3 of the Regulatory Powers Act, an
27 inspector is an authorised person in relation to evidential material
28 that relates to a provision mentioned in subsection (1).

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Issuing officer

- (4) For the purposes of Part 3 of the Regulatory Powers Act, each of the following persons is an issuing officer in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) a Judge of the Federal Court;
 - (b) a Judge of the Federal Circuit Court of Australia;
 - (c) a magistrate.

Relevant chief executive

- (5) For the purposes of Part 3 of the Regulatory Powers Act, the Chair of the ACMA is the relevant chief executive in relation to evidential material that relates to a provision mentioned in subsection (1).
- (6) The relevant chief executive may, in writing, delegate the powers and functions mentioned in subsection (7) to a person who is:
- (a) a member of the staff of the ACMA; and
 - (b) an SES employee or an acting SES employee.
- (7) The powers and functions that may be delegated are:
- (a) powers under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1); and
 - (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a).
- (8) A person exercising powers or performing functions under a delegation under subsection (6) must comply with any directions of the relevant chief executive.

Relevant court

- (9) For the purposes of Part 3 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to evidential material that relates to a provision mentioned in subsection (1):
- (a) the Federal Court;
 - (b) the Federal Circuit Court of Australia.

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Premises

- (10) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), each of the following is taken to be premises:
- (a) a vessel;
 - (b) an aircraft;
 - (c) a space object.

Person assisting

- (11) An authorised person may be assisted by other persons in exercising powers, or performing functions or duties, under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

Disposal

- (12) Part 3 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection (1), has effect as if a reference in section 68 of that Act to the disposal of a thing included a reference to the disposal of a thing by way of destruction.

Use of force in executing a warrant

- (13) In executing an investigation warrant:
- (a) an authorised person may use such force against things as is necessary and reasonable in the circumstances; and
 - (b) a person assisting the authorised person may use such force against things as is necessary and reasonable in the circumstances.

External Territories

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

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Geographical application

- (15) Sections 16, 17, 17A and 18 have effect as if a reference in those sections to this Act included a reference to Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection (1) of this section.

284C Identity card

- (1) Part 3 of the Regulatory Powers Act, as it applies in relation to the provisions mentioned in subsection 284B(1) of this Act, has effect as if a reference in paragraphs 55(6)(b) and 56(1)(b) of the Regulatory Powers Act to an identity card, when used in relation to an authorised person who is:
- (a) a member of the Australian Federal Police; or
 - (b) a member of the police force of an eligible State (within the meaning of section 284 of this Act);
- were a reference to written evidence of the fact that the authorised person is such a member.
- (2) Section 76 of the Regulatory Powers Act, so far as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, does not apply to an authorised person who is:
- (a) a member of the Australian Federal Police; or
 - (b) a member of the police force of an eligible State (within the meaning of section 284 of this Act).

284D Retention of thing seized etc.

- (1) Section 66 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect subject to subsections (2), (3) and (4) of this section.
- (2) If:
- (a) a thing is seized under the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284(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

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- 1 (c) the thing may have been used, or otherwise involved, in the
2 alleged commission of the offence;
3 the thing may be retained until the proceedings (and any appeal
4 from those proceedings) have been finalised.

5 Note: *Offence against this Act* has an extended meaning—see section 11.

6 (3) If:

- 7 (a) a thing is seized under the Regulatory Powers Act, as it
8 applies in relation to a provision mentioned in subsection
9 284B(1) of this Act; and
10 (b) proceedings under section 82 of the Regulatory Powers Act
11 in relation to a contravention of a civil penalty provision of
12 this Act are instituted within the period of 60 days after the
13 seizure; and
14 (c) the thing may have been used, or otherwise involved, in the
15 alleged contravention of the civil penalty provision;
16 the thing may be retained until the proceedings (and any appeal
17 from those proceedings) have been finalised.

18 (4) If:

- 19 (a) a thing is seized under the Regulatory Powers Act, as it
20 applies in relation to a provision mentioned in subsection
21 284B(1) of this Act; and
22 (b) proceedings under subsection 284L(3) of this Act in relation
23 to a contravention of a civil penalty provision of this Act are
24 instituted within the period of 60 days after the seizure; and
25 (c) the thing may have been used, or otherwise involved, in the
26 alleged contravention of the civil penalty provision;
27 the thing may be retained until the proceedings (and any appeal
28 from those proceedings) have been finalised.

29 (5) The ACMA may, by written instrument, authorise a thing seized
30 under the Regulatory Powers Act, as it applies in relation to a
31 provision mentioned in subsection 284B(1) of this Act, to be
32 released to the owner, or to the person from whom it was seized,
33 either:

- 34 (a) unconditionally; or

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- 1 (b) on such conditions as the ACMA thinks fit, including
2 conditions as to giving security for payment of its value if it
3 is forfeited under section 284L of this Act.

4 **284E Securing evidential material**

- 5 (1) If:
6 (a) an authorised person (within the meaning of Part 3 of the
7 Regulatory Powers Act as it applies in relation to a provision
8 mentioned in subsection 284B(1) of this Act) enters premises
9 under that Part as it applies in relation to such a provision;
10 and
11 (b) the occupier of the premises has consented to the authorised
12 person entering the premises; and
13 (c) a thing is found during the exercise of the investigation
14 powers on the premises; and
15 (d) the authorised person believes on reasonable grounds that the
16 thing is evidential material (within the meaning of Part 3 of
17 the Regulatory Powers Act as it applies in relation to a
18 provision mentioned in subsection 284B(1) of this Act);
19 the thing may be secured, for a period not exceeding 24 hours, by
20 locking it up, placing a guard or any other means.

21 *Extensions*

- 22 (2) The authorised person may apply to an issuing officer (within the
23 meaning of Part 3 of the Regulatory Powers Act as it applies in
24 relation to a provision mentioned in subsection 284B(1) of this
25 Act) for an extension of the 24-hour period if the authorised person
26 believes on reasonable grounds that the thing needs to be secured
27 for longer than that period.
- 28 (3) Before making the application, the authorised person must give
29 notice to the occupier of the premises, or another person who
30 apparently represents the occupier, of the authorised person's
31 intention to apply for an extension. The occupier or other person is
32 entitled to be heard in relation to that application.
- 33 (4) The 24-hour period may be extended more than once.

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Note: For the process by which an issuing officer may extend the period, see section 74 of the Regulatory Powers Act.

- (5) Section 74 of the Regulatory Powers Act, as it applies in relation to a provision mentioned in subsection 284B(1) of this Act, has effect as if a reference in that section to an application under subsection 51(5) of that Act included a reference to an application under subsection (2) of this section.

284F Directions to licensees—managing interference with radiocommunications

- (1) An inspector may give a written direction to the holder of an apparatus licence or a spectrum licence in relation to either or both of the following:
- (a) the installation, maintenance or operation of a radiocommunications device that is, or is to be, operated under the licence;
 - (b) anything that is, or is to be, installed or used in connection with a radiocommunications device that is, or is to be, operated under the licence;
- if the direction is for the purpose of avoiding, minimising or reducing interference with radiocommunications.
- (2) A direction given under this section to the holder of an apparatus licence applies to the holder of the licence, and may also be expressed to apply to:
- (a) all persons authorised under section 114 in relation to the licence; or
 - (b) a specified class of persons authorised under section 114 in relation to the licence; or
 - (c) a specified person authorised under section 114 in relation to the licence.
- (3) A direction given under this section to the holder of a spectrum licence applies to the holder of the licence, and may also be expressed to apply to:
- (a) all persons authorised under section 68 in relation to the licence; or

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- 1 (b) a specified class of persons authorised under section 68 in
2 relation to the licence; or
3 (c) a specified person authorised under section 68 in relation to
4 the licence.
- 5 (4) A person who is:
6 (a) the holder of an apparatus licence; or
7 (b) authorised under section 114 in relation to an apparatus
8 licence; or
9 (c) the holder of a spectrum licence; or
10 (d) authorised under section 68 in relation to a spectrum licence;
11 must comply with a direction under this section.
- 12 Civil penalty: 30 penalty units.
- 13 (5) A direction given under this section is not a legislative instrument.

284G Power of inspectors to enter premises and adjust transmitters in emergencies

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

- 18 (1) If an inspector believes on reasonable grounds that:
19 (a) a transmitter is operating on any land, or on or in any
20 premises, vessel, aircraft, space object or vehicle; and
21 (b) the land, premises, vessel, aircraft, space object or vehicle is
22 or are unoccupied; and
23 (c) the operation of the transmitter is interfering with
24 radiocommunications that are essential to the safety of
25 human life;
26 the inspector may:
27 (d) enter the land, premises, vessel, aircraft, space object or
28 vehicle, if the entry is made in circumstances of such
29 seriousness and urgency as to require and justify entry to
30 prevent the consequence set out in paragraph (c); and
31 (e) take such action as the inspector considers necessary to cause
32 the transmitter to:

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- 1 (i) cease operating; or
2 (ii) operate in such a way as to no longer give rise to the
3 consequence set out in paragraph (c).
- 4 (2) In exercising a power conferred by paragraph (1)(e) in relation to a
5 transmitter, an inspector must try to ensure that any disruption
6 caused to the performance of the transmitter is no greater than is
7 necessary to prevent the consequence set out in paragraph (1)(c).

8 *Substantial loss or damage*

- 9 (3) If an inspector believes on reasonable grounds that:
10 (a) a transmitter is operating on any land, or on or in any
11 premises, vessel, aircraft, space object or vehicle; and
12 (b) the land, premises, vessel, aircraft, space object or vehicle is
13 or are unoccupied; and
14 (c) the operation of the transmitter is causing substantial loss or
15 damage;
16 the inspector may:
17 (d) enter the land, premises, vessel, aircraft, space object or
18 vehicle, if the entry is made in circumstances of such
19 seriousness and urgency as to require and justify entry to
20 prevent the consequence set out in paragraph (c); and
21 (e) take such action as the inspector considers necessary to cause
22 the transmitter to:
23 (i) cease operating; or
24 (ii) operate in such a way as to no longer give rise to the
25 consequence set out in paragraph (c).
- 26 (4) In exercising a power conferred by paragraph (3)(e) in relation to a
27 transmitter, an inspector must try to ensure that any disruption
28 caused to the performance of the transmitter is no greater than is
29 necessary to prevent the consequence set out in paragraph (3)(c).

30 *Notification of the owner of the transmitter*

- 31 (5) If an inspector has, under a power conferred by this section:
32 (a) entered any land, premises, vessel, aircraft, space object or
33 vehicle; and

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- 1 (b) taken any action in respect of a transmitter;
2 the inspector must, as soon as practicable, take all reasonable steps
3 to notify the owner of the transmitter that the action has been
4 taken.

5 **284H Powers of inspectors to require operation of transmitters**

- 6 (1) If an inspector believes on reasonable grounds that a transmitter
7 has been, is being, or may be, operated so as to cause interference
8 with radiocommunications, the inspector may, for the purpose of
9 investigating:
10 (a) interference with radiocommunications; or
11 (b) risk of interference with radiocommunications;
12 direct a person to operate the transmitter.
- 13 (2) An inspector must not direct that a transmitter be operated if that
14 operation is likely to:
15 (a) endanger the safety of a person; or
16 (b) cause damage to property.
- 17 (3) The operation of a transmitter in accordance with a direction does
18 not give rise to:
19 (a) an offence against this Act; or
20 (b) a contravention of a civil penalty provision of this Act.

21 Note: *Offence against this Act* has an extended meaning—see section 11.

22 *Offence*

- 23 (4) A person commits an offence if:
24 (a) the person is subject to a direction under subsection (1); and
25 (b) the person engages in conduct; and
26 (c) the person's conduct contravenes the direction.

27 Penalty: 30 penalty units.

28 **284J General powers of inspectors**

- 29 (1) If an inspector suspects on reasonable grounds that a person has
30 done an act in respect of which the person is required to hold:
-

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- 1 (a) an apparatus licence; or
2 (b) an authorisation under section 114; or
3 (c) a spectrum licence; or
4 (d) an authorisation under section 68; or
5 (e) a certificate of proficiency; or
6 (f) a permit;
7 the inspector may, by written notice given to the person, require
8 the person to:
9 (g) produce:
10 (i) the licence, authorisation, certificate or permit; or
11 (ii) evidence of its existence and contents; and
12 (h) do so within the period, and in the manner, specified in the
13 notice.
- 14 (2) If an inspector suspects on reasonable grounds that the holder of an
15 apparatus licence has given an authorisation under section 114, the
16 inspector may, by written notice given to the holder, require the
17 holder to:
18 (a) produce a copy of a record of that authorisation; and
19 (b) do so within the period, and in the manner, specified in the
20 notice.
- 21 (3) If an inspector suspects on reasonable grounds that the holder of a
22 spectrum licence has given an authorisation under section 68, the
23 inspector may, by written notice given to the holder, require the
24 holder to:
25 (a) produce a copy of a record of that authorisation; and
26 (b) do so within the period, and in the manner, specified in the
27 notice.
- 28 (4) If an inspector suspects on reasonable grounds that a person is
29 required by the equipment rules to retain a record, the inspector
30 may, by written notice given to the person, require the person to:
31 (a) produce the record; and
32 (b) do so within the period, and in the manner, specified in the
33 notice.

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- 1 (5) An inspector may, by written notice given to a person, require the
2 person to:
- 3 (a) produce evidence of having applied a label to a transmitter in
4 accordance with an obligation imposed on the person under
5 section 300; and
6 (b) do so within the period, and in the manner, specified in the
7 notice.
- 8 (6) A period specified under subsection (1), (2), (3), (4) or (5) must not
9 be shorter than 14 days.

10 *Offences*

- 11 (7) A person commits an offence if:
- 12 (a) the person is subject to:
- 13 (i) a requirement under subsection (1) (other than a
14 requirement that relates to a permit); or
15 (ii) a requirement under subsection (2), (3) or (5); and
16 (b) the person engages in conduct; and
17 (c) the person's conduct contravenes the requirement.

18 Penalty: 30 penalty units.

- 19 (8) A person commits an offence if:
- 20 (a) the person is subject to:
- 21 (i) a requirement under subsection (1) that relates to a
22 permit; or
23 (ii) a requirement under subsection (4); and
24 (b) the person engages in conduct; and
25 (c) the person's conduct contravenes the requirement.

26 Penalty: 30 penalty units.

27 **284K Self-incrimination etc.**

- 28 (1) An individual is not excused from producing a document under
29 section 284J on the ground that the production of the document
30 might tend to incriminate the individual in relation to an offence.

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Note: A body corporate is not entitled to claim the privilege against self-incrimination.

(2) However:

- (a) the document produced; or
- (b) producing the document; or
- (c) any information, document or thing obtained as a direct or indirect consequence of producing the document;

is not admissible in evidence against the individual:

- (d) in civil proceedings for the recovery of a penalty; or
- (e) in criminal proceedings (other than proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to section 284J of this Act).

(3) If, at general law, an individual would otherwise be able to claim the privilege against self-exposure to a penalty (other than a penalty for an offence) in relation to producing a document under section 284J, the individual is not excused from producing a document under that section on that ground.

Note: A body corporate is not entitled to claim the privilege against self-exposure to a penalty.

Division 6—Court-ordered forfeiture

284L Court may order forfeiture

- (1) If a court convicts a person of an offence against this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the commission of the offence.

Note: *Offence against this Act* has an extended meaning—see section 11.

- (2) If a court makes a civil penalty order under section 82 of the Regulatory Powers Act in relation to a contravention of a civil penalty provision of this Act, the court may order the forfeiture to the Commonwealth of anything used, or otherwise involved, in the contravention of the civil penalty provision.

- (3) If the Federal Court or the Federal Circuit Court of Australia is satisfied that a thing was used, or otherwise involved, in a

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

1 contravention of a civil penalty provision of this Act, the court
2 may, on the application of the ACMA, order the forfeiture to the
3 Commonwealth of that thing.

4 **284M Forfeited goods may be sold, destroyed or otherwise disposed** 5 **of**

6 A thing forfeited under section 284L:

- 7 (a) may be sold, destroyed or otherwise disposed of in
8 accordance with the directions of the ACMA; and
9 (b) pending such directions, must be kept in such custody as the
10 ACMA directs.

11 **Division 7—Public warning notices**

12 **284N Public warning notices**

- 13 (1) The ACMA may issue to the public, in a way that the ACMA
14 thinks fit, a written notice containing a warning about particular
15 conduct engaged in by a person if:
16 (a) the ACMA suspects on reasonable grounds that the conduct
17 may constitute a contravention of:
18 (i) a provision of Part 4.1; or
19 (ii) section 192; or
20 (iii) section 193; or
21 (iv) section 194; or
22 (v) section 195; or
23 (vi) section 197; or
24 (vii) a provision of the equipment rules; and
25 (b) the ACMA is satisfied that one or more persons have
26 suffered, or are likely to suffer, detriment as a result of the
27 conduct; and
28 (c) the ACMA is satisfied that it is in the public interest to issue
29 the notice.
- 30 (2) A notice under subsection (1) may be issued to the public by being
31 published on the ACMA's website.

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Compliance and enforcement **Schedule 6**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (3) Subsection (2) does not, by implication, limit the ACMA's power
2 to decide a way in which a notice under subsection (1) may be
3 issued to the public.
- 4 (4) A notice issued under subsection (1) is not a legislative instrument.

5 **Division 8—Miscellaneous**

6 **284P Act not to affect performance of duties by inspectors**

7 Nothing in Chapter 3 or Part 4.1 or 4.2 prohibits the doing of any
8 act or thing by an inspector in the performance of the inspector's
9 duties under this Act or Part 3 of the Regulatory Powers Act.

10 **284Q Inspectors not authorised to enter or search certain land or** 11 **premises etc. used for defence purposes**

12 Nothing in Division 5 of this Part, or in Part 3 of the Regulatory
13 Powers Act, authorises an inspector to enter or to search:

- 14 (a) land or premises that are:
15 (i) occupied or used for the purposes of defence; and
16 (ii) specified in the legislative rules; or
17 (b) a vessel, aircraft, space object or vehicle that is in the
18 possession or control of the Defence Force or a part of the
19 Defence Force;
20 unless:
21 (c) permission to do so has been given by the person for the time
22 being in charge of those premises or that land, vessel,
23 aircraft, space object or vehicle; or
24 (d) if it is not reasonably practicable to obtain permission of the
25 kind mentioned in paragraph (c)—the entry and search is
26 supervised by a member of the Defence Force, or an APS
27 employee in the Defence Department, authorised to have
28 access to those premises or that land, vessel, aircraft, space
29 object or vehicle.

30 Note: For specification by class, see subsection 13(3) of the *Legislation Act*
31 *2003*.

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Schedule 6 Compliance and enforcement

Part 1 Amendment of the Radiocommunications Act 1992

1 **32 After paragraph 285(w)**

2 Insert:

3 (wa) a decision under subsection 268(2) to give a direction;

4 **33 Part 5.8**

5 Repeal the Part.

6 **34 Paragraphs 314(2)(d) to (f)**

7 Repeal the paragraphs.

8 **35 Section 315**

9 Repeal the section.

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Compliance and enforcement **Schedule 6**
Consequential amendments **Part 2**

Part 2—Consequential amendments

Australian Communications and Media Authority Act 2005

36 After section 67

Insert:

67A Liability for damages—public warning notices

None of the following:

- (a) the Commonwealth;
- (b) the ACMA;
- (c) an ACMA official;

is liable to an action or other proceeding for damages for, or in relation to, an act or matter done in good faith in the exercise, or purported exercise, of the ACMA's power under section 284N of the *Radiocommunications Act 1992*.

Note: Section 284N of the *Radiocommunications Act 1992* deals with public warning notices.

Telecommunications (Interception and Access) Act 1979

37 Paragraph 6(2H)(a)

Omit “section 267”, substitute “section 284”.

38 After subsection 6(2H)

Insert:

(2J) If:

- (a) an inspector under section 284 of the *Radiocommunications Act 1992* is lawfully engaged in exercising powers under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* as it applies in relation to:

- (i) a provision mentioned in subsection 284A(1) of the *Radiocommunications Act 1992*; or

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Schedule 6 Compliance and enforcement

Part 2 Consequential amendments

- 1 (ii) information mentioned in subsection 284A(2) of the
2 *Radiocommunications Act 1992*; and
- 3 (b) while exercising those powers, the inspector incidentally
4 listens to or records a communication passing over a
5 telecommunications system;
6 the listening or recording does not, for the purposes of this Act,
7 constitute an interception of the communication.
- 8 (2K) If:
- 9 (a) an inspector under section 284 of the *Radiocommunications*
10 *Act 1992* is lawfully engaged in exercising powers under
11 Part 3 of the *Regulatory Powers (Standard Provisions) Act*
12 *2014* as it applies in relation to a provision mentioned in
13 subsection 284B(1) of the *Radiocommunications Act 1992*;
14 and
- 15 (b) while exercising those powers, the inspector incidentally
16 listens to or records a communication passing over a
17 telecommunications system;
18 the listening or recording does not, for the purposes of this Act,
19 constitute an interception of the communication.

EXPOSURE DRAFT

Compliance and enforcement **Schedule 6**

Amendments contingent on the commencement of the Federal Circuit and Family Court
of Australia Act 2020 **Part 3**

1 **Part 3—Amendments contingent on the**
2 **commencement of the Federal Circuit and**
3 **Family Court of Australia Act 2020**

4 ***Radiocommunications Act 1992***

5 **39 Paragraphs 269(3)(b), 271(3)(b), 272(3)(b), 284A(5)(b) and**
6 **(10)(b) and 284B(4)(b) and (9)(b)**

7 Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit
8 and Family Court of Australia”.

9 **40 Subsection 284L(3)**

10 Omit “Federal Circuit Court of Australia”, substitute “Federal Circuit
11 and Family Court of Australia”.

EXPOSURE DRAFT

Schedule 6 Compliance and enforcement

Part 4 Transitional provisions

Part 4—Transitional provisions

Division 1—General

41 Transitional—enforcement

- (1) Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule), so far as it relates to an offence or alleged offence, does not apply to an offence committed, or allegedly committed, before the commencement of this item.
- (2) Despite the repeal by this Schedule of Divisions 1, 2, 3, 5 and 6 of Part 5.5 and paragraph 314(2)(e) of the *Radiocommunications Act 1992*:
- (a) those Divisions; and
 - (b) that paragraph; and
 - (c) regulations made for the purposes of that paragraph;
- continue to apply, in relation to an offence committed, or allegedly committed, before the commencement of this item as if:
- (d) those Divisions and that paragraph had not been repealed; and
 - (e) the definition of *inspector* in section 5 of that Act had not been amended by this Schedule; and
 - (f) the items of this Division (other than this item) had not been enacted.

42 Transitional—appointment of a Commonwealth officer to be an inspector

Scope

- (1) This item applies to an instrument if:
- (a) the instrument was in force immediately before the commencement of this item; and
 - (b) the instrument was made under:
 - (i) paragraph 267(1)(a) of the *Radiocommunications Act 1992*; or

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Compliance and enforcement **Schedule 6**
Transitional provisions **Part 4**

- 1 (ii) paragraph 267(1)(a) of the *Radiocommunications Act*
2 1992 and subsection 533(1) of the *Telecommunications*
3 *Act 1997*; and
4 (c) the instrument relates to a particular Commonwealth officer
5 (within the meaning of the *Radiocommunications Act 1992*).

6 *Effect of instrument*

- 7 (2) The instrument, so far as it was made under paragraph 267(1)(a) of the
8 *Radiocommunications Act 1992*, has effect, after the commencement of
9 this item, as if:
10 (a) it had been made under paragraph 284(1)(a) of the
11 *Radiocommunications Act 1992*; and
12 (b) a reference in the instrument to a provision of Part 5.5 of the
13 *Radiocommunications Act 1992* were a reference to:
14 (i) the corresponding provision of Part 5.5 of the
15 *Radiocommunications Act 1992* (as amended by this
16 Schedule); or
17 (ii) the corresponding provision of the *Regulatory Powers*
18 *(Standard Provisions) Act 2014*; and
19 (c) any requirement imposed by the *Radiocommunications Act*
20 1992 in relation to the making of the instrument (including a
21 requirement about the form of words) had been satisfied.

22 **43 Transitional—appointment of officers included in a class** 23 **of Commonwealth officers to be inspectors**

24 *Scope*

- 25 (1) This item applies to an instrument if:
26 (a) the instrument was in force immediately before the
27 commencement of this item; and
28 (b) the instrument was made under:
29 (i) paragraph 267(1)(b) of the *Radiocommunications Act*
30 1992; or
31 (ii) paragraph 267(1)(b) of the *Radiocommunications Act*
32 1992 and subsection 533(1) of the *Telecommunications*
33 *Act 1997*; and

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Schedule 6 Compliance and enforcement

Part 4 Transitional provisions

- 1 (c) the instrument relates to a particular class of Commonwealth
2 officers (within the meaning of the *Radiocommunications Act*
3 1992).

4 *Effect of instrument*

- 5 (2) The instrument, so far as it was made under paragraph 267(1)(b) of the
6 *Radiocommunications Act 1992*, has effect, after the commencement of
7 this item, as if:
8 (a) it had been made under paragraph 284(1)(b) of the
9 *Radiocommunications Act 1992*; and
10 (b) a reference in the instrument to a provision of Part 5.5 of the
11 *Radiocommunications Act 1992* were a reference to:
12 (i) the corresponding provision of Part 5.5 of the
13 *Radiocommunications Act 1992* (as amended by this
14 Schedule); or
15 (ii) the corresponding provision of the *Regulatory Powers*
16 *(Standard Provisions) Act 2014*; and
17 (c) any requirement imposed by the *Radiocommunications Act*
18 1992 or the *Legislation Act 2003* in relation to the making of
19 the instrument (including a requirement about the form of
20 words) had been satisfied.

21 **44 Transitional—appointment of a State officer to be an** 22 **inspector**

23 *Scope*

- 24 (1) This item applies to an instrument if:
25 (a) the instrument was in force immediately before the
26 commencement of this item; and
27 (b) the instrument was made under:
28 (i) paragraph 267(1)(a) of the *Radiocommunications Act*
29 1992; or
30 (ii) paragraph 267(1)(a) of the *Radiocommunications Act*
31 1992 and subsection 533(1) of the *Telecommunications*
32 *Act 1997*; and
33 (c) the instrument relates to a particular State officer (within the
34 meaning of the *Radiocommunications Act 1992*).

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Compliance and enforcement **Schedule 6**
Transitional provisions **Part 4**

Effect of instrument

- (2) The instrument, so far as it was made under paragraph 267(1)(a) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
- (a) it had been made under paragraph 284(1)(c) of the *Radiocommunications Act 1992*; and
 - (b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:
 - (i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or
 - (ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and
 - (c) any requirement imposed by the *Radiocommunications Act 1992* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

45 Transitional—appointment of officers included in a class of State officers to be inspectors

Scope

- (1) This item applies to an instrument if:
- (a) the instrument was in force immediately before the commencement of this item; and
 - (b) the instrument was made under:
 - (i) paragraph 267(1)(b) of the *Radiocommunications Act 1992*; or
 - (ii) paragraph 267(1)(b) of the *Radiocommunications Act 1992* and subsection 533(1) of the *Telecommunications Act 1997*; and
 - (c) the instrument relates to a particular class of State officers (within the meaning of the *Radiocommunications Act 1992*).

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Schedule 6 Compliance and enforcement

Part 4 Transitional provisions

Effect of instrument

- (2) The instrument, so far as it was made under paragraph 267(1)(b) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
- (a) it had been made under paragraph 284(1)(d) of the *Radiocommunications Act 1992*; and
 - (b) a reference in the instrument to a provision of Part 5.5 of the *Radiocommunications Act 1992* were a reference to:
 - (i) the corresponding provision of Part 5.5 of the *Radiocommunications Act 1992* (as amended by this Schedule); or
 - (ii) the corresponding provision of the *Regulatory Powers (Standard Provisions) Act 2014*; and
 - (c) any requirement imposed by the *Radiocommunications Act 1992* or the *Legislation Act 2003* in relation to the making of the instrument (including a requirement about the form of words) had been satisfied.

46 Transitional—identity card (monitoring powers)

Scope

- (1) This item applies to an identity card if:
- (a) the card was issued to a person before the commencement of this item; and
 - (b) the card was issued under:
 - (i) subsection 268(1) of the *Radiocommunications Act 1992*; or
 - (ii) subsection 268(1) of the *Radiocommunications Act 1992* and subsection 534(1) of the *Telecommunications Act 1997*; and
 - (c) immediately before the commencement of this item, the person:
 - (i) was an inspector (within the meaning of that Act); and
 - (ii) was not a member of a police force; and

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Transitional provisions **Part 4**

- (d) the person is an authorised person for the purposes of Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to:
- (i) the provisions mentioned in subsection 284A(1) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (ii) the information mentioned in subsection 284A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule).

Effect of card

- (2) The card, so far as it was issued under subsection 268(1) of the *Radiocommunications Act 1992*, has effect, after the commencement of this item, as if:
- (a) it had been issued to the person under subsection 35(1) of the *Regulatory Powers (Standard Provisions) Act 2014*; and
 - (b) any requirement imposed by or under subsection 35(2) of that Act in relation to the card had been satisfied.

47 Transitional—identity card (investigation powers)

Scope

- (1) This item applies to an identity card if:
- (a) the card was issued to a person before the commencement of this item; and
 - (b) the card was issued under subsection 268(1) of the *Radiocommunications Act 1992*; and
 - (c) immediately before the commencement of this item, the person;
 - (i) was an inspector (within the meaning of that Act); and
 - (ii) was not a member of a police force; and
 - (d) the person is an authorised person for the purposes of Part 3 of the *Regulatory Powers (Standard Provisions) Act 2014* in relation to evidential material that relates to a provision mentioned in subsection 284B(1) of the *Radiocommunications Act 1992* (as amended by this Schedule).

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Schedule 6 Compliance and enforcement

Part 4 Transitional provisions

Effect of card

- (2) The card has effect, after the commencement of this item, as if:
- (a) it had been issued to the person under subsection 76(1) of the *Regulatory Powers (Standard Provisions) Act 2014*; and
 - (b) any requirement imposed by or under subsection 76(2) of that Act in relation to the card had been satisfied.

Division 2—Infringement notices

48 Transitional—infringement notices

- (1) Despite the repeal by this Schedule of paragraph 11(2)(b) of the *Radiocommunications Act 1992*, that paragraph continues to apply, in relation to a payment made in relation to an offence allegedly committed before the commencement of this item, as if that paragraph had not been repealed.
- (2) Despite the repeal by this Schedule of section 315 and paragraph 314(2)(d) of the *Radiocommunications Act 1992*:
- (a) that section; and
 - (b) that paragraph; and
 - (c) regulations made for the purposes of that paragraph;
- continue to apply, in relation to an offence allegedly committed before the commencement of this item, as if that section and that paragraph had not been repealed.

Division 3—Enforceable undertakings

49 Transitional—enforceable undertakings

If:

- (a) before the commencement of this item:
 - (i) a person gave an undertaking under section 298C of the *Radiocommunications Act 1992*; and
 - (ii) the ACMA accepted the undertaking; and
- (b) the undertaking was not withdrawn or cancelled before the commencement of this item;

the undertaking has effect, after the commencement of this item, as if:

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Compliance and enforcement **Schedule 6**
Transitional provisions **Part 4**

- 1 (c) it had been given under Part 6 of the Regulatory Powers Act;
- 2 and
- 3 (d) it had been accepted by the ACMA under that Part.

EXPOSURE DRAFT

Schedule 7 Information-gathering powers

Part 1 Amendments

Schedule 7—Information-gathering powers

Part 1—Amendments

Radiocommunications Act 1992

1 Before Part 5.6

Insert:

Part 5.5A—Information-gathering powers

284R Simplified outline of this Part

- The ACMA may require a person to give the ACMA information, or produce to the ACMA a document, that relates to:
 - (a) the supply of radiocommunications devices; or
 - (b) the operation, or proposed operation, of radiocommunications devices; or
 - (c) the unlawful possession of radiocommunications devices; or
 - (d) compliance, or non-compliance, with conditions of an apparatus licence or a spectrum licence.

284S The ACMA may obtain information or documents

Scope

- (1) This section applies to a person if:
- (a) the ACMA believes on reasonable grounds that:
 - (i) the person has information or a document that relates to the supply of, or an offer to supply, one or more radiocommunications devices; and
 - (ii) the information or document is relevant to the operation of this Act or the equipment rules, so far as this Act

EXPOSURE DRAFT

Information-gathering powers **Schedule 7**
Amendments **Part 1**

- 1 relates, or the equipment rules relate, to interference
2 with radiocommunications; and
3 (iii) the information or document would be reasonably likely
4 to assist the ACMA in connection with managing,
5 limiting or preventing interference with
6 radiocommunications; or
7 (b) the ACMA believes on reasonable grounds that:
8 (i) the person has information or a document that relates to
9 the supply of, or an offer to supply, one or more
10 radiocommunications transmitters; and
11 (ii) the information or document is relevant to the operation
12 of this Act, so far as this Act relates to radio emissions
13 that result from a reasonably foreseeable use (including
14 a misuse) of those radiocommunications transmitters
15 and that would be likely to adversely affect the health or
16 safety of individuals; or
17 (c) the ACMA believes on reasonable grounds that:
18 (i) the person has information or a document that relates to
19 the supply of, or an offer to supply, one or more
20 radiocommunications transmitters; and
21 (ii) the information or document is relevant to the operation
22 of the equipment rules, so far as the equipment rules are
23 directed towards achieving the objective of protecting
24 the health or safety of individuals from any adverse
25 effect likely to be attributable to radio emissions
26 resulting from a reasonably foreseeable use (including a
27 misuse) of those radiocommunications transmitters; or
28 (d) the ACMA believes on reasonable grounds that the person
29 has information or a document that relates to the operation, or
30 proposed operation, of one or more radiocommunications
31 devices under:
32 (i) an apparatus licence; or
33 (ii) a spectrum licence; or
34 (iii) a class licence; or
35 (e) the ACMA believes on reasonable grounds that the person
36 has information or a document that relates to the proposed
37 operation of one or more radiocommunications devices
38 under:
-

EXPOSURE DRAFT

Schedule 7 Information-gathering powers

Part 1 Amendments

- 1 (i) an apparatus licence that might be issued in the future;
2 or
3 (ii) a spectrum licence that might be issued in the future; or
4 (iii) a class licence that might be issued in the future; or
5 (f) the ACMA believes on reasonable grounds that the person
6 has information or a document that relates to compliance or
7 non-compliance with one or more conditions of:
8 (i) an apparatus licence; or
9 (ii) a spectrum licence; or
10 (iii) a class licence; or
11 (g) the ACMA believes on reasonable grounds that the person
12 has information or a document that relates to the operation, or
13 proposed operation, of one or more radiocommunications
14 devices otherwise than as authorised by:
15 (i) an apparatus licence; or
16 (ii) a spectrum licence; or
17 (iii) a class licence; or
18 (h) the ACMA believes on reasonable grounds that the person
19 has information or a document that relates to the possession,
20 or proposed possession, of one or more radiocommunications
21 devices for the purpose of operating those devices otherwise
22 than as authorised by:
23 (i) an apparatus licence; or
24 (ii) a spectrum licence; or
25 (iii) a class licence.

26 *Requirement*

- 27 (2) The ACMA may, by written notice given to the person, require the
28 person:
29 (a) to give the ACMA, within the period and in the manner and
30 form specified in the notice, any such information; or
31 (b) to produce to the ACMA, within the period and in the
32 manner specified in the notice, any such documents; or
33 (c) to make copies of any such documents and to produce to the
34 ACMA, within the period and in the manner specified in the
35 notice, those copies.

EXPOSURE DRAFT

Information-gathering powers **Schedule 7**
Amendments **Part 1**

- 1 (3) A period specified under subsection (2) must not be shorter than 14
2 days.

3 *Compliance*

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

5 Civil penalty: 20 penalty units.

6 *Other provisions not limited*

- 7 (5) This section does not, by implication, limit:
8 (a) any other provision of this Act that requires a person to:
9 (i) give information; or
10 (ii) produce a document; or
11 (b) a power conferred by this Act to make:
12 (i) regulations; or
13 (ii) rules; or
14 (iii) any other legislative instrument.

15 **284T Copying documents—compensation**

16 A person is entitled to be paid by the ACMA, on behalf of the
17 Commonwealth, reasonable compensation for complying with a
18 requirement covered by paragraph 284S(2)(c).

19 **284U Copies of documents**

- 20 (1) The ACMA may:
21 (a) inspect a document or copy produced under subsection
22 284S(2); and
23 (b) make and retain copies of, or take and retain extracts from,
24 such a document.
25 (2) The ACMA may retain possession of a copy of a document
26 produced in accordance with a requirement covered by paragraph
27 284S(2)(c).

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Schedule 7 Information-gathering powers

Part 1 Amendments

284V ACMA may retain documents

- (1) The ACMA may take, and retain for as long as is necessary, possession of a document produced under subsection 284S(2).
- (2) The person otherwise entitled to possession of the document is entitled to be supplied, as soon as practicable, with a copy certified by the ACMA to be a true copy.
- (3) The certified copy must be received in all courts and tribunals as evidence as if it were the original.
- (4) Until a certified copy is supplied, the ACMA must, at such times and places as the ACMA thinks appropriate, permit the person otherwise entitled to possession of the document, or a person authorised by that person, to inspect and make copies of, or take extracts from, the document.

284W Self-incrimination

- (1) An individual is not excused from giving information or producing a document under section 284S on the ground that the information or the production of the document might tend to incriminate the individual in relation to an offence.

Note: A body corporate is not entitled to claim the privilege against self-incrimination.

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

EXPOSURE DRAFT

Information-gathering powers **Schedule 7**
Amendments **Part 1**

1 (3) If, at general law, an individual would otherwise be able to claim
2 the privilege against self-exposure to a penalty (other than a
3 penalty for an offence) in relation to giving information or
4 producing a document under section 284S, the individual is not
5 excused from giving information or producing a document under
6 that section on that ground.

7 Note: A body corporate is not entitled to claim the privilege against
8 self-exposure to a penalty.

EXPOSURE DRAFT

Schedule 7 Information-gathering powers

Part 2 Transitional provisions

Part 2—Transitional provisions

2 Transitional—section 284S of the *Radiocommunications Act 1992*

Supply, or offer to supply, radiocommunications devices or transmitters

(1) For the purposes of:

- (a) subparagraph 284S(1)(a)(i) of the *Radiocommunications Act 1992*; or
- (b) subparagraph 284S(1)(b)(i) of the *Radiocommunications Act 1992*; or
- (c) subparagraph 284S(1)(c)(i) of the *Radiocommunications Act 1992*;

it is immaterial whether the supply, or the offer to supply, occurs before, at or after the commencement of this item.

Operation, or proposed operation, of radiocommunications devices

(2) For the purposes of paragraph 284S(1)(d) of the *Radiocommunications Act 1992*:

- (a) so far as the paragraph relates to the operation of one or more radiocommunications devices—it is immaterial whether the operation occurs before, at or after the commencement of this item; or
- (b) so far as the paragraph relates to the proposed operation of one or more radiocommunications devices—it is immaterial whether the operation was or is proposed to occur before, at or after the commencement of this item.

(3) For the purposes of paragraph 284S(1)(g) of the *Radiocommunications Act 1992*:

- (a) so far as the paragraph relates to the operation of one or more radiocommunications devices—it is immaterial whether the operation occurs before, at or after the commencement of this item; or

EXPOSURE DRAFT

Information-gathering powers **Schedule 7**
Transitional provisions **Part 2**

- 1 (b) so far as the paragraph relates to the proposed operation of
2 one or more radiocommunications devices—it is immaterial
3 whether the operation was or is proposed to occur before, at
4 or after the commencement of this item.

5 *Compliance, or non-compliance, with licence conditions*

- 6 (4) For the purposes of paragraph 284S(1)(f) of the *Radiocommunications*
7 *Act 1992*, it is immaterial whether the compliance, or non-compliance,
8 occurs before, at or after the commencement of this item.

9 *Possession, or proposed possession, of radiocommunications*
10 *devices*

- 11 (5) For the purposes of paragraph 284S(1)(h) of the *Radiocommunications*
12 *Act 1992*:
13 (a) so far as the paragraph relates to the possession of one or
14 more radiocommunications devices—it is immaterial whether
15 the possession occurs before, at or after the commencement
16 of this item; or
17 (b) so far as the paragraph relates to the proposed possession of
18 one or more radiocommunications devices—it is immaterial
19 whether the possession was or is proposed to occur before, at
20 or after the commencement of this item.

EXPOSURE DRAFT

Schedule 8 Miscellaneous

Part 1 Amendment of the Radiocommunications Act 1992

Schedule 8—Miscellaneous

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Insert:

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

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

legislative rules means rules made under section 313B.

2 Subparagraph 68(2)(b)(i)

Omit “if applicable,”.

3 Subsection 69A(2)

Omit “an authorised person (see subsection (3)) derives income, profits or gains from allowing third parties to operate radiocommunications devices under the licence,”, substitute “a person (the *authorised person*) authorised under section 68 in relation to the licence derives income, profits or gains from operating radiocommunications devices under the licence,”.

4 Subsection 69A(3) (definition of *authorised person*)

Repeal the definition.

5 Subsection 214(1)

Omit “(1)”.

EXPOSURE DRAFT

Miscellaneous **Schedule 8**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 **6 Subsection 214(2)**

2 Repeal the subsection.

3 **7 Paragraph 226(b)**

4 Omit “section 48 of that Act as applied by section 229 of this Act”,
5 substitute “section 42 of the *Legislation Act 2003*”.

6 **8 Before paragraph 285(x)**

7 Insert:

8 (wb) a decision of the ACMA:

9 (i) made under the legislative rules; and

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

12 **9 Before section 303**

13 Insert:

14 **302 Exemptions from certain compliance provisions**

15 *Compliance provision*

16 (1) For the purposes of this section, each of the following is a
17 ***compliance provision***:

18 (a) subsection 46(1);

19 (b) subsection 46(3);

20 (c) subsection 47(1);

21 (d) subsection 47(3);

22 (e) subsection 170(1);

23 (f) subsection 170(2);

24 (g) subsection 170(3);

25 (h) subsection 175(1);

26 (i) subsection 175(2);

27 (j) subsection 175(3);

28 (k) subsection 175(4);

29 (l) subsection 176(1);

30 (m) subsection 176(2);

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Schedule 8 Miscellaneous

Part 1 Amendment of the Radiocommunications Act 1992

- 1 (n) subsection 176(3);
2 (o) subsection 176(4).

3 *Exemptions*

- 4 (2) The ACMA may, by legislative instrument, determine either or
5 both of the following:
6 (a) that one or more specified acts are exempt from one or more
7 specified compliance provisions;
8 (b) that one or more specified persons are exempt from one or
9 more specified compliance provisions.
- 10 (3) A determination under subsection (2) is subject to such conditions
11 (if any) as are specified in the determination.
- 12 (4) The ACMA must not determine an exemption under subsection (2)
13 unless the ACMA is satisfied that:
14 (a) the exemption is in the public interest; or
15 (b) the exemption is of a kind specified in the legislative rules.
- 16 (5) A determination under subsection (2) may confer a power to make
17 a decision of an administrative character on the ACMA.

18 **10 After section 305**

19 Insert:

20 **305A Computerised decision-making**

- 21 (1) The ACMA may arrange for the use, under the ACMA's control,
22 of computer programs for any purposes for which the ACMA may,
23 or must, under this Act or under a legislative instrument made
24 under this Act:
25 (a) make a decision; or
26 (b) exercise any power or comply with any obligation; or
27 (c) do anything else related to making a decision or exercising a
28 power or complying with an obligation.
- 29 (2) For the purposes of this Act and any legislative instrument made
30 under this Act, the ACMA is taken to have:

EXPOSURE DRAFT

Miscellaneous **Schedule 8**
Amendment of the Radiocommunications Act 1992 **Part 1**

- 1 (a) made a decision; or
2 (b) exercised a power or complied with an obligation; or
3 (c) done something else related to the making of a decision or
4 the exercise of a power or the compliance with an obligation;
5 that was made, exercised, complied with or done by the operation
6 of a computer program under an arrangement made under
7 subsection (1).
- 8 (3) The ACMA may substitute a decision for a decision (the *initial*
9 *decision*) made by the operation of a computer program under an
10 arrangement under subsection (1) if the ACMA is satisfied that the
11 initial decision is incorrect.

12 **11 After section 308**

13 Insert:

14 **308A Compensation for acquisition of property**

- 15 (1) If the operation of this Act, or a legislative instrument under this
16 Act, would result in an acquisition of property (within the meaning
17 of paragraph 51(xxxi) of the Constitution) from a person otherwise
18 than on just terms (within the meaning of that paragraph), the
19 Commonwealth is liable to pay a reasonable amount of
20 compensation to the person.
- 21 (2) If the Commonwealth and the person do not agree on the amount
22 of the compensation, the person may institute proceedings in:
23 (a) the Federal Court; or
24 (b) the Supreme Court of a State or Territory;
25 for the recovery from the Commonwealth of such reasonable
26 amount of compensation as the court determines.

27 **12 After section 313A**

28 Insert:

29 **313B Legislative rules**

- 30 (1) The Minister may, by legislative instrument, make rules
31 (*legislative rules*) prescribing matters:
-

EXPOSURE DRAFT

Schedule 8 Miscellaneous

Part 1 Amendment of the Radiocommunications Act 1992

- 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.
- 24 (6) Legislative rules that are inconsistent with the regulations have no
25 effect to the extent of the inconsistency, but legislative rules are
26 taken to be consistent with the regulations to the extent that the
27 rules are capable of operating concurrently with the regulations.

Part 2—Transitional provisions

13 Transitional—spectrum licence condition about third party use

Scope

- (1) This item applies to a spectrum licence that:
- (a) was in force immediately before the commencement of this item; and
 - (b) included a condition required by paragraph 68(2)(b) of the *Radiocommunications Act 1992*.

Condition

- (2) After the commencement of this item, the spectrum licence has effect as if the expression “if applicable,” were omitted from the condition.

14 Transitional—spectrum licence condition about residency etc.

Scope

- (1) This item applies to a spectrum licence that was in force immediately before the commencement of this item.

Condition

- (2) After the commencement of this item, the spectrum licence:
- (a) is taken to include a condition covered by subsection 69A(2) of the *Radiocommunications Act 1992* (as amended by this Schedule); and
 - (b) is taken not to include a condition that was covered by subsection 69A(2) of the *Radiocommunications Act 1992*, as in force immediately before the commencement of this item.

EXPOSURE DRAFT

Schedule 8 Miscellaneous

Part 2 Transitional provisions

15 Constitutional safety net—acquisition of property

- (1) If the operation of this Act would result in an acquisition of property (within the meaning of paragraph 51(xxxi) of the Constitution) from a person otherwise than on just terms (within the meaning of that paragraph), the Commonwealth is liable to pay a reasonable amount of compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may institute proceedings in:
- (a) the Federal Court of Australia; or
 - (b) the Supreme Court of a State or Territory;
- for the recovery from the Commonwealth of such reasonable amount of compensation as the court determines.

EXPOSURE DRAFT

Datacasting **Schedule 9**
Amendment of the Radiocommunications Act 1992 **Part 1**

Schedule 9—Datacasting

Part 1—Amendment of the Radiocommunications Act 1992

Radiocommunications Act 1992

1 Section 5

Repeal the following definitions:

- (a) definition of *channel A datacasting transmitter licence*;
- (b) definition of *channel B datacasting transmitter licence*;
- (c) definition of *community television broadcasting service*;
- (d) definition of *datacasting transmitter licence*;
- (e) definition of *domestic digital television receiver*.

2 Subsection 96(7)

Omit “Divisions 6 and 6A are”, substitute “Division 6 is”.

3 Sections 98A and 98B

Repeal the sections.

4 Subsection 100(1)

Omit “102B,”.

5 Section 102B

Repeal the section.

6 Subsection 103(2)

Omit “, a datacasting transmitter licence”.

7 Subsection 103(5)

Repeal the subsection.

8 Subsections 106(5A) and (6A)

Repeal the subsections.

EXPOSURE DRAFT

Schedule 9 Datacasting

Part 1 Amendment of the Radiocommunications Act 1992

1 **9 Subsection 106(7)**

2 Omit “, (5A), (6) and (6A)”, substitute “and (6)”.

3 **10 Subsection 106(9A)**

4 Repeal the subsection.

5 **11 Subsection 106(10)**

6 Omit “or (9A)”.

7 **12 Subsection 106(11)**

8 Omit “or (9A)”.

9 **13 Paragraph 107(3)(b)**

10 Repeal the paragraph.

11 **14 Paragraph 108(5)(b)**

12 Repeal the paragraph.

13 **15 Subparagraph 108A(1)(b)(i)**

14 Omit “293”, substitute “60 of the *Australian Communications and*
15 *Media Authority Act 2005*”.

16 **16 Section 109A**

17 Repeal the section.

18 **17 Section 110**

19 Omit “, 109A(1)(k)”.

20 **18 Paragraph 111(1)(c)**

21 Omit “, 109A(1)(k)”.

22 **19 Paragraph 111(1)(d)**

23 Omit “or 109A(1)(d)”.

24 **20 Subsection 114(1)**

25 Omit “, (3AA), (3A), (3B), (3D) and (3F)”, substitute “and (3AA)”.

EXPOSURE DRAFT

Datacasting **Schedule 9**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 **21 Subsections 114(3A) to (3F)**

2 Repeal the subsections.

3 **22 Paragraph 118(1)(c)**

4 Omit “or 128C(1)”.

5 **23 Paragraph 118(1)(d)**

6 Omit “, or section 128D,”.

7 **24 Division 4A of Part 3.3**

8 Repeal the Division.

9 **25 Division 6 of Part 3.3 (heading)**

10 Omit “: general”.

11 **26 Paragraph 125(1)(a)**

12 Omit “(other than a condition set out in paragraph 109A(1)(g), (ga),
13 (ia), (ib), (ic), (id), (ie), (if), (ij) or (j) or subsection 109A(2) or (3))”.

14 **27 Division 6A of Part 3.3**

15 Repeal the Division.

16 **28 Subsection 130(2B)**

17 Repeal the subsection.

18 **29 Subsection 131(1)**

19 Omit “(1)”.

20 **30 Subsection 131(2)**

21 Repeal the subsection.

22 **31 Subsection 131AB(1)**

23 Omit “sections 131AC and 131ACA”, substitute “section 131AC”.

24 **32 Paragraph 131AB(3)(a)**

25 Omit “Divisions 6 and 6A”, substitute “Division 6”.

EXPOSURE DRAFT

Schedule 9 Datacasting

Part 1 Amendment of the Radiocommunications Act 1992

1 **33 Section 131ACA**

2 Repeal the section.

3 **34 Paragraph 148(b)**

4 Omit “or 128C”.

5 **35 Paragraph 148(c)**

6 Omit “or 128D”.

7 **36 Division 1 of Part 5.6 (heading)**

8 Repeal the heading.

9 **37 Paragraph 285(eb)**

10 Repeal the paragraph.

11 **38 Paragraph 285(f)**

12 Omit “, 109A(1)(k)”.

13 **39 Paragraph 285(ma)**

14 Omit “otherwise than because of a decision under
15 paragraph 131ACA(b)”.

16 **40 Division 2 of Part 5.6**

17 Repeal the Division.

1 **Part 2—Other amendments**

2 *Australian Communications and Media Authority Act 2005*

3 **41 Subparagraph 9(h)(i)**

4 Omit “(other than a provision of that Act covered by
5 paragraph 10(1)(p))”.

6 **42 Paragraph 10(1)(p)**

7 Repeal the paragraph.

8 *Broadcasting Services Act 1992*

9 **43 Subsection 6(1) (note 1 to the definition of *associate*)**

10 Repeal the note.

11 **44 Subsection 6(1) (note 2 to the definition of *associate*)**

12 Omit “2”.

13 **45 Subsection 6(1) (definition of *channel B datacasting*
14 *transmitter licence*)**

15 Repeal the definition.

16 **46 Subsection 6(1) (definitions of *datacasting transmitter*
17 *licence* and *domestic digital television receiver*)**

18 Repeal the definitions.

19 **47 Subsection 6(1) (definition of *licence*)**

20 Repeal the definition, substitute:

21 *licence* means a licence allocated by the ACMA under this Act
22 (other than a class licence).

23 **48 Subsection 6(1) (definition of *MDS system*)**

24 Repeal the definition.

EXPOSURE DRAFT

Schedule 9 Datacasting
Part 2 Other amendments

1 **49 Section 7 (note)**

2 Repeal the note.

3 **50 Part 5 (heading)**

4 Repeal the heading, substitute:

5 **Part 5—Control of commercial broadcasting**
6 **licences**

7 **51 Section 51A**

8 Repeal the section.

9 **52 Subdivision A of Division 2 of Part 5 (heading)**

10 Repeal the heading.

11 **53 Subdivision B of Division 2 of Part 5**

12 Repeal the Subdivision.

13 **54 Subdivision A of Division 3 of Part 5 (heading)**

14 Repeal the heading.

15 **55 Subdivision B of Division 3 of Part 5**

16 Repeal the Subdivision.

17 **56 Subsection 63(1)**

18 Omit “a commercial television broadcasting licensee, commercial radio
19 broadcasting licensee or datacasting transmitter licensee”, substitute “a
20 commercial television broadcasting licensee or a commercial radio
21 broadcasting licensee”.

22 **57 Subsection 63(5) (paragraph (a) of the penalty)**

23 Omit “, a datacasting transmitter licence”.

24 **58 Subsection 66(1) (paragraph (e) of the penalty)**

25 Omit “or datacasting transmitter licence”.

EXPOSURE DRAFT

Datacasting **Schedule 9**
Other amendments **Part 2**

1 **59 Section 69 (paragraph (a) of the penalty)**

2 Omit “or datacasting transmitter licence”.

3 **60 Section 72 (paragraph (a) of the penalty)**

4 Omit “or datacasting transmitter licence”.

5 **61 Paragraphs 74(1)(a) and (b)**

6 Omit “a datacasting transmitter licence,”.

7 **62 Subsection 74(2)**

8 Omit “the datacasting transmitter licence,”.

9 **63 Subsection 130A(7) (note 6)**

10 Repeal the note.

11 **64 Paragraph 130F(1)(h)**

12 Repeal the paragraph.

13 **65 Subsection 212(2B)**

14 Repeal the subsection.

15 **66 Subclause 1(1) of Schedule 1**

16 Omit “datacasting transmitter licences,”.

17 **67 Subclause 1(2) of Schedule 1**

18 Omit “and datacasting industries”, substitute “industry”.

19 **68 Paragraph 2(1)(b) of Schedule 1**

20 Omit “(other than a datacasting transmitter licence)”.

21 **69 Paragraph 2(1)(ba) of Schedule 1**

22 Repeal the paragraph.

23 **70 Subclause 2(2A) of Schedule 1**

24 Repeal the subclause.

EXPOSURE DRAFT

Schedule 9 Datacasting

Part 2 Other amendments

71 Paragraph 4(2)(b) of Schedule 1

Omit “in the case of a licensee other than a datacasting transmitter licensee—”.

72 Paragraph 4(2)(ba) of Schedule 1

Repeal the paragraph.

73 Subclause 4(4) of Schedule 1 (paragraph (bb) of the definition of *media company*)

Repeal the paragraph.

74 Clause 1 of Schedule 4

Omit “and datacasters”.

75 Clause 42 of Schedule 4

Omit:

- The owner or operator of a broadcasting transmission tower or a designated associated facility must provide a datacaster with access to the tower or facility.

76 Clause 42 of Schedule 4

Omit:

- The owner or operator of a broadcasting transmission tower must provide a datacaster with access to the site of the tower.

77 Clause 43 of Schedule 4 (definition of *datacaster*)

Repeal the definition.

78 Clause 43 of Schedule 4 (definition of *datacasting transmitter licence*)

Repeal the definition.

EXPOSURE DRAFT

Datacasting **Schedule 9**
Other amendments **Part 2**

1 **79 Subclauses 45(3) and (4) of Schedule 4**

2 Repeal the subclauses.

3 **80 Subclause 45(5) of Schedule 4**

4 Omit “or (3)” (wherever occurring).

5 **81 Subclause 45(5) of Schedule 4**

6 Omit “, as the case may be,”.

7 **82 Subclause 45(6) of Schedule 4**

8 Omit “or (3)”.

9 **83 Subclauses 45A(4) and (5) of Schedule 4**

10 Repeal the subclauses.

11 **84 Subclause 45A(6) of Schedule 4**

12 Omit “or (4)” (wherever occurring).

13 **85 Subclause 45A(6) of Schedule 4**

14 Omit “, as the case may be,”.

15 **86 Subclause 45A(7) of Schedule 4**

16 Omit “or (4)”.

17 **87 Subclause 45A(9) of Schedule 4**

18 Omit “from subclauses (2) and (4)”, substitute “from subclause (2)”.

19 **88 Subclauses 46(3) and (4) of Schedule 4**

20 Repeal the subclauses.

21 **89 Subclause 46(5) of Schedule 4**

22 Omit “or (3)” (wherever occurring).

23 **90 Subclause 46(5) of Schedule 4**

24 Omit “, as the case may be,”.

EXPOSURE DRAFT

Schedule 9 Datacasting
Part 2 Other amendments

1 **91 Subclause 46(6) of Schedule 4**

2 Omit “or (3)”.

3 **92 Subclause 47(1) of Schedule 4**

4 Omit “or (3)”.

5 **93 Subclause 47(1A) of Schedule 4**

6 Omit “or (4)”.

7 **94 Subclause 47(2) of Schedule 4**

8 Omit “or (3)”.

9 **95 Subclause 2(1) of Schedule 6 (definition of *nominated***
10 ***datacaster declaration*)**

11 Repeal the definition.

12 **96 Parts 6 and 7 of Schedule 6**

13 Repeal the Parts.

14 **97 Clause 58 of Schedule 6 (table items 6 and 7)**

15 Repeal the items.

16 ***Competition and Consumer Act 2010***

17 **98 Subparagraph 155(2)(a)(ii)**

18 Omit “4A or”.

19 **99 Paragraph 155(9)(d)**

20 Omit “4A or”.

21 **100 Subsection 155AAA(21) (paragraph (d) of the definition**
22 ***of protected information*)**

23 Omit “118C, 118G,”.

EXPOSURE DRAFT

Datacasting **Schedule 9**
Other amendments **Part 2**

1 ***Income Tax Assessment Act 1997***

2 **101 Paragraph 40-30(2)(g)**

3 Repeal the paragraph.

4 **102 Paragraph 40-70(2)(d)**

5 Repeal the paragraph.

6 **103 Paragraph 40-72(2)(d)**

7 Repeal the paragraph.

8 **104 Subsection 40-95(7) (table item 10)**

9 Repeal the item.

10 **105 Subsection 995-1(1) (definition of *datacasting transmitter***
11 ***licence*)**

12 Repeal the definition.

EXPOSURE DRAFT

Schedule 9 Datacasting

Part 3 Transitional provisions

Part 3—Transitional provisions

106 Application—amendments of the *Income Tax Assessment Act 1997*

Despite the amendments of the *Income Tax Assessment Act 1997* made by this Schedule, the *Income Tax Assessment Act 1997* continues to apply, in relation to a datacasting transmitter licence that was in existence before the commencement of this item, as if those amendments had not been made.

107 Transitional—section 155 of the *Competition and Consumer Act 2010*

Section 155 of the *Competition and Consumer Act 2010* has effect, after the commencement of this item, as if:

- (a) a matter that constitutes, or may constitute, a contravention of repealed Division 4A of Part 3.3 of the *Radiocommunications Act 1992* were a matter referred to in subsection (2) of that section; and
- (b) a reference in that section to a designated communications matter included a reference to the performance of a function, or the exercise of a power, conferred on the Australian Competition and Consumer Commission by or under repealed Division 4A of Part 3.3 of the *Radiocommunications Act 1992*.

108 Transitional—section 155AAA of the *Competition and Consumer Act 2010*

Section 155AAA of the *Competition and Consumer Act 2010* has effect, after the commencement of this item, as if a reference in that section to protected information included a reference to information that was obtained by the Australian Competition and Consumer Commission under repealed section 118C or 118G of the *Radiocommunications Act 1992*.

EXPOSURE DRAFT

Public inquiries **Schedule 10**
Amendment of the Radiocommunications Act 1992 **Part 1**

1 **Schedule 10—Public inquiries**

2 **Part 1—Amendment of the Radiocommunications**
3 **Act 1992**

4 ***Radiocommunications Act 1992***

5 **1 Subsection 231(3)**

6 Repeal the subsection.

7 **2 Part 5.2**

8 Repeal the Part.

EXPOSURE DRAFT

Schedule 10 Public inquiries

Part 2 Other amendments

1 **Part 2—Other amendments**

2 *Australian Communications and Media Authority Act 2005*

3 **3 Section 3 (definition of *inquiry*)**

4 Repeal the definition, substitute:

5 *inquiry* means an inquiry held, or proposed to be held, by the
6 ACMA under Part 25 of the *Telecommunications Act 1997*.

7 **4 Paragraph 4(2)(b)**

8 Repeal the paragraph.