

# Application for a datacasting licence



Effective from February 2016

## Instructions for completion

Please print clearly. Forms which are illegible, unclear or incomplete may be returned for clarification.

### Who may apply:

- To apply for a datacasting licence you must be one of the following:
  - a) A company that:
    - i) is registered under Part 2A.2 of the Corporations Act 2001; and
    - ii) has a share capital; or
  - b) the Commonwealth, a State or a Territory; or
  - c) the Australian Broadcasting Corporation; or
  - d) the Special Broadcasting Service Corporation; or
  - e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or Territory.

### Licence application fee:

- The application fee, as determined by the ACMA, must accompany this application.
- Please note that the ACMA reviews its fees periodically. The fee applicable at the time this form was prepared is set out in *Broadcasting (Charges) Determination 2007*. Contact the ACMA on 1300 850 115 to check the current fee before lodging an application.

### Payment by cheque:

- Cheques should be made payable to the Australian Communications and Media Authority and sent with your application.

### Payment by electronic funds transfer:

- Payment by electronic funds transfer (EFT) may be made for credit to:

Account Name: ACMA Official Administered Receipts Account  
BSB No: 012-951  
Account Number: 837924272  
Bank Name: ANZ
- Please fax or email a copy of the EFT receipt to the ACMA on (02) 6219 5264 or [remittance@acma.gov.au](mailto:remittance@acma.gov.au).
- Please be sure to include in your advice your client number and ACMA reference number if relevant.

### Please note:

- Giving false or misleading information is a serious offence. Providing documents that are false and misleading is also a serious offence.

### Disclosure of personal details:

- Clauses 12 of Schedule 6 to the *Broadcasting Services Act 1992* require the ACMA to maintain a Register of datacasting licences. The ACMA will disclose the contents of the Register by making it available for inspection on the internet.

### Definitions and licensing legislation:

- A copy of the relevant definitions and legislative provisions are included at Attachment A to this form. Please note that not all provisions relating to RDL's are contained in this attachment.

- If you need more information about the definitions and licence conditions, please contact the ACMA on:

Telephone: 1300 850 115  
Email: [info@acma.gov.au](mailto:info@acma.gov.au)

### Where to send this form:

Licence Issue and Allocation Section  
Spectrum Operations and Services Branch  
Australian Communications and Media Authority  
PO Box 78  
BELCONNEN ACT 2616  
Telephone: 1300 850 115  
Facsimile: (02) 6219 5347  
Email: [info@acma.gov.au](mailto:info@acma.gov.au)

### Further information

- For more information, please telephone 1300 850 115 or email [info@acma.gov.au](mailto:info@acma.gov.au)

**ACMA USE ONLY**

File number

Client number

Licence number

**Section 1: Applicant's details**

Client number (if known)

Name of applicant

Indicate the applicant organisation type (place an **X** in one of the boxes)

<input type="checkbox"/>

a company that is registered under Part 2A.2 of the Corporations Act 2001, and has a share capital; or

the Commonwealth, a State or a Territory; or

the Australian Broadcasting Corporation; or

the Special Broadcasting Service Corporation; or

other body corporate established for a public purpose by a law of the Commonwealth or

of a State or Territory (give relevant details below)

**Note:** Applicant must attach to the application a copy of the certificate of incorporation in Australia or other evidence of the organisation type.

ABN/ACN

Trading name that will or may be used to identify the Applicant to recipients of the service (if applicable)

Contact surname

Given names

Title

<input type="text"/>	<input type="text"/>	<input type="text"/>
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Contact's position

Postal address

<input type="text"/>			
State	<input type="text"/>	Postcode	<input type="text"/>

Registered office address (if the same as postal address, please print 'as above')

<input type="text"/>			
State	<input type="text"/>	Postcode	<input type="text"/>

Telephone numbers

Work	<input type="text"/>	Home	<input type="text"/>
Facsimile	<input type="text"/>	Mobile	<input type="text"/>

Email

**Section 2: Licence information**

Does the applicant or any related body corporate hold, or has it or any related body corporate previously held, any other datacasting licence?

If yes, has any such datacasting licence ever been cancelled?

If you answered YES to the proceeding question, give the date of cancellation for each such licence.

Licence No.		Date cancelled	

**Note:** The ACMA may refuse to allocate a datacasting licence to an applicant if a datacasting licence held by the applicant, or by a related body corporate of the applicant, was cancelled at any time during the previous 12 months (subclause 8(2) of Schedule 6 to the BSA).

**Section 3: Service information**

The name of the proposed service to be provided under the licence (if appropriate)

Give a brief description of the nature and content of the proposed service

Give details of how recipients of the service will be able to identify and contact the licensee in circumstances where they may wish to make a complaint about the service

If the service will include interactive elements, please describe the elements, their purpose and how they will be presented to and used by the recipient of the service

**Note:** This question is intended to elicit general information only. The licence will not be constrained from change in the future in respect of its form or content by the details given here.

**Section 4: Applicant's certification**

I certify and acknowledge the following.

1. In making this application, I/we have not relied on any representation made by the ACMA, its officers, employees or agents.
2. The information on this application and in any accompanying documents is true and correct.
3. Any attachment required by this application form constitutes part of this application form.
4. This application is made with the authority of the board of the applicant.
5. I am aware that providing false or misleading information, or making a false or misleading statement, is a serious offence.

**Authorised person**

SIGNATURE	DATE
PRINT NAME AND TITLE/POSITION	

**Witness**

SIGNATURE	DATE
PRINT NAME AND TITLE/POSITION	

**ACMA USE ONLY**

YES

NO

## Attachment A

The extracts below are reproduced for your convenience from the compilation of the *Broadcasting Services Act 1992* (the BSA) effective at 17 September 2015. You should only rely on the current compilation of the BSA, which is available at [www.comlaw.gov.au](http://www.comlaw.gov.au).

## Extracts from the BSA relevant to datacasting

### Definitions

#### 6 Interpretation

(1) In this Act, unless the contrary intention appears:

*datacasting licence* means a licence under Schedule 6 to provide a datacasting service.

*datacasting service* means a service that delivers content:

- (a) whether in the form of text; or
- (b) whether in the form of data; or
- (c) whether in the form of speech, music or other sounds; or
- (d) whether in the form of visual images (animated or otherwise); or
- (e) whether in any other form; or
- (f) whether in any combination of forms;

to persons having equipment appropriate for receiving that content, where the delivery of the service uses the broadcasting services bands.

## Schedule 6 to the *Broadcasting Services Act 1992*

### Part 1—Introduction

#### 1 Simplified outline

The following is a simplified outline of this Schedule:

- This Schedule sets up a system for regulating the provision of datacasting services.
- A Person who provides a designated datacasting service must hold a datacasting licence.
- Datacasting content will be subject to restrictions. Those restrictions are designed to encourage datacasting licensees to provide a range of innovative services that are different to traditional broadcasting services.
- The main restrictions on datacasting content are as follows:
  - (a) restrictions on the provision of certain genres of television programs;
  - (b) restrictions on the provision of audio content.
- Datacasting licensees will be allowed to provide the following types of content:
  - (a) information-only programs (including matter that enables people to carry out transactions);

- (b) educational programs;
  - (c) interactive computer games;
  - (d) content in the form of text or still visual images;
  - (e) Parliamentary broadcasts;
  - (f) ordinary electronic mail;
  - (g) internet content.
- A group that represents datacasting licensees may develop codes of practice.
  - The ACMA has a reserve power to make a standard if there are no codes of practice or if a code of practice is deficient.
  - The ACMA is to investigate complaints about datacasting licensees.

## 2 Definitions

(1) In this Schedule, unless the contrary intention appears:

***advertising or sponsorship material*** means advertising or sponsorship material (whether or not of a commercial kind).

***Classification Board*** means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.

***compilation program*** means a program that consists of video clips or other matter edited together to form a structured program, where there is a heavy emphasis on entertainment value.

***declared internet carriage service*** has the meaning given by clause 23B.

***designated datacasting service*** has the meaning given by clause 2A.

***drama program*** has the same meaning as in section 103B.

***educational program*** has the meaning given by clause 3.

***engage in conduct*** (except in clause 55 or 56) means:

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

***financial, market or business information bulletin*** means a bulletin the sole or dominant purpose of which is to provide information, analysis, commentary or discussion in relation to financial, market or business matters.

***foreign-language news or current affairs program*** has the meaning given by clause 5.

***information-only program*** has the meaning given by clause 4.

***infotainment or lifestyle program*** means a program the sole or dominant purpose of which is to present factual information in an entertaining way, where there is a heavy emphasis on entertainment value.

***interactive computer game*** means a computer game, where:

- (a) the way the game proceeds, and the result achieved at various stages of the game, is determined in response to the decisions, inputs and direct involvement of the player; and
- (b) a part of the software that enables end-users to play the game is under the control of the datacasting licensee concerned.

**internet carriage service** has the same meaning as in Schedule 5, but does not include a service that transmits content that has been copied from the internet, where the content is selected by the datacasting licensee concerned.

**music program** means a program the sole or dominant purpose of which is to provide:

- (a) music with video clips; or
  - (b) video footage of musical performances;
- or both.

**news or current affairs program** means any of the following:

- (a) a news bulletin;
- (b) a sports news bulletin;
- (c) a program (whether presenter-based or not) whose sole or dominant purpose is to provide analysis, commentary or discussion principally designed to inform the general community about social, economic or political issues of current relevance to the general community.

**nominated datacaster declaration** means a declaration under clause 45.

**ordinary electronic mail** does not include a posting to a newsgroup.

**qualified entity** means:

- (a) a company that:
  - (i) is registered under Part 2A.2 of the *Corporations Act 2001*; and
  - (ii) has a share capital; or
- (b) the Commonwealth, a State or a Territory; or
- (c) the Australian Broadcasting Corporation; or
- (d) the Special Broadcasting Service Corporation; or
- (e) any other body corporate established for a public purpose by a law of the Commonwealth or of a State or Territory.

**“reality television” program** means a program the sole or dominant purpose of which is to depict actual, contemporary events, people or situations in a dramatic or entertaining way, where there is a heavy emphasis on dramatic impact or entertainment value.

**related body corporate** has the same meaning as in the *Corporations Act 2001*.

**sports program** means a program the sole or dominant purpose of which is to provide:

- (a) coverage of one or more sporting events; or
  - (b) analysis, commentary or discussion in relation to one or more sporting events;
- or both, but does not include a sports news bulletin.

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

- (2) In determining the meaning of an expression used in a provision of this Act (other than this Schedule), this clause is to be disregarded.

## 2A Designated datacasting service

- (1) For the purposes of this Schedule, a **designated datacasting service** is a datacasting service that:
  - (a) is provided by a person who is:
    - (i) a commercial television broadcasting licensee; or
    - (ii) a commercial radio broadcasting licensee; or
    - (iii) a national broadcaster; or
  - (b) is of a kind specified in an instrument under subclause (2).
- (2) The Minister may, by legislative instrument, specify kinds of datacasting services for the purposes of paragraph (1)(b).

### 3 Educational programs

- (1) For the purposes of this Schedule, an **educational program** is matter, where, having regard to:
  - (a) the substance of the matter; and
  - (b) the way in which the matter is advertised or promoted; and
  - (c) any other relevant matters;it would be concluded that the sole or dominant purpose of the matter is to assist a person in education or learning, whether or not in connection with a course of study or instruction.
- (2) Subclause (1) has effect subject to subclauses (3) and (4).

#### *ACMA determinations*

- (3) The ACMA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken to be an **educational program**.
- (4) The ACMA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken not to be an **educational program**.
- (5) A determination under subclause (3) or (4) has effect accordingly.
- (6) A determination under subclause (3) or (4) is to be an instrument of a legislative character.
- (7) A determination under subclause (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

### 4 Information-only programs

- (1) For the purposes of this Schedule, an **information-only program** is matter the sole or dominant purpose of which is to:
  - (a) provide factual information, or directly-related comment, about any of a wide range of matters, including but not limited to any of the following:
    - (i) products;
    - (ii) services;
    - (iii) community activities;
    - (iv) domestic or household matters;
    - (v) private recreational pursuits or hobbies;
    - (vi) legal rights, obligations or responsibilities;
    - (vii) first aid, health or safety matters;
    - (viii) emergencies or natural disasters;
    - (ix) rural matters;
    - (x) travel matters;
    - (xi) crime prevention matters; or
  - (b) enable and/or facilitate the carrying out and/or completion of transactions; or both, where there is not a significant emphasis on dramatic impact or entertainment.
- (2) Subclause (1) has effect subject to subclauses (3) and (4).

#### *ACMA determinations*

- (3) The ACMA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken to be an **information-only program**.
- (4) The ACMA may make a written determination providing that, for the purposes of this Schedule, specified matter is taken not to be an **information-only program**.
- (5) A determination under subclause (3) or (4) has effect accordingly.

- (6) A determination under subclause (3) or (4) is to be an instrument of a legislative character.
- (7) A determination under subclause (3) or (4) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

#### *Definitions*

- (8) In this clause:

***community activity*** means:

- (a) a meeting, event, performance or other activity that can be attended by:
  - (i) the public; or
  - (ii) a section of the public; or
  - (iii) members of a particular club, society or organisation; or
- (b) the activity of visiting an institution, a tourist attraction or other place; whether on payment of a charge or otherwise.

***product*** includes real property.

***services*** means any services, benefits, rights, privileges or facilities that are capable of being provided, granted or conferred:

- (a) in trade or commerce; or
- (b) by a government or government authority; or
- (c) in any other way.

***transactions*** includes:

- (a) commercial transactions; and
- (b) banking transactions; and
- (c) insurance transactions; and
- (d) dealings about employment matters; and
- (e) dealings with governments and government authorities.

## **5 Foreign-language news or current affairs programs**

- (1) For the purposes of this Schedule, a ***foreign-language news or current affairs program*** means a news or current affairs program that is wholly in a language other than English.
- (2) For the purposes of subclause (1), disregard minor and infrequent uses of the English language.
- (3) For the purposes of subclause (1), disregard any English language subtitles or captioning.

## **6 Datacasting content is taken not to be a television program or a radio program etc.**

For the purposes of this Act (other than Divisions 1 and 2 of Part 3 of this Schedule) and any other law of the Commonwealth (other than the *Tobacco Advertising Prohibition Act 1992*), if a datacasting service is provided under, and in accordance with the conditions of, a datacasting licence:

- (a) any matter provided on that service is taken not to be a television program or a radio program; and
- (b) any matter provided on that service is taken not to be broadcast or televised; and
- (c) that service is taken not to be a broadcasting service, a television service or a radio service.

## **Part 2—Datacasting licences**

### **7 Allocation of datacasting licence**

- (1) The ACMA may allocate a datacasting licence to a person, on written application by the person.

- (2) Applications must:
  - (a) be in accordance with a form approved in writing by the ACMA; and
  - (b) be accompanied by the application fee determined in writing by the ACMA.

## 8 When datacasting licence must not be allocated

- (1) A datacasting licence is not to be allocated to an applicant if:
  - (a) the applicant is not a qualified entity; or
  - (b) the ACMA decides that subclause 9(1) applies to the applicant.
- (2) The ACMA may refuse to allocate a datacasting licence to an applicant if a datacasting licence held by the applicant, or by a related body corporate of the applicant, was cancelled at any time during the previous 12 months.
- (3) Paragraph (1)(b) does not require the ACMA to consider the application of clause 9 in relation to an applicant before allocating a licence to the applicant.

## 9 Unsuitable applicant

- (1) The ACMA may, if it is satisfied that allowing a particular person to provide a datacasting service under a datacasting licence would lead to a significant risk of:
  - (a) an offence against this Act or the regulations being committed; or
  - (aa) a breach of a civil penalty provision occurring; or
  - (b) a breach of the conditions of the licence occurring;decide that this subclause applies to the person.
- (2) In deciding whether such a risk exists, the ACMA is to take into account:
  - (a) the business record of the person; and
  - (b) the person's record in situations requiring trust and candour; and
  - (c) the business record of each person who would be, if a datacasting licence were allocated to the first-mentioned person, in a position to control the licence; and
  - (d) the record in situations requiring trust and candour of each such person; and
  - (e) whether the first-mentioned person, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations; and
  - (f) whether a civil penalty order has been made against:
    - (i) the first-mentioned person; or
    - (ii) a person referred to in paragraph (c) or (d).
- (3) This clause does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## 10 Transfer of datacasting licences

- (1) A datacasting licensee may transfer the licence to another qualified entity.
- (2) A transferee of a datacasting licence must, within 7 days after the transfer, notify the ACMA of the transfer.

Penalty: 50 penalty units.

- (2A) Subclause (2) is an offence of strict liability.

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

- (3) A notification must be in accordance with a form approved in writing by the ACMA.

## 11 Surrender of datacasting licences

A datacasting licensee may, by written notice given to the ACMA, surrender the licence.

## 12 ACMA to maintain Register of datacasting licences

- (1) The ACMA is to maintain a Register in which the ACMA includes:
  - (a) particulars of datacasting licences; and
  - (b) such information about transmitter licences as the ACMA determines.
- (2) The Register may be maintained by electronic means.
- (3) The Register is to be made available for inspection on the internet.

# Part 3—Conditions of datacasting licences

## Division 1—Genre conditions

### 13 Category A television programs

- (1) For the purposes of this Division, each of the following television programs is a *category A television program*:
  - (a) a drama program;
  - (c) a sports program;
  - (d) a music program;
  - (e) an infotainment or lifestyle program;
  - (f) a documentary program;
  - (g) a “reality television” program;
  - (h) a children’s entertainment program;
  - (i) a light entertainment or variety program;
  - (j) a compilation program;
  - (k) a quiz or games program;
  - (l) a comedy program;
  - (m) a program that consists of a combination of any or all of the above programs.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (5).
- (3) For the purposes of this Division, neither of the following television programs is a *category A television program*:
  - (a) an information-only program;
  - (b) an educational program.

#### *ACMA genre determinations*

- (4) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken to be a *category A television program* covered by a specified paragraph of subclause (1).
- (5) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken not to be a *category A television program* covered by a specified paragraph of subclause (1).
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

## 14 Condition relating to category A television programs

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial television broadcasting service, would be:
  - (a) a category A television program; or
  - (b) an extract from a category A television program.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting an extract from a category A television program, so long as:
  - (a) the extract is not longer than 10 minutes; and
  - (c) the extract is not combined with one or more other extracts from category A television programs in such a way that the extracts together constitute the whole or a majority of a particular category A television program; and
  - (d) having regard to:
    - (i) the nature of the extract; and
    - (ii) the circumstances in which the extract is provided;it would be concluded that the licensee did not intend that the extract be combined with one or more other extracts from category A television programs in such a way that the extracts together constitute the whole or a majority of a particular category A television program.
- (3) A reference in subclause (2) to a **category A television program** is a reference to matter that is covered by subclause (1) because of paragraph (1)(a).
- (4) A reference in subclause (2) to an **extract from a category A television program** is a reference to matter that is covered by subclause (1) because of paragraph (1)(b).
- (5) If, because of subclause (2) of this clause, a datacasting licensee can transmit matter without breaching the condition set out in subclause (1) of this clause, the condition set out in subclause 16(1) does not prevent the licensee from transmitting that matter.

## 15 Category B television programs

- (1) For the purposes of this Division, each of the following television programs is a **category B television program**:
  - (a) a news or current affairs program;
  - (b) a financial, market or business information bulletin;
  - (c) a weather bulletin;
  - (d) a bulletin or program that consists of a combination of any or all of the above bulletins or programs.
- (2) Subclause (1) has effect subject to subclauses (3), (4) and (5).
- (3) For the purposes of this Division, none of the following television programs is a **category B television program**:
  - (a) an information-only program;
  - (b) an educational program;
  - (c) a foreign-language news or current affairs program.

### *ACMA genre determinations*

- (4) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken to be a **category B television program** covered by a specified paragraph of subclause (1).

- (5) The ACMA may make a written determination providing that, for the purposes of this Division, a specified television program or specified matter is taken not to be a *category B television program* covered by a specified paragraph of subclause (1).
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

## 16 Condition relating to category B television programs

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial television broadcasting service, would be:
  - (a) a category B television program; or
  - (b) an extract from a category B television program.
- (2) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin, or program, (whether presenter-based or not), so long as:
  - (a) the bulletin or program is not longer than 10 minutes; and
  - (b) if:
    - (i) an earlier bulletin or program covered by subclause (1) was transmitted by the licensee; and
    - (ii) the content of the first-mentioned bulletin or program differs in any respect from the content of the earlier bulletin or program;
 

the interval between the start of the transmission of the earlier bulletin or program and the start of the transmission of the first-mentioned bulletin or program is at least 30 minutes; and
  - (c) the bulletin or program is not combined with one or more other bulletins or programs in such a way that the bulletins or programs together constitute a bulletin or program longer than 10 minutes; and
  - (d) having regard to:
    - (i) the nature of the bulletin or program; and
    - (ii) the circumstances in which the bulletin or program is provided;
 

it would be concluded that the licensee did not intend that the bulletin or program be combined with one or more other bulletins or programs in such a way that the bulletins or programs together constitute a bulletin or program longer than 10 minutes.
- (3) The condition set out in subclause (1) does not prevent the licensee from transmitting a bulletin or program, so long as:
  - (a) the bulletin or program is not a presenter-based bulletin or program; and
  - (b) one of the following applies:
    - (i) the bulletin or program consists of a single item of news (including a single item of sports news);
    - (ii) the bulletin or program is a financial, market or business information bulletin or program that deals with a single topic;
    - (iia) the bulletin or program is a compilation of items, the subject of which is the same or directly related, and is not longer than 10 minutes;
    - (iii) the bulletin or program is a weather bulletin or program; and
  - (c) the bulletin or program can only be accessed by an end-user who makes a selection from an on-screen menu.
- (4) In this clause:

***presenter-based bulletin or program*** means a bulletin or program that consists of, or includes, a combination of:

- (a) introductory or closing segments, or both, spoken by a host, or an anchor presenter, who is visible on the screen; and
  - (b) video images (whether or not with accompanying sound).
- (5) If, because of subclause (2) or (3) of this clause, a datacasting licensee can transmit matter without breaching the condition set out in subclause (1) of this clause, the condition set out in subclause 14(1) does not prevent the licensee from transmitting that matter.

### **17 Genre conditions do not apply to Parliamentary proceedings etc.**

The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting live matter that consists of:

- (a) the proceedings of, or the proceedings of a committee of, a Parliament; or
- (b) the proceedings of a court or tribunal in Australia; or
- (c) the proceedings of an official inquiry or Royal Commission in Australia; or
- (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.

### **18 Genre conditions do not apply to matter that consists of no more than text or still visual images etc.**

- (1) The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting matter that consists of no more than:
- (a) text; or
  - (b) text accompanied by associated sounds; or
  - (c) still visual images; or
  - (d) still visual images accompanied by associated sounds; or
  - (e) any combination of matter covered by the above paragraphs; or
  - (f) any combination of:
    - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
    - (ii) animated images (with or without associated sounds);
 where:
    - (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
    - (iv) the animated images consist of advertising or sponsorship material.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

### **18A Genre conditions do not apply to advertising or sponsorship material**

The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from transmitting advertising or sponsorship material.

### **19 Genre conditions do not apply to interactive computer games**

- (1) The conditions set out in clauses 14 and 16 do not prevent a datacasting licensee from providing an interactive computer game.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

### **20 Genre conditions do not apply to internet carriage services or ordinary electronic mail**

- (1) The conditions set out in clauses 14 and 16 do not apply to:
- (a) the transmission of so much of a datacasting service as consists of an internet carriage service (other than a declared internet carriage service); or

- (b) the transmission of ordinary electronic mail.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

## 20AA Genre conditions do not apply to certain content copied from the internet

- (1) The conditions set out in clauses 14 and 16 do not apply to the transmission of matter if:
  - (a) the matter is content that has been copied from the internet; and
  - (b) the content is selected by the datacasting licensee concerned; and
  - (c) there is in force an exemption order under subclause 27A(1) in relation to the transmission of the matter.
- (2) In determining the meaning of the expressions *television* or *television program*, when used in a provision of this Act, subclause (1) is to be disregarded.

## Division 2—Audio content condition

### 21 Audio content condition

- (1) Each datacasting licence is subject to the condition that the licensee will not transmit matter that, if it were broadcast on a commercial radio broadcasting service, would be a designated radio program.

#### *Designated radio program*

- (2) For the purposes of this clause, a *designated radio program* is a radio program other than:
  - (a) an information-only program; or
  - (b) an educational program; or
  - (c) a foreign-language news or current affairs program.
- (3) Subclause (2) has effect subject to subclauses (4) and (5).

#### *ACMA determinations*

- (4) The ACMA may make a written determination providing that, for the purposes of this clause, a specified radio program or specified matter is taken to be a *designated radio program*.
- (5) The ACMA may make a written determination providing that, for the purposes of this clause, a specified radio program or specified matter is taken not to be a *designated radio program*.
- (6) A determination under subclause (4) or (5) has effect accordingly.
- (7) A determination under subclause (4) or (5) is to be an instrument of a legislative character.
- (8) A determination under subclause (4) or (5) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

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

#### *Condition does not apply to incidental or background audio content*

- (8A) The condition set out in subclause (1) does not apply to the transmission of audio content that is incidental to, or provided as background to, matter displayed on the screen.

#### *Condition does not apply to internet carriage services*

- (9) The condition set out in subclause (1) does not apply to the transmission of so much of a datacasting service as consists of an internet carriage service (other than a declared internet carriage service).

*Condition does not apply to certain content copied from the internet*

- (10) The condition set out in subclause (1) does not apply to the transmission of matter if:
- (a) the matter is content that has been copied from the internet; and
  - (b) the content is selected by the datacasting licensee concerned; and
  - (c) there is in force an exemption order under subclause 27A(1) in relation to the transmission of the matter.

## **22 Audio content condition does not apply to Parliamentary proceedings etc.**

The condition set out in clause 21 does not prevent a datacasting licensee from transmitting live audio content that consists of:

- (a) the proceedings of, or the proceedings of a committee of, a Parliament; or
- (b) the proceedings of a court or tribunal in Australia; or
- (c) the proceedings of an official inquiry or Royal Commission in Australia; or
- (d) a hearing conducted by a body established for a public purpose by a law of the Commonwealth or of a State or Territory.

## **23 Audio content condition does not apply to matter that consists of no more than text or still visual images etc.**

- (1) The condition set out in clause 21 does not prevent a datacasting licensee from transmitting matter that consists of no more than:
- (a) text; or
  - (b) text accompanied by associated sounds; or
  - (c) still visual images; or
  - (d) still visual images accompanied by associated sounds; or
  - (e) any combination of matter covered by the above paragraphs; or
  - (f) any combination of:
    - (i) matter that is covered by any of the above paragraphs (the *basic matter*); and
    - (ii) animated images (with or without associated sounds);where:
    - (iii) having regard to the substance of the animated images, it would be concluded that the animated images are ancillary or incidental to the basic matter; or
    - (iv) the animated images consist of advertising or sponsorship material.
- (2) In determining the meaning of the expressions *radio* or *radio program*, when used in a provision of this Act, subclause (1) is to be disregarded.

## **23A Audio content condition does not apply to advertising or sponsorship material**

The condition set out in clause 21 does not prevent a datacasting licensee from transmitting advertising or sponsorship material.

## **Division 2A—Genre conditions: anti-avoidance**

### **23B Anti-avoidance—declared internet carriage services**

- (1) If:
- (a) the whole or a part of a datacasting service provided under a datacasting licence consists of an internet carriage service; and
  - (b) one or more persons enter into, begin to carry out, or carry out, a scheme; and
  - (c) the ACMA is of the opinion that the person, or any of the persons, who entered into, began to carry out, or carried out, the scheme did so for the sole or dominant purpose of avoiding the application to the licensee of Division 1 or 2;

the ACMA may, by writing, determine that, for the purposes of the application of this Schedule to the licensee, the internet carriage service is a ***declared internet carriage service***.

- (2) The person, or any of the persons, referred to in paragraphs (1)(b) and (c) may be the licensee.
- (3) A determination under subclause (1) has effect accordingly.
- (4) In this clause:

***scheme*** means:

- (a) any agreement, arrangement, understanding, promise or undertaking, whether express or implied and whether or not enforceable, or intended to be enforceable, by legal proceedings; or
- (b) any scheme, plan, proposal, action, course of action or course of conduct, whether there are 2 or more parties or only one party involved.

## Division 3—Other conditions

### 24 General conditions

- (1) Each datacasting licence is subject to the following conditions:
  - (a) the licensee will comply with the requirements of clauses 3, 3A, 4, 5 and 6 of Schedule 2 (as modified by subclause (4) of this clause);
  - (b) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, transmit a tobacco advertisement within the meaning of that Act;
  - (c) the licensee will comply with standards applicable to the licence under clause 31;
  - (ca) the licensee will comply with any standards under section 130A (which deals with technical standards for digital transmission);
  - (d) the licensee will not use the datacasting service in the commission of an offence against another Act or a law of a State or Territory;
  - (e) the licensee will not transmit datacasting content that has been classified as RC or X 18+ by the Classification Board;
  - (f) the licensee will not transmit datacasting content that has been classified R 18+ by the Classification Board unless:
    - (i) the content has been modified as mentioned in paragraph 28(4)(b); or
    - (ii) access to the program is subject to a restricted access system (within the meaning of clause 27);
  - (g) the licensee will comply with subsection 130V(1) (which deals with industry standards);
  - (h) if the whole or a part of the datacasting service consists of an internet carriage service—the licensee will comply with an online provider rule (within the meaning of Schedule 5) that is applicable to the licensee in relation to the internet carriage service;
  - (i) the licensee will not use the part of the radiofrequency spectrum covered by paragraph (b) of the definition of ***broadcasting services bands*** in subsection 6(1) to provide a datacasting service under the licence.
- (2) The conditions set out in paragraphs (1)(a), (c), (e) and (f) do not apply in relation to:
  - (a) the transmission of so much of a datacasting service as consists of an internet carriage service; or
  - (b) the transmission of ordinary electronic mail.
- (3) The condition set out in paragraph (1)(b) does not apply in relation to the transmission of ordinary electronic mail.
- (4) Clauses 3, 3A, 4, 5 and 6 of Schedule 2 apply to datacasting services provided under datacasting licences in a corresponding way to the way in which those clauses apply to broadcasting services, and, in particular, those clauses have effect as if:
  - (a) a reference in those clauses to a person providing broadcasting services under a class licence included a reference to a person who is a datacasting licensee; and

- (b) a reference in those clauses to a broadcasting service included a reference to a datacasting service; and
  - (c) a reference in those clauses to broadcast included a reference to provide on a datacasting service; and
  - (d) subclause 4(2) of Schedule 2 were not applicable to political matter provided under a datacasting licence, where the political matter consists of no more than:
    - (i) text; or
    - (ii) still visual images; or
    - (iii) any combination of matter covered by the above subparagraphs; and
  - (e) clause 4 of Schedule 2 also provided that, if a datacasting licensee provides on a datacasting service, at the request of another person, political matter that consists of no more than:
    - (i) text; or
    - (ii) still visual images; or
    - (iii) any combination of matter covered by the above subparagraphs;
 the licensee must also cause to be displayed to end-users the required particulars in relation to the political matter in a form approved in writing by the ACMA.
- (5) Subclause (4) does not apply to:
- (a) the transmission of so much of a datacasting service as consists of an internet carriage service; or
  - (b) the transmission of ordinary electronic mail.

## 25 Suitability condition

- (1) Each datacasting licence is subject to the condition that the licensee will remain a suitable licensee.
- (2) For the purposes of this clause, a person is a suitable licensee if the ACMA has not decided that subclause (3) applies to the person.
- (3) The ACMA may, if it is satisfied that allowing a particular person to provide, or continue to provide, datacasting services under a datacasting licence would lead to a significant risk of:
  - (a) an offence against this Act or the regulations being committed; or
  - (b) a breach of the conditions of the licence occurring;
 decide that this subclause applies to the person.
- (4) In deciding whether such a risk exists, the ACMA is to take into account:
  - (a) the business record of the person; and
  - (b) the person's record in situations requiring trust and candour; and
  - (c) the business record of each person who is in a position to control the licence; and
  - (d) the record in situations requiring trust and candour of each such person; and
  - (e) whether the first-mentioned person, or a person referred to in paragraph (c) or (d), has been convicted of an offence against this Act or the regulations.
- (5) This clause does not affect the operation of Part VIIC of the *Crimes Act 1914* (which includes provisions that, in certain circumstances, relieve persons from the requirement to disclose spent convictions and require persons aware of such convictions to disregard them).

## 26 Additional conditions imposed by the ACMA

- (1) The ACMA may, by written notice given to a datacasting licensee:
  - (a) impose an additional condition on the licence; or
  - (b) vary or revoke a condition of the licence imposed under this clause.
- (2) If the ACMA proposes to vary or revoke a condition or to impose a new condition, the ACMA must:
  - (a) give to the licensee written notice of its intention; and

- (b) give to the licensee a reasonable opportunity to make representations to the ACMA in relation to the proposed action; and
  - (c) make the proposed changes available on the internet.
- (3) Action taken under subclause (1) must not be inconsistent with conditions set out in:
- (a) clause 14; or
  - (b) clause 16; or
  - (c) clause 21; or
  - (d) clause 24; or
  - (e) clause 25.
- (4) Conditions of datacasting licences varied or imposed by the ACMA must be relevant to the datacasting services to which those licences relate.
- (5) Without limiting the range of conditions that may be imposed, the ACMA may impose a condition on a datacasting licensee:
- (a) requiring the licensee to comply with a code of practice that is applicable to the licensee; or
  - (b) designed to ensure that a breach of a condition by the licensee does not recur.

*ACMA to maintain Register of conditions*

- (6) The ACMA is to maintain a register in which it includes particulars of:
- (a) conditions imposed under this clause; and
  - (b) variations of conditions under this clause; and
  - (c) revocations of conditions under this clause.
- (7) The Register may be maintained by electronic means.
- (8) The Register is to be made available for inspection on the internet.

## **27 Restricted access system**

- (1) The ACMA may, by written instrument, declare that a specified access-control system is a ***restricted access system*** for the purposes of this Division. A declaration under this subclause has effect accordingly.

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

- (2) In making an instrument under subclause (1), the ACMA must have regard to:
- (a) the objective of protecting children from exposure to matter that is unsuitable for children; and
  - (b) such other matters (if any) as the ACMA considers relevant.
- (3) An instrument under subclause (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **Division 4—Exemption orders for content copied from the internet**

### **27A Exemption orders in relation to content copied from the internet**

- (1) If the ACMA is satisfied that:
- (a) matter is proposed to be transmitted by a datacasting licensee; and
  - (b) the matter is content that is proposed to be copied from the internet; and
  - (c) the content is proposed to be selected by the datacasting licensee; and
  - (d) if it were assumed that clause 20AA and subclause 21(10) had not been enacted:
    - (i) any breach of the conditions set out in clauses 14 and 16 and subclause 21(1) that would arise from the transmission of the matter would be of a minor, infrequent or incidental nature; or

- (ii) the transmission of the matter would not be contrary to the purpose of clauses 14, 16 and 21;  
the ACMA may, by writing, make an exemption order in relation to the transmission of the matter.
- (2) If the ACMA receives a request from a datacasting licensee to make an exemption order in relation to the transmission of matter by the licensee, the ACMA must use its best endeavours to make that decision within 28 days after the request was made.