



**Australian Government**  
**Australian Communications  
and Media Authority**

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Australia's regulator for broadcasting, the internet, radiocommunications and telecommunications

[www.acma.gov.au](http://www.acma.gov.au)

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# Narrowcasting services on television

## Guidelines and information

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# Introduction

In October 2006, the Australian Parliament passed laws that will allow the emergence of a range of new digital services for Australian consumers. The new legislation allows for the allocation of two datacasting transmitter licences (Channel A and Channel B). Datacasting, narrowcasting television, and certain other services will be allowed to be provided under these licences. The Parliament also determined that commercial broadcasting television services would not be permitted to be provided to domestic television receivers under these licences.

While narrowcasting television services have been possible under the existing legislative framework, increased interest in the provision of these services is likely to arise following Parliament's recent decisions. In this context, the Australian Communications and Media Authority (ACMA) has developed these guidelines to assist existing and prospective providers of services to understand the types of services that may be provided as narrowcasting television services. The specific aims of the guidelines are:

- to assist prospective providers of narrowcasting services on television to understand the types of television services that are likely to be categorised as narrowcasting under the BSA; and
- to explain how ACMA will approach applications under section 21 of the *Broadcasting Services Act 1992* (BSA), for opinions about the category a proposed service falls into.

These guidelines should be read in conjunction with relevant legislation – principally the BSA and the *Radiocommunications Act 1992* (RA) – and if relevant, information about the planning and allocation of the datacasting transmitter licences for those channels, available on ACMA's website. The guidelines will assist service providers using or proposing to use the Channel A and Channel B datacasting licensed services, and services delivered on other platforms, including non-broadcasting services band platforms.

Narrowcasting services are distinct from broadcasting services as their reception is limited, rather than being intended to appeal to the general public. Narrowcasting services can play an important role in achieving the regulatory objective of increasing the diversity of services that are available in the Australian community. The introduction of digital broadcasting platforms creates even greater opportunities for new service formats aimed at meeting a diverse range of audience preferences. In the context of the government's recent announcements, the decision to permit narrowcasting services in addition to other services, such as datacasting services, on two new digital television channels aims to stimulate consumer take-up of digital television, by increasing the range of content available to audiences.

The transition to digital broadcasting in Australia is well underway. The digital environment presents increased flexibility for broadcasters in delivering new programming options by, for example, exploring opportunities for non-linear program formats. In this environment, ACMA has chosen not to adopt a prescriptive approach to the definition of ‘narrowcasting service’, as it considers:

- the guidelines should encourage provision of new and innovative narrowcasting television services that will help to stimulate the take-up of digital television services by Australian audiences; and
- it is not possible to determine the category a digital television service falls into without knowing the detailed circumstances of that service, because the digital television platform enables a wide range of potential service formats.

These guidelines are not intended to be a substitute for legal advice or a formal opinion on the category of broadcasting service. Any prospective narrowcasting television service provider is strongly encouraged to consider the definitions of subscription narrowcasting services and open narrowcasting services in section 17 and section 18 of the BSA, and to apply to ACMA as soon as possible for an opinion, under section 21 of the BSA, about the category of broadcasting service into which its proposed service falls.

In addition to the relevant sections in Part 2 of the BSA, in which the different types of broadcasting service categories are defined, these guidelines aim to clarify the types of services that may be provided as narrowcasting television services. The guidelines:

1. Explain the legal and policy framework for narrowcasting television services, including the statutory criteria that determine whether a service falls into a narrowcasting licence category under section 17 or section 18 of the BSA; and
2. Set out ACMA’s approach to the matters it must have regard to under section 22 of the BSA when providing an opinion about which category a proposed broadcasting service falls into. ACMA would need to apply the definitions in section 17 and section 18 and criteria or clarifications determined under section 19 (where relevant) of the BSA.

Prospective narrowcasting service licensees should also have regard to the transmitter licensing provisions of the RA including, as relevant, the conditions in sections 107 to 110 of the RA.

# Policy and legal framework

This section sets out the policy and legal framework in which narrowcasting services operate. Relevant extracts of the BSA and the RA are provided in Appendix A.

## Regulatory objectives

Broadcasting services, including narrowcasting services, are regulated under the BSA, which establishes a framework for the licensing of such services and provides mechanisms for regulating their content. Under section 6(1) of the BSA, broadcasting service means:

a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or
- (c) a service, or a class of services, that the Minister determines, by notice in the *Gazette*, not to fall within this definition.

In relation to (c) above, on 12 September 2000, the Minister determined that the following is not a broadcasting service:

a service that makes available television programs or radio programs using the Internet, other than a service that delivers television programs or radio programs using the broadcasting services bands.

As the Full Court of the Federal Court has noted, there is no definition of ‘service’ in the BSA<sup>1</sup>. In the context of making a decision about the construction of section 212 of the BSA the Full Court decided that a service related to a particular channel of a broader subscription television service. Clause 41A of Schedule 4 to the BSA also recognises that more than one service can be authorised by a commercial television broadcasting licence.

While continuous ‘streams’ of linear integrated programming identified as, for example, ‘Channel 7’, ‘Channel 9’ or ‘Channel 10’ have been the norm for broadcasting services in the analogue broadcasting environment, the BSA does not necessarily preclude other models of services from being provided. In the context of digital services in particular, it is possible

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<sup>1</sup> *Amalgamated Television Services Pty Ltd & others v Foxtel Digital Cable Television Pty Ltd & anor* (1996) 136 ALR 319 per Lockhart, Wilcox and Hill JJ at pages 321 and 322.

that a service provider could provide a number of separate, distinct services which share channel capacity with other services.

The objects of the BSA include promoting the availability of a diverse range of radio and television services offering entertainment, education and information, and promoting provision of high quality and innovative programming by providers of broadcasting services (section 3(1)(a) and (f) of the BSA). Encouraging a diverse range of services includes encouraging provision of programming that is of general interest and broad appeal, as well as material that meets more specific and targeted needs and interests. To help achieve this diversity, the BSA provides for different categories of broadcasting services, including two categories of narrowcasting services.

## **Categories of service under the *Broadcasting Services Act 1992***

The BSA defines seven categories of broadcasting services, including two categories of narrowcasting services—open narrowcasting and subscription narrowcasting. The criteria for each category are set out in Part 2 of the BSA. The categorisation of narrowcasting services is based on the definitions of those services under section 17 and section 18 of the BSA. These provisions indicate that the defining characteristic of narrowcasting services is that their reception is limited in some way. In the case of open narrowcasting services, subsection 18(1) of the BSA provides that reception may be limited:

- by being targeted to special interest groups; or
- by being intended only for limited locations, for example, arenas or business premises; or
- by being provided during a limited period or to cover a special event; or
- because they provide programs which are of limited appeal; or
- for some other reason.

At April 2007, available open narrowcasting television services include an indigenous programming service based in Broome, a tourist information service based in Darwin, trial community television services based in Adelaide and Mt Gambier, and a range of television services that broadcast on frequencies outside the broadcasting services bands. This compares with a broad range of open narrowcasting radio services available across Australia.

Section 17 of the BSA also provides that the reception of a subscription narrowcasting service must be limited for one of the above reasons, and such a service must satisfy the additional criterion that it is made available only on payment of a subscription fee. Existing subscription television providers have offered a range of subscription narrowcasting services, including a service dedicated to coverage of Australian Football League matches and a service providing adult programming.

With the exception of licences for international broadcasting services, the licences for broadcasting services are mutually exclusive. When considering category of service issues, prospective narrowcasting service providers should have regard to the criteria for all service categories, particularly the commercial broadcasting and subscription broadcasting categories. It is important when developing service proposals and submitting applications to ACMA for opinions about the categories into which services may fall, to ensure that their proposed services *do not* meet the criteria for one of the broadcasting service categories. For

example, section 14 of the BSA provides that commercial broadcasting services are broadcasting services:

- that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- that provide programs that:
  - are able to be received by commonly available equipment; and
  - are made available free to the general public; and
- that are usually funded by advertising revenue; and
- that are operated for profit or as part of a profit-making enterprise.

Under section 16 of the BSA, subscription broadcasting services are services that:

- provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- are made available to the general public, but only on payment of subscription fees.

While reception of a narrowcasting service may be limited for a number of reasons, one key point of differentiation between a narrowcasting service and broadcasting service is often the audience appeal of the programs. A service that provides programs which appear to be intended to appeal to the general public is likely to fall into either the commercial broadcasting service or subscription broadcasting service categories, unless its reception is limited for some reason. More detailed information about the characteristics of broadcasting and narrowcasting services is provided in section 3 of these guidelines.

Under section 19 of the BSA, ACMA may determine additional criteria for a broadcasting service category or clarify the existing criteria. The former Australian Broadcasting Authority (ABA) made two determinations that clarified the criteria for narrowcasting radio services in 2001 and 2002<sup>2</sup>. However, neither ACMA nor the former ABA has clarified the statutory criteria or determined additional criteria for narrowcasting television services, as in the past there has been a low level of demand for the provision and supply of such services. ACMA considers that making such determinations at this stage may stifle innovation in the development of narrowcasting television services. However, ACMA may consider using its power under section 19 of the BSA in the future, to clarify the existing criteria or determine additional criteria to differentiate narrowcasting television services from other categories of service. If ACMA were to determine additional criteria for a broadcasting service category or clarify the existing criteria under section 19 of the BSA, these criteria would apply in addition to those currently set out in sections 17 and 18 of the BSA.

## **Broadcasting service licensing and content regulation**

The BSA provides for different levels of regulation to be applied to each category of broadcasting service, depending on the degree of influence that different types of services are able to exert in shaping community views. The BSA specifies conditions that apply to each category of licence, and contains a framework for development of and compliance with

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<sup>2</sup> See *Broadcasting Services Clarification Notice 2001* and *Broadcasting Services Clarification Notice 2001*



program standards and codes of practice that deal with the content broadcasting services, with separate codes applying to each sector of the broadcasting industry.

## **BROADCASTING SERVICE LICENCES**

The BSA requires broadcasting services to be licensed, and imposes penalties for operating a broadcasting service without the appropriate licence (see Part 10 of the BSA). Unlike commercial broadcasting and community broadcasting services, which must be individually licensed, open narrowcasting and subscription narrowcasting services are authorised by class licences determined under section 117 of the BSA.

The BSA specifies conditions that apply to each category of licence. The BSA also contains a framework for development of and compliance with program standards and codes of practice that deal with the content of broadcasting services, with separate codes applying to each sector of the broadcasting industry (see section 123 of the BSA). Providers of narrowcasting services must be mindful of the different licensing requirements for narrowcasting and broadcasting services, and ensure that the reception of narrowcasting services is limited. Providers of open narrowcasting services in particular must ensure that their services are not found to be providing commercial broadcasting services without the appropriate licences (see section 131 of the BSA).

If ACMA is satisfied that a person is providing a broadcasting service without the appropriate licence, ACMA may direct the person to cease providing the service. Failure to comply with such a direction amounts to an offence under section 138 of the BSA. In the case of a commercial television broadcasting service or subscription television broadcasting service, failure to comply with an ACMA direction to cease providing an unlicensed service may incur a penalty of up to \$2,200,000 for the first day and then \$220,000 for each day after that, if failure to comply with the direction continues (section 213 of the BSA).

For the majority of services in the analogue terrestrial broadcasting environment, the broadcasting service licence and apparatus (or transmitter) licence are held by the same licensee entity. However, a digital broadcasting platform has the capacity to support multiple broadcasting services that share channel capacity, and it is conceivable that broadcasting service licensees and apparatus licensees may be separate entities. In such circumstances, failure to ensure that a service is authorised by the appropriate licence may have implications for both the provider of the unauthorised service, and for the apparatus licensee.

## **CONDITIONS APPLICABLE TO CLASS LICENCES**

Narrowcasting television services provided under class licences are subject to the standard conditions set out in Part 2 of Schedule 2 and Part 7 of Schedule 2 to the BSA. The conditions include:

- a ban on tobacco advertising;
- a requirement to comply with any applicable program standards approved by ACMA;
- a condition not to use the broadcasting service to commit an offence;
- requirements to comply with the BSA in relation to the broadcast of political and electoral material and advertisements relating to medicines; and
- a requirement to keep records of certain broadcast material.

These are reproduced in Appendix A to these guidelines. ACMA has the power to impose additional licence conditions and has done so in the past for radio narrowcasting services.

Class licensed broadcasting service providers who wish to use the broadcasting services bands part of the radiofrequency spectrum must apply to ACMA for a transmitter licence issued under the RA to operate their services. Further information about transmitter licensing under the RA is provided below.

## STANDARDS

Under section 125 of the BSA, ACMA may determine program standards for broadcasting services in certain circumstances. ACMA has determined anti-terrorism standards for open narrowcasting and subscription narrowcasting services. The standards aim to prevent the broadcast of programs that directly encourage people to join or finance terrorist organisations. The standards place an obligation on narrowcast television services to ensure that prohibited programs will not be broadcast.

The full text of the Broadcasting Services (Anti-terrorism Requirements for Open Narrowcasting Television Services) Standard 2006 and Broadcasting Services (Anti-terrorism Requirements for Subscription Television Narrowcasting Services) Standard 2006 can be viewed on ACMA's website<sup>3</sup>.

## CODES OF PRACTICE

Part 9 of the BSA establishes a framework for development of industry codes of practice for each broadcasting service category, and for datacasting services. Separate codes have been developed for radio and television services within the commercial broadcasting, community broadcasting, open narrowcasting and subscription narrowcasting sectors. The codes of practice for subscription narrowcasting and open narrowcasting television services provide:

- guidelines for general programming;
- the requirements for the classification of programs; and
- the procedures for complaints about the content of programs (with different requirements for services in each sector).

In addition, Part 9A of the BSA will provide for development of industry codes covering matters of particular relevance to digital broadcasting services, following the commencement of Part 9A in May 2007.<sup>4</sup>

## Broadcasting service category opinions

Section 21 of the BSA permits a person who is providing, or who proposes to provide, a broadcasting service to apply to ACMA for an opinion as to which category of broadcasting services the service falls into.

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<sup>3</sup> See [http://www.acma.gov.au/ACMAINTER.1638528:STANDARD::pc=PC\\_100311](http://www.acma.gov.au/ACMAINTER.1638528:STANDARD::pc=PC_100311)

<sup>4</sup> Part 9A of the BSA is established under Schedule 2A to the *Broadcasting Legislation Amendment (Digital Television) Act 2006*, and comes into effect on the earlier of a day to be fixed by proclamation or 5 May 2007.

An opinion given under section 21 applies only to the service in respect of which the application was made and only as long as the circumstances relating to the service remain substantially the same as those set out in the application for an opinion.

Once ACMA has provided a section 21 opinion, neither ACMA nor any other Government agency may, while the circumstances relating to the broadcasting service remain substantially the same as those advised to ACMA when applying for the opinion, take any action against the provider of the service for 5 years on the basis that the service falls into a different category of broadcasting services than that advised in the opinion.

If ACMA makes a determination or a clarification under section 19 of the BSA that places a broadcasting service in a different category or categories to that determined in an opinion, ACMA may take action against the provider of the service after the five year period of the opinion has expired if the service provider continues to provide the same service. Where no such determination or clarification is made and the circumstances relating to the broadcasting service remain substantially the same, the option may continue to apply beyond 5 years.

Intending service providers should not regard previous opinions as binding precedents. Service proposals are seldom identical to one another and each ACMA opinion on the category of a broadcasting service will be based upon an assessment of all relevant factors surrounding that service at the time of the application.

A category-of-service opinion is provided on the basis of the service proposal provided to ACMA and the circumstances in which the service is to be presented. Should the service alter substantially from that advised to ACMA in the application, for instance in terms of programming, method of delivery, coverage or location, the opinion would no longer be valid. Accordingly, where a significant change to any element of a service is envisaged by a service provider who has an existing opinion, consideration should be given to whether the service will continue to be in the same category of service despite those changes, or whether a further opinion on the revised service should be obtained. Service providers should advise ACMA of these circumstances.

Prospective providers of narrowcasting television services are strongly encouraged to seek ACMA's opinion on the category into which their proposed services will fall.

Upon receiving an application for a broadcasting service category opinion, ACMA must provide an opinion within 45 days, or the service is taken to fall into the category nominated by the applicant. However, ACMA may seek additional information in relation to an application, in which case the 45 day period restarts on the date the additional information is received by ACMA. Further information about applying for a broadcasting service category opinion, including an application form, is available on ACMA's website.

Consistent with the requirements of section 210 of the BSA, ACMA publishes opinions provided pursuant to section 21 of the BSA following the commencement of the service to which an opinion relates<sup>5</sup>. ACMA must also publish any opinion given under section 21 of the BSA in the *Government Notices Gazette*. ACMA must not publish an opinion until the service to which it relates has commenced operation.

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<sup>5</sup> Published category of service opinions can be viewed on ACMA's web site at [http://www.acma.gov.au/WEB/STANDARD//pc=PC\\_90175#publication](http://www.acma.gov.au/WEB/STANDARD//pc=PC_90175#publication).

# Matters to be considered by ACMA

This section sets out ACMA's intended approach in providing an opinion under section 21 of the BSA. As noted above, the content and format of services can vary considerably from one service to another. Therefore, the following information is intended to be a guide only, and any opinion provided by ACMA will depend on a detailed assessment of the nature and particular circumstances of any proposed service having regard to the matters set out in section 22 of the BSA and the relevant service category criteria established under the BSA.

## **Service**

An important initial consideration in preparing an opinion will be to consider the scope of the service in relation to which an opinion is sought. It is conceivable that a prospective service provider may envisage its proposed narrowcasting service being delivered using a single stream of television programming content or channel, a part of a television channel or more than one channel.

As the Full Court of the Federal Court has noted, there is no definition of 'service' in the BSA although there is a definition of broadcasting service (section 6)<sup>6</sup>. In the context of making a decision about the construction of section 212 of the BSA the Full Court decided that a service related to a particular channel of a broader subscription television service. Schedule 4 of the BSA also recognises that more than one service can be authorised by commercial television broadcasting licences. These considerations may assist ACMA in giving opinions under section 21 of the BSA.

As noted above, providing narrowcasting services in a digital environment opens up the potential for new and innovative services. Prospective narrowcasting service licensees will need to provide ACMA with full details on the types of linear or 'matrix' programming that they intend to provide.

ACMA expects that it will be necessary to give detailed consideration to this issue in the context of any particular applications for opinions.

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<sup>6</sup> *Amalgamated Television Services Pty Ltd & others v Foxtel Digital Cable Television Pty Ltd & anor* (1996) 136 ALR 319 per Lockhart, Wilcox and Hill JJ at pages 321 and 322.

## **Matters taken into account when determining the category of a service**

Section 22 of the BSA requires ACMA to have regard to the following matters when providing an opinion as to the category that a broadcasting service falls into:

- the geographic coverage of the service;
- the size of the potential audience;
- the accessibility of the service, including whether it is encrypted and the cost or availability of receiving equipment;
- the duration and frequency of the service;
- the nature of the target audience;
- the nature of the programs provided by the service, including the level of interest in the subject matter, the intended audience, and the social and cultural impact; and
- other matters, as ACMA thinks fit.

The framework established by the BSA requires ACMA to consider all of the above aspects of a service, in the context of the actual service to be provided. Each of the above matters may impact on one or more of the criteria that define the different categories of broadcasting services set out in Part 2 of the BSA. In the case of a proposed narrowcasting service, the only consideration will be that its reception is limited in some way.

As noted above, the content and format of services can vary considerably from one service to another. Therefore the following information is intended to be a guide only, and any opinion provided by ACMA will depend on:

- detailed assessment of a proposed service against the matters set out in section 22 of the BSA; and
- the relevant service category criteria set out in Part 2 of the BSA.

ACMA must consider all of the matters in section 22 when considering an application under section 21. However, it is important to note that the matters listed in section 22 are not additional criteria which must be met by a service. For example, an open narrowcasting service may operate continuously and have wide geographic coverage if its reception is otherwise limited by other factors, such as the limited appeal of the programs.

### **Geographic coverage (section 22(a))**

Geographic coverage is one of the factors that ACMA must consider when deciding which category a service falls into. However, this factor alone may not be necessarily decisive in shaping ACMA's opinion on whether a service is a narrowcasting service. For example, a service that is accessible only in limited locations, but over a wide geographic area, may be a narrowcasting service. Conversely, a commercial service that can be received only in a specific location may be considered a commercial broadcasting service if the service as a whole appears to be intended to appeal to the general public in that location.

Bearing in mind the examples of limited locations that are cited in section 17(a)(ii) and section 18(1)(a)(ii) of the BSA, the geographic coverage of a service would need to be very small if this were the only criterion which defined a service as a narrowcasting service. In

the case of an in-home television service, it is unlikely to be sufficient that the only factor which limits reception of the service is that its geographic coverage is limited to a particular town or suburb.

Applicants for a service category opinion will need to provide ACMA with sufficient information to support any proposal that a service to be provided is a narrowcasting service based on it being limited by geographic coverage. This is particularly the case for applicants who intend to provide a service using the new digital datacasting licences for Channels A and B which are both intended to be allocated as national licences.

## **Potential audience size (section 22(b))**

When giving an opinion under section 21 of the BSA, ACMA must consider the potential size of the audience for a service in the context of the service as a whole, rather than the audience for individual programs. A service which attracts only small audiences for each individual program may be found to be a broadcasting service if the programs, when considered in the context of the service as a whole, appear to be intended to appeal to the general public.

While audiences for individual programs may be limited in size, a service is unlikely to be a narrowcasting service if it appeals to an aggregate audience that is representative of the general public.

While ACMA does not consider there to be an acceptable range or threshold for the size of a narrowcasting television audience service, estimates of or empirical data on audience size are likely to be of assistance when determining what category a service falls into. Relevant data should be provided to ACMA to support any service category opinion that is based on audience size as a factor which limits the reception of a service. ACMA also may refer to available audience data for programs that are similar to those to be provided as part of a proposed service.

## **Accessibility (section 22(c))**

Factors that impact on the accessibility of a service include its comprehensibility (in the sense of it being able to be understood by the general community), whether it is encrypted, and the availability and cost of reception equipment.

The requirement for special software or hardware may limit the accessibility of a service, and is another reason that reception of a service may be limited. Similarly, the accessibility of a service will usually be reduced if special receiving equipment is required, and the equipment is not reasonably accessible to an audience. Hardware and software consideration are more likely to be relevant to subscription services, which may have provider-specific requirements for reception and decryption of the program signal, but also may be a feature of an open narrowcasting service.

If a receiver can be purchased from an electronic goods retailer and the cost of the equipment is within the means of the average member of the community, it is likely that a service would be reasonably accessible to the public. Alternatively, if the cost of the receiving equipment is such that very few members of the community would be expected to own such equipment, the reception of the service is likely to be limited.

While the reception of digital television services is limited to viewers with digital television receivers, ACMA may not regard the requirement for a digital television receiver alone to limit reception of a service sufficiently to make it a narrowcasting service. This is because digital television receiving equipment is now widely available, and increasingly affordable.

## **Scheduling of service (section 22(d))**

ACMA is required to consider the duration and frequency of a service, including whether it is provided for a set period only. The duration and frequency of a service may bear directly on whether reception of the service is limited by being provided during a limited period or to cover a special event.

Aspects of the scheduling of a service that may determine the category it falls into include the repetition of program content over a short period—for example, a schedule of programs that are repeated several times over the course of a day—or the availability of the service for part of the day or certain events only. Scheduling was one factor considered by the former ABA in a decision regarding the category of a foreign language movie service, which was comprised of an eight hour block of movies broadcast three times per day.

Insofar as the impact that scheduling of programs has on reception of a service, ACMA will take account of the opportunities afforded by digital technologies to record and ‘time shift’ programs. Such technologies may increase the appeal of a service that would otherwise appeal to a more limited audience due to the times at which programs were scheduled. Scheduling may also be an important factor where a number of distinct services share channel capacity with other services.

## **Audience characteristics (section 22(e))**

In addition to considering a service’s audience size, ACMA must consider other characteristics of a service’s audience. Audience characteristics are likely to bear on whether reception of a service is limited by being targeted at a special interest group, because the programs are of limited appeal, or both. Consideration of the target audience for a service will be decisive in distinguishing ‘programs of limited appeal’ from those that ‘appear to be intended to appeal to the general public’.

In general, defining a target audience with reference to age or gender alone is unlikely to limit the appeal and reception of a service to the extent that it is regarded as a narrowcasting service. This approach would be consistent with that taken in respect of narrowcasting radio services, in Broadcasting Services Clarification Notice 2002<sup>7</sup>, although different considerations may apply to television audiences.

Audience characteristics which may help to define the target audience for a narrowcasting television service include profession or occupation, recreational interest, ethnicity, religion, or other perceptible cultural characteristics such as the main language spoken in the home. A special interest group may be recognisable by its representative organisation such as a professional, sporting, cultural or other association. However, ACMA considers that a

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<sup>7</sup> The Broadcasting Services Clarification Notice 2002 provided that a radio service aimed at persons within a particular age range was unlikely to be a narrowcasting radio service on this basis, unless the service was targeted to persons less than 10 years old.

special interest group may also exist without formal associations, if the group can be otherwise defined and distinguished from the general public.

A special interest group may also comprise an audience with particular information requirements which would otherwise have no association with a group or organisation. For example, students of a particular academic discipline or business analysts following stock market trends and related financial information may constitute unconnected groups which share special interests. A service comprised of programs which appeal specifically to such a group – and which do not appeal to the general public – may be considered a narrowcasting service for this reason. While such a service might also provide incidental content that is of broader audience appeal, it is expected that this would be a very small component of the content of a narrowcasting television service.

Where a proposed narrowcasting television service purports to target a specific audience, the prospective narrowcasting service licensee will need to demonstrate that the characteristics of the target audience are such that the audience can be distinguished from the general public, that the program content directly serves the interest of that group, and that the reception of the service is therefore limited. And while the special interest group criterion does not require a service to target only one special interest group, a service which targeted more than one special interest group may be regarded a service that appeals to the general public if those target groups taken as a whole, could reasonably be considered to represent a cross-section of the community.

## **Program content (section 22(f))**

ACMA must take into account the nature of programs to be provided by the service, including the level of interest in the subject matter dealt with by the programs, whether the programs are aimed at a specialised audience, and the social and cultural impact of the programs. In practice, the mix of programs provided by a service and the content of those programs are likely to be significant determinants of the category that the service falls into.

The inclusion or exclusion of a particular program genre in a service will not in itself determine the category that the service falls into. In addition, the impact of different program genres on the appeal of a service may vary significantly from one service to another.

The more program elements that comprise a service, the more it is likely that the service will appeal to the general public. Commercial broadcasting services commonly comprise a number of distinct program components which, in combination, form a broad-based service of general appeal. A service that incorporates several program genres is less likely to be regarded as narrowcasting, unless its reception is limited by other factors.

While individual programs within a service may each appeal only to niche audiences, if the ‘package’ of programs provided by a service appears to be intended to appeal to the general public, then the service will be considered to be a commercial broadcasting service, and not an open narrowcasting service.

A service comprised of programs which are predominantly in a language other than English may appeal only to people who are fluent in that language, and may fall within the narrowcasting category for this reason.

Where a narrowcasting service’s reception is limited by being targeted at a special interest group, program content factors are likely to be a significant consideration. A prospective



narrowcasting service licensee would need to demonstrate that the proposed program content is of specific interest to the group to be targeted by the service, and it would not be sufficient to demonstrate merely that the target audience likes a particular type of program, which may also have broader audience appeal.

While general news, coverage of sporting events that have Australian participation, popular music, movies and lifestyle programs are all program genres that are likely to appeal to a wide audience, the appeal of a service that provides such programs may be limited in other ways, and the inclusion of one or more of these program genres in a service would not in itself result in an opinion that the service is a broadcasting service.

In relation to the news content of a service, research and ratings data indicate that television news is popular with Australian audiences.<sup>8</sup> A service that features regular coverage of general news matters is therefore more likely to be a broadcasting service than a narrowcasting service, unless its reception is limited for other reasons. A service that specialises in news coverage, or provides news on a particular subject matter or from a particular geographic region, may be considered to have limited audience appeal, and therefore be a narrowcasting service.

Live and delayed coverage of sporting events, particularly events involving participation by Australian teams or individuals, is popular with Australian television audiences and the establishment of the anti-siphoning regime under the BSA to protect the availability of coverage of certain events on free to air television is indicative of the social and cultural impact of televising those events<sup>9</sup>. However, a court has found that a service consisting of matches or rounds of the AFL to be a narrowcasting service<sup>10</sup>.

Coverage of sporting events that do not involve Australian participation may attract only viewers with specific interest in particular teams or athletes. A service which includes such coverage as a significant component is less likely to appeal to the general public.

The amount and type of any music clips broadcast on a proposed television service may bear on the service's audience appeal. However, whereas an increase in the music component of a radio broadcasting service may have the effect of broadening its appeal, it is not clear that the same can be said for a television service with a significant music component, bearing in mind the range of formats that could be adopted for such a service. The former ABA decided that a specialist music video service was a narrowcasting service, due to the limited appeal of a service comprised predominantly of music videos, with little talk or other content<sup>11</sup>.

Applicants for service category opinions are asked to provide as much information as

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<sup>8</sup> Bond University, *Sources of News and Current Affairs, Stage One: The Industry, Stage Two: The Audience*, Australian Broadcasting Authority, May 2001, page 372; Ratings data sources from Mediaweek Bulletins published January – March 2006.

<sup>9</sup> Under section 115 of the BSA, the Minister may determine a list of events that should be available on free-to-air television for viewing by the general public.

<sup>10</sup> In *Sportvision Australia Pty Ltd v Tallglen Pty Ltd & Anor* (1998) NSWLR 103, Bryson J of the Supreme Court of New South Wales Equity Division found that the Sports AFL service provided by Optus Media Pty Ltd fell within s 17(a)(i) and (iv) of the Act, that is that Sports AFL was a narrowcasting service targeted to a special interest group, providing programs of limited appeal. The channel provided coverage of AFL football 24 hours a day during the football season and about 16 hours a day outside the season and included 'a high level of repeat material'.

<sup>11</sup> ABA (1996), Opinion of Category of Broadcasting Service – Australis Media Limited ([http://www.acma.gov.au/webwr/\\_assets/main/lib100703/australis%20media%20limited%2096.pdf](http://www.acma.gov.au/webwr/_assets/main/lib100703/australis%20media%20limited%2096.pdf)).

possible about the amount and type of music clips to be broadcast, including a sample broadcast list.

### **Other matters (section 22(g))**

Under section 22(g) of the BSA, ACMA may consider such other matters it thinks fit when providing a broadcasting service category opinion. Bearing in mind the range of television services that could be provided, ACMA does not propose to limit the range of other matters it might consider at this time.

Other matters that may be relevant include the sources of revenue to fund the operation of a service. While section 22 of the BSA does not explicitly require ACMA to consider whether a proposed service will carry advertising and whether users will pay a fee to subscribe to the service, these matters are likely to be relevant considerations, bearing in mind the criteria which define the service categories. Applicants for broadcasting service category opinions will be asked to provide information about whether a subscription fee will be charged and whether the licensee will receive revenue for advertisements broadcast on the service.

As noted above, the definition of a commercial broadcasting service in section 14 of the BSA includes the criterion that such services are usually funded by advertising revenue. However, this does not mean that a service which carries advertising will automatically be a commercial broadcasting service. The definition of open narrowcasting service at section 18 of the BSA does not prevent such services from carrying paid advertisements and being funded by advertising, provided that their reception is limited in some way.

# Appendix A – Relevant Legislation

## Extracts from the *Broadcasting Services Act 1992*

### 3 Objects of this Act

- (1) The objects of this Act are:
  - (a) to promote the availability to audiences throughout Australia of a diverse range of radio and television services offering entertainment, education and information; and
  - (aa) to promote the availability to audiences and users throughout Australia of a diverse range of datacasting services; and
  - (b) to provide a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs; and
  - (ba) to provide a regulatory environment that will facilitate the development of a datacasting industry in Australia that is efficient, competitive and responsive to audience and user needs; and
  - (c) to encourage diversity in control of the more influential broadcasting services; and
  - (d) to ensure that Australians have effective control of the more influential broadcasting services; and
  - (e) to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity; and
  - (ea) to promote the availability to audiences throughout Australia of television and radio programs about matters of local significance; and
  - (f) to promote the provision of high quality and innovative programming by providers of broadcasting services; and
  - (fa) to promote the provision of high quality and innovative content by providers of datacasting services; and

### 4 Regulatory policy

- (1) The Parliament intends that different levels of regulatory control be applied across the range of broadcasting services, datacasting services and Internet services according to the degree of influence that different types of broadcasting services, datacasting services and Internet services are able to exert in shaping community views in Australia.
- (2) The Parliament also intends that broadcasting services and datacasting services in Australia be regulated in a manner that, in the opinion of the ACMA:
  - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services and datacasting services; and
  - (b) will readily accommodate technological change; and

- (c) encourages:
  - (i) the development of broadcasting technologies and datacasting technologies, and their application; and
  - (ii) the provision of services made practicable by those technologies to the Australian community.

...

## 6 Interpretation

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

...

***broadcasting service*** means a service that delivers television programs or radio programs to persons having equipment appropriate for receiving that service, whether the delivery uses the radiofrequency spectrum, cable, optical fibre, satellite or any other means or a combination of those means, but does not include:

- (a) a service (including a teletext service) that provides no more than data, or no more than text (with or without associated still images); or
- (b) a service that makes programs available on demand on a point-to-point basis, including a dial-up service; or
- (c) a service, or a class of services, that the Minister determines, by notice in the Gazette, not to fall within this definition.

...

## 11 Categories of broadcasting services

The following categories of broadcasting services are broadcasting services to which this Act relates:

- (a) national broadcasting services;
- (b) commercial broadcasting services;
- (c) community broadcasting services;
- (d) subscription broadcasting services;
- (e) subscription narrowcasting services;
- (f) open narrowcasting services;
- (fa) international broadcasting services.

### 11A Dual categorisation of international broadcasting services

An international broadcasting service may also fall into another category of broadcasting services.

## 12 Method of regulating particular services

- (1) Commercial broadcasting services, community broadcasting services, subscription television broadcasting services and international broadcasting services require individual licences.
- (2) Other broadcasting services (other than national broadcasting services) are to be provided under the relevant class licence.

*Dual categorisation of international broadcasting services*

- (3) An international broadcasting service that also falls into the category of commercial broadcasting services requires both:
  - (a) an international broadcasting licence; and
  - (b) either:
    - (i) a commercial radio broadcasting licence; or
    - (ii) a commercial television broadcasting licence.
- (4) An international broadcasting service that also falls into the category of community broadcasting services requires both:
  - (a) an international broadcasting licence; and
  - (b) a community broadcasting licence.
- (5) An international broadcasting service that also falls into the category of subscription television broadcasting services requires both:
  - (a) an international broadcasting licence; and
  - (b) a subscription television broadcasting licence.
- (6) Both of the following rules apply to an international broadcasting service that also falls into a category of broadcasting services covered by subsection (2):
  - (a) the service requires an international broadcasting licence;
  - (b) the service is to be provided under the relevant class licence.

**13 National broadcasting services**

- (1) National broadcasting services are:
  - (a) broadcasting services provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
  - (b) broadcasting services provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or
  - (c) broadcasting services provided under the *Parliamentary Proceedings Broadcasting Act 1946*.
- (2) National broadcasting services do not include subscription broadcasting services or subscription or open narrowcasting services provided by the Australian Broadcasting Corporation or the Special Broadcasting Service Corporation.
- (3) Subsection (2) does not apply to services specified by the Minister by notice in the *Gazette*.
- (4) A specification under subsection (3) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) Except as expressly provided by this Act, the regulatory regime established by this Act does not apply to national broadcasting services.

**14 Commercial broadcasting services**

Commercial broadcasting services are broadcasting services:

- (a) that provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and

- (b) that provide programs that:
  - (i) are able to be received by commonly available equipment; and
  - (ii) are made available free to the general public; and
- (c) that are usually funded by advertising revenue; and
- (d) that are operated for profit or as part of a profit-making enterprise; and
- (e) that comply with any determinations or clarifications under section 19 in relation to commercial broadcasting services.

## 15 Community broadcasting services

Community broadcasting services are broadcasting services that:

- (a) are provided for community purposes; and
- (b) are not operated for profit or as part of a profit-making enterprise; and
- (c) that provide programs that:
  - (i) are able to be received by commonly available equipment; and
  - (ii) are made available free to the general public; and
- (d) comply with any determinations or clarifications under section 19 in relation to community broadcasting services.

## 16 Subscription broadcasting services

Subscription broadcasting services are broadcasting services that:

- (a) provide programs that, when considered in the context of the service being provided, appear to be intended to appeal to the general public; and
- (b) are made available to the general public but only on payment of subscription fees (whether periodical or otherwise); and
- (c) comply with any determinations or clarifications under section 19 in relation to subscription broadcasting services.

## 17 Subscription narrowcasting services

Subscription narrowcasting services are broadcasting services:

- (a) whose reception is limited:
  - (i) by being targeted to special interest groups; or
  - (ii) by being intended only for limited locations, for example, arenas or business premises; or
  - (iii) by being provided during a limited period or to cover a special event; or
  - (iv) because they provide programs of **limited appeal**; or
  - (v) for some other reason; and
- (b) that are made available only on payment of subscription fees (whether periodical or otherwise); and
- (c) that comply with any determinations or clarifications under section 19 in relation to subscription narrowcasting services.

## 18 Open narrowcasting services

(1) Open narrowcasting services are broadcasting services:

- (a) whose reception is limited:
  - (i) by being targeted to special interest groups; or

- (ii) by being intended only for limited locations, for example, arenas or business premises; or
  - (iii) by being provided during a limited period or to cover a special event; or
  - (iv) because they provide programs of limited appeal; or
  - (v) for some other reason; and
- (b) that comply with any determinations or clarifications under section 19 in relation to open narrowcasting services.
- (1A) A HDTV multi-channelled commercial television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.
- (1B) A HDTV multi-channelled national television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.
- (2) A SDTV multi-channelled national television broadcasting service (within the meaning of Schedule 4) is not an open narrowcasting service.

### 18A International broadcasting services

- (1) International broadcasting services are broadcasting services that are targeted, to a significant extent, to audiences outside Australia, where:
- (a) the means of delivering the services involves the use of a radiocommunications transmitter in Australia (whether alone or in combination with any other means); and
  - (b) the services comply with any determinations or clarifications under section 19 in relation to international broadcasting services.
- (2) A broadcasting service is not an international broadcasting service if the broadcasting service is:
- (a) provided by the Australian Broadcasting Corporation in accordance with section 6 of the *Australian Broadcasting Corporation Act 1983*; or
  - (b) provided by the Special Broadcasting Service Corporation in accordance with section 6 of the *Special Broadcasting Service Act 1991*; or
  - (c) an exempt broadcasting service (as defined by subsection (3)).
- (3) For the purposes of this section, a broadcasting service is an ***exempt broadcasting service*** if:
- (a) the service delivers only programs packaged outside Australia (which may include programs produced in Australia); and
  - (b) all relevant programming decisions are made outside Australia; and
  - (c) the service is transmitted from a place outside Australia to an earth station in Australia for the sole purpose of being immediately re-transmitted to a satellite; and
  - (d) the satellite is a means of delivering the service (whether alone or in combination with any other means).
- (4) The references in this section to localities do not, by implication, affect the application of paragraph 21(b) of the *Acts Interpretation Act 1901* and section 10 of this Act to a provision of this Act that deals with a category of broadcasting services other than international broadcasting services.
- (5) In this section:
- Australia*** includes the external Territories.

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

## **19 ACMA may determine additional criteria or clarify existing criteria**

- (1) The ACMA may, by notice in the *Gazette*:
  - (a) determine additional criteria to those specified in sections 14 to 18A; or
  - (b) clarify the criteria specified in sections 14 to 18A;
 for the purpose of distinguishing between categories of broadcasting services.
- (2) Different criteria or clarifications may be determined or made for radio services and television services.
- (3) The Minister may give specific directions to the ACMA as to the making of determinations and clarifications, and the ACMA must observe those directions.

## **20 Determinations and clarifications to be disallowable by the Parliament**

Determinations and clarifications under section 19 are disallowable instruments for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **21 Requests to ACMA to decide which category a broadcasting service falls into**

- (1) A person who is providing, or who proposes to provide, a broadcasting service may apply to the ACMA for an opinion as to which category, or categories, of broadcasting services the service falls into.
- (2) An application must be in accordance with a form approved in writing by the ACMA, and must state the applicant's opinion as to which category, or categories, of broadcasting services the service falls into.
- (3) If the ACMA considers that additional information is required before an opinion can be given, the ACMA may, by notice in writing given to the applicant within 30 days after receiving the application, request the applicant to provide that information.
- (4) The ACMA must, as soon as practicable after:
  - (a) receiving the application; or
  - (b) if the ACMA has requested further information—receiving that further information;
 give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into.
- (5) If the ACMA has given an opinion under this section to the provider of a broadcasting service, neither the ACMA nor any other Government agency may, while the circumstances relating to the broadcasting service remain substantially the same as those advised to the ACMA in relation to the application for the opinion:
  - (a) take any action against the provider of the service during the period of 5 years commencing on the day on which the opinion is given on the basis that the service falls into a different category, or different categories, of broadcasting services than that advised in the opinion; or
  - (b) unless the ACMA has made a determination or clarification under section 19 after that opinion was given that places the broadcasting service in a different category or different categories—take any action against the provider of the service after the end of that period on the basis that the service falls into a different category, or different categories, of broadcasting services.



- (6) If the ACMA does not, within 45 days after:
  - (a) receiving the application; or
  - (b) if the ACMA has requested further information—receiving that further information;
 give the applicant, in writing, its opinion as to which category, or categories, of broadcasting services the service falls into, the ACMA is taken to have given an opinion at the end of that period that accords with the applicant's opinion.
- (7) The ACMA may charge a fee for providing an opinion under this section.
- (8) The ACMA must not give an opinion under this section that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.
- (9) A person must not, in an application under this section, state an opinion that a particular broadcasting service falls into more than one category of broadcasting services unless one of the categories is international broadcasting services.

## 22 Matters to be considered by ACMA

In making determinations or clarifications under section 19 in relation to broadcasting services, and in giving opinions under section 21 in relation to broadcasting services, the ACMA is to have regard to:

- (a) the geographic coverage of those services; and
- (b) the number of persons who receive or are able to receive those services; and
- (c) the accessibility of those services, including:
  - (i) whether those services are encrypted; and
  - (ii) whether their availability is otherwise restricted, whether because of the high cost of the equipment required to receive those services, the controlled supply of that equipment or otherwise; and
  - (iii) whether their comprehensibility is otherwise restricted; and
- (d) the duration and frequency of the provision of those services, including whether those services are provided for a set period only; and
- (e) the nature of the audience to which those services are targeted; and
- (f) the nature of the programs being provided by those services, including:
  - (i) the level of interest in the subject matter of those programs; and
  - (ii) whether those programs are directed at a specialised audience; and
  - (iii) the social and cultural impact of those programs; and
- (g) such other matters as the ACMA thinks fit.

# Schedule 2—Standard conditions

## Part 1—Interpretation

### 1 Definitions

In this Schedule:

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

**election** means an election to a Parliament or a local government authority of a State or Territory.

**election advertisement**, in relation to an election, means:

- (a) an advertisement:
  - (i) that contains election matter that relates to that election; and
  - (ii) in respect of the broadcasting of which the relevant licensee has received or is to receive, directly or indirectly, any money or other consideration; or
- (b) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a person or persons and indicating that the person is a candidate, or one or more of the persons is or are candidates, at the election; or
- (c) an announcement containing a statement to the effect that a program that is to be or has been broadcast is or was sponsored by a particular political party where a candidate at the election belongs to that party.

**election matter**, in relation to an election, means matter of any of the following kinds:

- (a) matter commenting on, or soliciting votes for, a candidate at the election;
- (b) matter commenting on, or advocating support of, a political party to which a candidate at the election belongs;
- (c) matter commenting on, stating or indicating any of the matters being submitted to the electors at the election or any part of the policy of a candidate at the election or of the political party to which a candidate at the election belongs;
- (d) matter referring to a meeting held or to be held in connection with the election.

**election period** means:

- (a) in relation to an election to the Legislative Council of Tasmania, or an ordinary election to the Legislative Assembly of the Australian Capital Territory—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (b) in relation to any other election to a Parliament—the period that starts on:
  - (i) the day on which the proposed polling day for the election is publicly announced; or
  - (ii) the day on which the writs for the election are issued;
 whichever happens first, and ends at the close of the poll on the polling day for the election; and
- (c) in relation to an election to a local government authority—the period that starts 33 days before the polling day for the election and ends at the close of the poll on that day; and
- (d) in relation to a referendum whose voting day is the same as the polling day for an election to the Parliament of the Commonwealth—the election period in relation to that election; and
- (e) in relation to any other referendum—the period that starts 33 days before the voting day for the referendum and ends at the close of voting on that day.

**person** includes a political party, a corporation and any other association (whether incorporated or unincorporated).

**political matter** means any political matter, including the policy launch of a political party.

**radiocommunications device** has the same meaning as in the *Radiocommunications Act 1992*.

**referendum** means the submission to the electors of a proposed law for the alteration of the Constitution, whether or not the proposal to make the submission has been announced.

**relevant period**, in relation to an election, means the period that commences at the end of the Wednesday before the polling day for the election and ends at the close of the poll on that polling day.

**required particulars**, in relation to a political matter that is broadcast, means:

- (a) if the broadcasting was authorised by a political party:
  - (i) the name of the political party; and
  - (ii) the town, city or suburb in which the principal office of the political party is situated; and
  - (iii) the name of the natural person responsible for giving effect to the authorisation; and
- (b) if the broadcasting of the political matter was authorised by a person other than a political party:
  - (i) the name of the person who authorised the broadcasting of the political matter; and
  - (ii) the town, city or suburb in which the person lives or, if the person is a corporation or association, in which the principal office of the person is situated; and
- (c) the name of every speaker who, either in person or by means of a sound recording device, delivers an address or makes a statement that forms part of that matter.

**required period**, in relation to the keeping of a record in relation to political matter, means:

- (a) subject to paragraph (b), the period of 6 weeks commencing on the day on which the matter was broadcast; or
- (b) if the matter relates to an election or referendum and was broadcast during the election period in relation to the election or referendum—the period commencing on the day on which the matter was broadcast and ending:
  - (i) at the end of the period referred to in paragraph (a); or
  - (ii) if that period ends before the end of the election period in relation to the election or referendum—the day on which that election period ends;

or such longer period as the ACMA, before the end of that period, directs by notice in writing to the broadcaster concerned.

## 2 Interpretation—certain things do not amount to broadcasting of advertisements

(1) For the purposes of this Schedule (other than paragraphs 7(1)(a), 8(1)(a), 9(1)(a), 10(1)(a) and 11(1)(a)), a person is not taken to broadcast an advertisement if:

- (a) the person broadcasts matter of an advertising character as an accidental or incidental accompaniment to the broadcasting of other matter; and

(b) the person does not receive payment or other valuable consideration for broadcasting the advertising matter.

(2) For the purposes of this Schedule (other than paragraph 9(1)(a)), the broadcasting by a community broadcasting licensee of:

- (a) community information material or community promotional material; or
- (b) a sponsorship announcement that acknowledges financial support by a person of the licensee or of a program broadcast on the service provided under the licence, whether or not the announcement:
  - (i) specifies the name and address of, and a description of the general nature of any business or undertaking carried on by the person; or
  - (ii) promotes activities, events, products, services or programs of the person; or
- (c) material that announces or promotes the service provided under the licence, including material (whether by way of the announcement or promotion of activities, events, products, services or otherwise) that is likely to induce public support, whether financially or otherwise, or to make use of, the services provided under the licence;

is not taken to be the broadcasting of an advertisement.

## Part 2—Special conditions

### 3 Broadcasting of political or controversial material

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
  - (b) a commercial radio broadcasting licensee; or
  - (c) a community broadcasting licensee; or
  - (d) a subscription television broadcasting licensee; or
  - (e) a person providing broadcasting services under a class licence.
- (2) If, during an election period, a broadcaster broadcasts election matter, the broadcaster must give reasonable opportunities for the broadcasting of election matter to all political parties contesting the election, being parties which were represented in either House of the Parliament for which the election is to be held at the time of its last meeting before the election period.
- (3) This clause does not require a broadcaster to broadcast any matter free of charge.

#### 3A Broadcasting of election advertisements

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
  - (b) a commercial radio broadcasting licensee; or
  - (c) a community broadcasting licensee; or
  - (d) a subscription television broadcasting licensee; or
  - (e) a person providing broadcasting services under a class licence.
- (2) If:
- (a) a broadcaster has a licence that has a licence area; and
  - (b) an election to a Parliament is to be held; and
  - (c) the licence area overlaps, contains or is contained in the area of Australia to which the election relates;
- the broadcaster must not broadcast under the licence an election advertisement in relation to the election during the relevant period.
- (3) If:
- (a) a broadcaster has a licence that does not have a licence area; and
  - (b) an election to a Parliament is to be held; and
  - (c) a broadcasting service under the licence is normally received in the area of Australia to which the election relates;
- the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.
- (4) If:
- (a) a broadcaster provides a broadcasting service under a class licence; and
  - (b) an election to a Parliament is to be held; and

- (c) the broadcasting service is normally received in the area of Australia to which the election relates;
- the broadcaster must not broadcast an election advertisement in relation to the election during the relevant period as part of the service.

#### 4 Identification of certain political matter

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
  - (b) a commercial radio broadcasting licensee; or
  - (c) a community broadcasting licensee; or
  - (d) a subscription television broadcasting licensee; or
  - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts political matter at the request of another person, the broadcaster must, immediately afterwards, cause the required particulars in relation to the matter to be announced in a form approved in writing by the ACMA.
- (3) A broadcaster must, in relation to political matter broadcast at the request of another person, keep a record of the name, address and occupation of the person or, if the person is a company, the name and the address of the principal office of the person for the required period and must give to the ACMA any particulars of the record that the ACMA, by written notice, requires.
- (4) For the purposes of this clause, a person authorises the broadcasting of political matter only if the person is responsible for approval of the content of the political matter and the decision to present it for broadcasting.

#### 5 Records of matter broadcast

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
  - (b) a commercial radio broadcasting licensee; or
  - (c) a community broadcasting licensee; or
  - (d) a subscription television broadcasting licensee; or
  - (e) a person providing broadcasting services under a class licence.
- (2) If a broadcaster broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address, a statement, a commentary or a discussion, the broadcaster must cause a record of the matter to be made in a form approved in writing by the ACMA.
- (3) Subject to this clause, a broadcaster must retain in his or her custody a record so made for a period of:
- (a) 6 weeks from the date on which the matter was broadcast; or
  - (b) if a complaint has been made about the matter—for 60 days from the date on which the matter was broadcast;
- or for such longer period as the ACMA, in special circumstances, directs in writing.

- (4) If a person considers that a record so made is admissible in evidence in proceedings instituted, or proposed to be instituted, in a court, being a record that is held under subclause (3), the person may give to the broadcaster a notice in writing informing the broadcaster that the record may be required for the purposes of the proceedings.
- (5) If such a notice is given to a broadcaster in respect of a record, the broadcaster must, subject to this clause, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.
- (6) If the proceedings are not instituted within a period of 3 months after the notice is given to the broadcaster, subclause (5) ceases to apply to the record at the end of that period.
- (7) The obligation imposed by this clause on a broadcaster to retain a record does not apply at any time when the record is in the custody of a court in connection with proceedings instituted in the court.
- (8) If the ACMA is of the opinion that a matter of which a record has been made under this clause is of sufficient historic interest to justify its being permanently preserved, the ACMA may direct in writing a person who has custody of the record to deliver it for safe keeping to a person or authority specified by the ACMA, and the person to whom the direction is given must comply with the direction but is entitled to fair compensation.
- (9) A broadcaster must, without charge, make available to the ACMA, upon request, any specified record made by the broadcaster under subclause (2) that has been retained by the broadcaster (whether or not the broadcaster is, at the time of the request, under an obligation to retain the record).

## 6 Advertisements relating to medicines

- (1) In this clause, *broadcaster* means:
- (a) a commercial television broadcasting licensee; or
  - (b) a commercial radio broadcasting licensee; or
  - (c) a subscription television broadcasting licensee; or
  - (d) a person providing broadcasting services under a class licence.
- (2) A broadcaster must not broadcast an advertisement relating to therapeutic goods that is required to be approved under the *Therapeutic Goods Act 1989* unless the text of the advertisement has been so approved.

## Part 7—Services provided under class licences

### 11 Conditions applicable to broadcasting services provided under class licences

- (1) The following conditions apply to the provision by a person of a broadcasting service under a class licence:
- (a) the licensee will not, in contravention of the *Tobacco Advertising Prohibition Act 1992*, broadcast a tobacco advertisement within the meaning of that Act;
  - (ab) in the case of a person who provides an open narrowcasting television service or a subscription television narrowcasting service—the person will comply with subsection 121E(2) (section 121E is about requiring the ACMA’s permission to provide certain television services in regional areas);

- (b) the person will comply with program standards applicable to the licence under Part 9 of this Act;
- (c) the person will not use the broadcasting service in the commission of an offence against another Act or a law of a State or Territory;
- (d) the person will comply with the requirements of clauses 3, 3A, 4, 5 and 6.

(2) The provision by a person of a subscription broadcasting service or a subscription narrowcasting service under a class licence is also subject to the condition that subscription fees will continue to be the predominant source of revenue for the service.

(3) The provision by a person of an open narrowcasting television service under a class licence is also subject to the following conditions:

- (a) the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board;
- (b) the licensee will not broadcast films that are classified as “R 18+” unless the films have been modified as mentioned in paragraph 123(3C)(b).

(4) The provision by a person of a subscription television narrowcasting service under a class licence is also subject to the condition that the licensee will not broadcast a program that has been classified RC or X 18+ by the Classification Board.

## Extracts from the *Radiocommunications Act 1992*

### 98A Channel A datacasting transmitter licence

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a channel A datacasting transmitter licence for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a channel A datacasting transmitter licence for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA’s Internet site.

### 98B Channel B datacasting transmitter licence

- (1) The ACMA may, by writing, declare that a specified datacasting transmitter licence proposed to be issued is a channel B datacasting transmitter licence for the purposes of this Act.
- (2) If such a datacasting transmitter licence is issued, the licence is a channel B datacasting transmitter licence for the purposes of this Act.
- (3) A declaration under subsection (1) is not a legislative instrument.
- (4) A copy of a declaration under subsection (1) is to be made available on the ACMA’s Internet site.



## Division 3—Conditions of apparatus licences

### 107 General conditions

- (1) An apparatus licence is subject to the following conditions:
  - (a) a condition that the licensee, and any person authorised by the licensee to operate a radiocommunications device under the licence, must comply with this Act;
  - (b) a condition that the licensee inform each person so authorised of the person's obligations to comply with this Act and the conditions of the licence;
  - (c) a condition that the licensee meet all obligations (if any) of the licensee to pay:
    - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
    - (ii) amounts of apparatus licence tax;
  - (d) a condition that any radiocommunications device operated under the licence must comply with all the standards applicable to it;
  - (f) such conditions (if any) as the ACMA may determine, by written instrument, in relation to that particular type of apparatus licence;
  - (g) such other conditions as are specified in the licence.
- (2) Paragraphs (1)(a), (b), (c) and (d) do not limit the kinds of conditions that may be specified under paragraph (1)(f) or (g) or imposed under paragraph 111(a).
 

Note: Inclusion of conditions under paragraph (1)(g) is a reviewable decision under Part 5.6.
- (3) This section does not apply to transmitter licences issued under section 101A, 102 or 102A or to datacasting transmitter licences.
- (4) A determination is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (5) If the issue of an apparatus licence is covered by section 153M (which deals with re-allocation of spectrum), a condition of the licence may provide for the progressive authorisation of the operation of the radiocommunications device under the licence. The progressivity is to be based on the times when a particular part or parts of the spectrum become available as a result of the expiry, surrender or cancellation of one or more other apparatus licences that, under section 153D, are affected by the spectrum re-allocation declaration concerned.
- (6) Subsection (5) does not, by implication, limit anything in subsection (1).

### 108 Additional conditions for transmitter licences

- (1) A transmitter licence is subject to the additional conditions set out in subsection (2) relating to the operation of any radiocommunications transmitter under the licence by the licensee, or by any person authorised by the licensee to operate a radiocommunications transmitter under the licence.
- (2) The licensee, and any person so authorised:
  - (a) must not operate, or permit operation of, the transmitter for a purpose that is inconsistent with a purpose of a kind specified in the appropriate frequency band plan (if any) under subsection 32(4); and
  - (b) must not operate, or permit operation of, the transmitter except in accordance with any conditions specified in the licence that relate to:

- (i) containment of interference, or of the likelihood of interference, to radiocommunications; or
  - (ii) transmission of an identification signal; and
  - (c) must not operate, or permit operation of, the transmitter except on a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence; and
  - (d) must not operate, or permit operation of, the transmitter:
    - (i) in a way that would be likely to cause reasonable persons, justifiably in all the circumstances, to be seriously alarmed or seriously affronted; or
    - (ii) for the purpose of harassing a person; and
  - (da) must not operate, or permit operation of, the transmitter for transmitting an international broadcasting service unless there is in force an international broadcasting licence authorising the provision of that service; and
  - (e) if the licence is a licence in respect of which persons operating the transmitter are required under section 119 to be qualified operators in relation to the licence— must not operate the transmitter unless he or she is such a qualified operator; and
  - (f) must comply with subsection 269A(2) of the *Navigation Act 1912*; and
  - (g) must comply with any direction:
    - (i) that relates to operation of the transmitter; and
    - (ii) to which subsection (3) applies.
- (3) This subsection applies to a direction that:
- (a) is given, in a way not inconsistent with any relevant guidelines under section 112, either orally or in writing; and
  - (b) is given by:
    - (i) a member of the Australian Federal Police; or
    - (ii) a member of the police force of a State or Territory; or
    - (iii) an officer of the Defence Force; or
    - (iv) an officer of the Australian Coastal Surveillance Centre; or
    - (v) an officer who is included in a class of officers specified in the regulations, and who is an officer of an organisation specified in the regulations the sole or principal purpose of which is to deal with natural disasters; and
  - (c) is reasonably necessary for the purposes of:
    - (i) securing the safety of a vessel, aircraft or space object that is in danger; or
    - (ii) dealing with an emergency involving a serious threat to the environment; or
    - (iii) dealing with an emergency involving risk of death of, or injury to, persons; or
    - (iv) dealing with an emergency involving risk of substantial loss of, or substantial damage to, property.
- (4) This section does not limit the kinds of conditions that may be specified under paragraph 107(1)(f) or (g) or imposed under paragraph 111(a).
- (5) This section does not apply to transmitter licences issued under section 101A, 102 or 102A or to datacasting transmitter licences.

### **108A Conditions of transmitter licences for temporary community broadcasters**

- (1) A transmitter licence issued under section 101A is subject to the following conditions:
- (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:

- (i) charges fixed by determinations under section 293; and
- (ii) amounts of apparatus licence tax;
- (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
- (d) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
- (e) such conditions (if any) as the ACMA determines, by written instrument, in relation to licences issued under section 101A;
- (f) such other conditions as are specified in the licence.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

- (2) The conditions of the licence, including any further conditions imposed under paragraph 111(1)(a), must not be inconsistent with the related licence as referred to in section 101A.
- (3) A determination under paragraph (1)(e) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

## **109 Conditions of transmitter licences for certain broadcasting services**

- (1) A transmitter licence issued under section 102 or 102A is subject to the following conditions:
  - (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:
    - (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
    - (ii) amounts of apparatus licence tax;
  - (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
  - (d) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter otherwise than in accordance with any relevant technical specifications determined by the ACMA under subsection 26(1) of the *Broadcasting Services Act 1992*;
  - (e) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
  - (f) such other conditions as are specified in the licence.
- (2) The conditions of the licence, including any further conditions imposed under paragraph 111(a), must not be inconsistent with the related licence as referred to in section 102 or 102A.

Note: Inclusion of conditions under paragraph (1)(f) is a reviewable decision under Part 5.6.

### **109A Conditions of datacasting transmitter licences**

- (1) A datacasting transmitter licence is subject to the following conditions:
  - (a) a condition that the licensee must comply with this Act;
  - (b) a condition that the licensee meet all obligations (if any) of the licensee to pay:

- (i) charges fixed by determinations under section 60 of the *Australian Communications and Media Authority Act 2005*; and
- (ii) amounts of apparatus licence tax;
- (ba) if the licence is a channel A datacasting transmitter licence—a condition that the licensee will meet all obligations of the licensee to pay amounts of datacasting transmitter licence fee;
- (bb) if the licence is a channel A datacasting transmitter licence—a condition that the licensee will comply with the requirements of section 205BA of the *Broadcasting Services Act 1992*;
- (c) a condition that the licensee inform each person authorised by the licensee to operate a radiocommunications transmitter under the licence of the person's obligations to comply with this Act and the conditions of the licence;
- (d) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, the transmitter except on a frequency or frequencies, or on a frequency channel, and at a constancy, specified in the licence;
- (e) a condition that the licensee, and any person so authorised, must not operate, or permit operation of, such a transmitter except within:
  - (i) a part of the spectrum covered by a determination under subsection 34(3) of the *Broadcasting Services Act 1992*; or
  - (ii) a part of the spectrum covered by a determination under subsection 34(1) of the *Broadcasting Services Act 1992* because of paragraph 34(1)(fa) of that Act;
- (f) a condition that the licensee, and any person so authorised, must comply with guidelines developed by the ACMA under section 33 of the *Broadcasting Services Act 1992*;
- (fa) a condition that the licensee, and any person so authorised, must comply with any regulations made for the purposes of clause 36B of Schedule 4 to the *Broadcasting Services Act 1992*;
- (g) if the licence is neither a channel A datacasting transmitter licence nor a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 1 year after the allocation of the licence or within such longer period as is notified in writing by the ACMA;
- (ga) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, or a person so authorised, will commence to transmit a datacasting service within 18 months after the allocation of the licence or within such longer period as is notified in writing by the ACMA;
- (i) a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter on or after 1 January 2007 for transmitting a datacasting service unless:
  - (i) there is in force a BSA datacasting licence, or another licence allocated by the ACMA under the *Broadcasting Services Act 1992*, authorising the provision of that service; or
  - (ii) that service is provided in accordance with a class licence under the *Broadcasting Services Act 1992*; or
  - (iii) that service is a BSA exempt re-transmission service;
- (ia) if the licence is a channel A datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless:

- (i) the service is provided under, and in accordance with the conditions of, a BSA datacasting licence, and the service is capable of being received by a domestic digital television receiver; or
  - (ii) the service is an open narrowcasting television service that is capable of being received by a domestic digital television receiver; or
  - (iii) the service is a community television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ib) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the datacasting service is:
- (i) a commercial broadcasting service; or
  - (ii) a subscription television broadcasting service that is capable of being received by a domestic digital television receiver;
- (ic) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if the licensee or the person so authorised is:
- (i) a company that holds a commercial television broadcasting licence; or
  - (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or
  - (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;
- and the datacasting service is capable of being received by a domestic digital television receiver;
- (id) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service provided under a BSA datacasting licence if the holder of the BSA datacasting licence is:
- (i) a company that holds a commercial television broadcasting licence; or
  - (ii) a person who is in a position to exercise control of a commercial television broadcasting licence; or
  - (iii) a company, where a person is in a position to exercise control of the company and a commercial television broadcasting licence; or
  - (iv) a national broadcaster; or
  - (v) a company, where a national broadcaster is in a position to exercise control of the company;
- and the datacasting service is capable of being received by a domestic digital television receiver;
- (ie) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service if:
- (i) the service is a BSA exempt re-transmission service; and
  - (ii) the service is capable of being received by a domestic digital television receiver;
- (if) if the licence is a channel A datacasting transmitter licence or a channel B datacasting transmitter licence—a condition that the licensee, and any person so

- authorised, must not operate, or permit the operation of, such a transmitter for transmitting a datacasting service unless that service is transmitted in digital mode (within the meaning of Schedule 4 to the *Broadcasting Services Act 1992*);
- (ij) if the licence is a channel B datacasting transmitter licence—a condition that the licensee, and any person so authorised, will comply with an access undertaking in force under Division 4A in relation to the licence;
  - (j) a condition that the licensee, and any person so authorised, will at all times have a constitution;
  - (k) such other conditions as are specified in the licence.
- (1A) The ACMA must not notify a longer period for the purposes of paragraph (1)(g) or (ga) unless the ACMA is satisfied that there are exceptional circumstances that warrant the longer period.
- (1B) For the purposes of subparagraph (1)(ib)(ii), it is immaterial whether a domestic digital television receiver is capable of receiving subscription television broadcasting services when used:
- (a) in isolation; or
  - (b) in conjunction with any other equipment.
- (1C) A condition specified in a licence under paragraph (1)(k) may deal with the commencement or continuity of transmission of datacasting services.
- (1D) Subsection (1C) does not limit paragraph (1)(k).
- (1E) Paragraphs (1)(g) and (ga) do not limit subsection (1C).

*Constitution of licensee to contain certain provisions*

- (2) A datacasting transmitter licence is subject to the condition that the licensee's constitution will at all times contain provisions under which:
- (a) a person is not eligible to continue to be the holder of shares in the licensee if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of the *Broadcasting Services Act 1992*; and
  - (b) the licensee may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of the *Broadcasting Services Act 1992* continuing; and
  - (c) a person who becomes the holder of shares in the licensee is required to provide to the licensee a statutory declaration:
    - (i) stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares; and
    - (ii) stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of a commercial television broadcasting licence, and giving particulars of any such position; and
  - (d) a person holding shares in the licensee may be required by the licensee, from time to time, to provide to the licensee statutory declarations concerning matters relevant to the person's eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of the *Broadcasting Services Act 1992*; and
  - (e) the licensee may secure the disposal of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in paragraph (c) or (d).

*Constitution of authorised company to contain certain provisions*

- (3) A datacasting transmitter licence is subject to the condition that the constitution of a company authorised by the licensee to operate a radiocommunications transmitter under the licence will at all times contain provisions under which:
- (a) a person is not eligible to continue to be the holder of shares in the company if, because of holding those shares and of any other relevant circumstances, that or some other person would contravene Part 5 of the *Broadcasting Services Act 1992*; and
  - (b) the company may secure the disposal of shares held by a person to the extent necessary to prevent a contravention of Part 5 of the *Broadcasting Services Act 1992* continuing; and
  - (c) a person who becomes the holder of shares in the company is required to provide to the company a statutory declaration:
    - (i) stating whether the shares are held by the person beneficially and, if not, who has beneficial interests in the shares; and
    - (ii) stating whether the person, or any person who has a beneficial interest in the shares, is in a position to exercise control of a commercial television broadcasting licence, and giving particulars of any such position; and
  - (d) a person holding shares in the company may be required by the company, from time to time, to provide to the company statutory declarations concerning matters relevant to the person's eligibility to continue to be the holder of those shares having regard to the provisions of Part 5 of the *Broadcasting Services Act 1992*; and
  - (e) the company may secure the disposal of shares held by a person who refuses or fails to provide a statutory declaration under the provisions referred to in paragraph (c) or (d).

*Application of control rules*

- (4) Schedule 1 to the *Broadcasting Services Act 1992* applies for the purposes of subparagraphs (1)(ic)(ii), (iii) and (v), (1)(id)(ii), (iii) and (v), (2)(c)(ii) and (3)(c)(ii) of this section in a corresponding way to the way in which it applies for the purposes of Part 5 of that Act.
- (5) Subsections (2) and (3) do not apply to a channel B datacasting transmitter licence unless the relevant transmitter, or any of the relevant transmitters, is operated for transmitting a datacasting service that is capable of being received by a domestic digital television receiver.

*Ministerial directions*

- (6) The Minister may give the ACMA a written direction about the exercise of the power conferred by paragraph (1)(k) to specify conditions in a channel A datacasting transmitter licence.

**110 Conditions relating to interference**

The conditions that may be specified in an apparatus licence under paragraph 107(1)(g), 108A(1)(f), 109(1)(f) or 109A(1)(k) include, for example:

- (a) a condition requiring the licensee to place advertisements, in a specified way, asking members of the public to contact the licensee if they believe that operation of a

transmitter to which the licence relates is causing interference to other radiocommunications; and

- (b) a condition that, if operation of the transmitter is causing interference to other radiocommunications, the licensee must (at the licensee's own expense) adjust, or fit devices to, receivers in order to eliminate or minimise the interference.