



# Broadcasting Services Act 1992

## Act No. 110 of 1992 as amended

This compilation was prepared on 29 March 2011  
taking into account amendments up to Act No. 5 of 2011

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Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra

Excerpted portions only

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# **An Act relating to broadcasting services, datacasting services, online services and content services, and for related purposes**

## **Part 1—Preliminary**

### **1 Short title** [see Note 1]

This Act may be cited as the *Broadcasting Services Act 1992*.

### **2 Commencement** [see Note 1]

- (1) Section 1, this section, sections 3 and 6 commence on the day on which this Act receives the Royal Assent.
- (2) The remaining provisions of this Act commence on a day to be fixed by Proclamation.
- (3) If those provisions do not commence under subsection (2) within the period of 6 months beginning on the day on which this Act receives the Royal Assent, those provisions commence on the first day after the end of that period.

### **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

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- (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
- (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
- (g) to encourage providers of commercial and community broadcasting services to be responsive to the need for a fair and accurate coverage of matters of public interest and for an appropriate coverage of matters of local significance; and
- (h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and
- (ha) to ensure designated content/hosting service providers respect community standards in relation to content; and
- (i) to encourage the provision of means for addressing complaints about broadcasting services; and
- (j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them; and
- (ja) to ensure that international broadcasting services are not provided contrary to Australia's national interest; and
- (k) to provide a means for addressing complaints about certain internet content; and
- (l) to restrict access to certain internet content that is likely to cause offence to a reasonable adult; and
- (m) to protect children from exposure to internet content that is unsuitable for children; and

(n) to ensure the maintenance and, where possible, the development of diversity, including public, community and indigenous broadcasting, in the Australian broadcasting system in the transition to digital broadcasting.

(2) In this section:

*designated content/hosting service provider* has the same meaning as in Schedule 7.

*internet content* has the same meaning as in Schedule 5.

#### 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.
- (3) The Parliament also intends that internet carriage services supplied to end-users in Australia, be regulated in a manner that:
- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on internet service providers; and
  - (b) will readily accommodate technological change; and

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- (c) encourages:
  - (i) the development of internet technologies and their application; and
  - (ii) the provision of services made practicable by those technologies to the Australian community; and
  - (iii) the supply of internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.
- (3AA) The Parliament also intends that designated content/hosting services be regulated in a manner that:
  - (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services; and
  - (b) will readily accommodate technological change; and
  - (c) encourages:
    - (i) the development of communications technologies and their application; and
    - (ii) the provision of services made practicable by those technologies to the Australian community.
- (3A) This section does not apply to Part 8B (which deals with international broadcasting services).
- (4) In this section:
  - designated content/hosting service* has the same meaning as in Schedule 7.
  - internet carriage service* has the same meaning as in Schedule 5.
  - internet content* has the same meaning as in Schedule 5.
  - internet service provider* has the same meaning as in Schedule 5.

## 5 Role of the ACMA

- (1) In order to achieve the objects of this Act in a way that is consistent with the regulatory policy referred to in section 4, the Parliament:
  - (a) charges the ACMA with responsibility for monitoring the broadcasting industry, the datacasting industry, the internet industry and the commercial content service industry; and
  - (b) confers on the ACMA a range of functions and powers that are to be used in a manner that, in the opinion of the ACMA, will:
    - (i) produce regulatory arrangements that are stable and predictable; and
    - (ii) deal effectively with breaches of the rules established by this Act.
- (2) Where it is necessary for the ACMA to use any of the powers conferred on it by this Act to deal with a breach of this Act or the regulations, the Parliament intends that the ACMA use its powers, or a combination of its powers, in a manner that, in the opinion of the ACMA, is commensurate with the seriousness of the breach concerned.
- (3) This section does not, by implication, limit the functions and powers of:
  - (b) the Australian Competition and Consumer Commission; or
  - (c) any other body or person who has regulatory responsibilities in relation to the internet industry.
- (4) In this section:

*commercial content service* has the same meaning as in Schedule 7.

## 6 Interpretation

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

*ACMA* means the Australian Communications and Media Authority.

*amount paid on shares*, in relation to a company, includes an amount treated by the company as having been so paid.

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***analog commercial radio broadcasting service*** means a commercial radio broadcasting service that is transmitted using an analog modulation technique.

***analog community radio broadcasting service*** means a community radio broadcasting service that is transmitted using an analog modulation technique.

***anti-siphoning event*** means an event, or an event of a kind, that is specified in a notice under subsection 115(1). For this purpose, disregard subsections 115(1AA) and (1B).

***associate***, in relation to a person in relation to control of a licence or a newspaper, or control of a company in relation to a licence or a newspaper, means:

- (a) the person's spouse or a parent, child, brother or sister of the person; or
- (b) a partner of the person or, if a partner of the person is a natural person, a spouse or a child of a partner of the person; or
- (c) if the person or another person who is an associate of the person under another paragraph receives benefits or is capable of benefiting under a trust—the trustee of the trust; or
- (d) a person (whether a company or not) who:
  - (i) acts, or is accustomed to act; or
  - (ii) under a contract or an arrangement or understanding (whether formal or informal) is intended or expected to act;  
in accordance with the directions, instructions or wishes of, or in concert with, the first-mentioned person or of the first-mentioned person and another person who is an associate of the first-mentioned person under another paragraph; or
- (e) if the person is a company—another company if:
  - (i) the other company is a related body corporate of the person for the purposes of the *Corporations Act 1990*; or



- (ii) the person, or the person and another person who is an associate of the person under another paragraph, are in a position to exercise control of the other company;

but persons are not associates if the ACMA is satisfied that they do not act together in any relevant dealings relating to that company, licence or newspaper, and neither of them is in a position to exert influence over the business dealings of the other in relation to that company, licence or newspaper.

Note 1: *Licence* is given an extended meaning by this subsection.

Note 2: See also subsection (3).

**associate member** means an associate member of the ACMA.

**authorised infringement notice officer** means:

- (a) the Chair of the ACMA; or
- (b) a member of the staff of the ACMA appointed under section 205ZE.

**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.

**broadcasting services bands** means:

- (a) that part of the radiofrequency spectrum that:
  - (i) is designated under subsection 31(1) of the *Radiocommunications Act 1992* as being primarily for broadcasting purposes; and
  - (ii) is referred by the Minister under that subsection to the ACMA for planning; and

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- (b) that part of the radiofrequency spectrum that:
- (i) is designated under subsection 31(1A) of the *Radiocommunications Act 1992* as being partly for the purpose of digital radio broadcasting services and restricted datacasting services; and
  - (ii) is referred by the Minister under that subsection to the ACMA for planning.

***broadcasting services bands licence*** means a commercial television broadcasting licence, a commercial radio broadcasting licence or a community broadcasting licence that uses the broadcasting services bands as a means of delivering broadcasting services.

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

***census count*** means a census count of the Australian population published by the Australian Statistician.

***CER Trade in Services Protocol:***

- (a) means the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement (being that Protocol as in force from time to time); and
- (b) includes an instrument under that Protocol (being that instrument as in force from time to time).

***Chair*** means the Chair of the ACMA.

***channel B datacasting transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

***child:*** without limiting who is a child of a person for the purposes of this Act, someone is the ***child*** of a person if he or she is a child of the person within the meaning of the *Family Law Act 1975*.

***civil penalty order*** means an order under subsection 205F(1).

***civil penalty provision*** means a provision declared by this Act to be a civil penalty provision.

***class licence*** means a class licence determined by the ACMA under section 117.

***commercial broadcasting service*** has the meaning given by section 14.

***commercial radio broadcasting licence*** means a licence under Part 4 to provide:

- (a) in the case of a licence allocated under subsection 40(1)—a commercial radio broadcasting service; or
- (b) in any other case—the commercial radio broadcasting service or services that, under section 41D, are authorised by the licence.

***commercial radio broadcasting service*** means a commercial broadcasting service that provides radio programs.

***commercial television broadcasting licence*** means a licence under Part 4 to provide:

- (aa) in the case of a licence allocated under section 38C—the commercial television broadcasting services that, under section 41CA, are authorised by the licence; or
- (a) in the case of a licence allocated under subsection 40(1)—a commercial television broadcasting service; or
- (b) in any other case—the commercial television broadcasting services that, under section 41B or 41C, are authorised by the licence.

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

***community broadcasting licence*** means:

- (a) a community radio broadcasting licence; or
- (b) a community television broadcasting licence.

***community broadcasting service*** has the meaning given by section 15.

***community radio broadcasting licence*** means:

- (a) a licence under Part 6 to provide:
  - (i) in the case of a licence allocated under subsection 82(1)—a community radio broadcasting service; or

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- (ii) in the case of a designated community radio broadcasting licence—the community radio broadcasting service or services that, under section 85A, are authorised by the licence; or
  - (iii) in any other case—a community radio broadcasting service; or
- (b) a licence under Part 6A to provide a community radio broadcasting service.

***community radio broadcasting service*** means a community broadcasting service that provides radio programs.

***community television broadcasting licence*** means a licence under Part 6 or 6A to provide a community broadcasting service that provides television programs.

***company interests***, in relation to a person who has a shareholding interest, a voting interest, a dividend interest or a winding-up interest in a company, means the percentage of that interest or, if the person has 2 or more of those interests, whichever of those interests has the greater or greatest percentage.

***conditional access scheme*** means a scheme that sets out rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C.

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

***control*** includes control as a result of, or by means of, trusts, agreements, arrangements, understandings and practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights.

***core commercial television broadcasting service***, in relation to a commercial television broadcasting licence, has the meaning given by whichever of paragraph 41A(1)(b) or (2)(a) is applicable.

Note: There is no core commercial television broadcasting service in relation to a licence allocated on or after 1 January 2009. This is because core commercial television broadcasting services are certain services authorised by licences allocated before 1 January 2009.

***core/primary commercial television broadcasting service***, in relation to a commercial television broadcasting licence, means:

- (a) if a core commercial television broadcasting service is provided under the licence—that service; or
- (b) if a primary commercial television broadcasting service (within the meaning of Schedule 4) is provided under the licence—that service.

**CTV licence** means a community broadcasting licence under Part 6 to provide a service that provides television programs but is not targeted, to a significant extent, to one or more remote Indigenous communities.

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

**datacasting service** means a service that delivers content:

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

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

**datacasting transmitter licence** has the same meaning as in the *Radiocommunications Act 1992*, and includes an authorisation under section 114 of that Act by the licensee of such a licence.

**designated community radio broadcasting licence** has the meaning given by section 8AA.

**designated infringement notice provision** means a provision declared by this Act to be a designated infringement notice provision.

**digital commercial radio broadcasting service** means a commercial radio broadcasting service that is transmitted using a digital modulation technique.

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***digital community radio broadcasting service*** means a community radio broadcasting service that is transmitted using a digital modulation technique.

***digital national radio broadcasting service*** means a national radio broadcasting service that is transmitted using a digital modulation technique.

***digital program enhancement content***, in relation to a radio program, means content:

- (a) in the form of text; or
- (b) in the form of still visual images; or
- (c) if a form is specified in a legislative instrument made by the Minister—in that form; or
- (d) in any combination of the above forms;

where:

- (e) the content is transmitted using a digital modulation technique; and
- (f) both the content and the radio program are intended to be received by the same reception equipment; and
- (g) if:
  - (i) the reception equipment is capable of receiving both the content and the radio program; and
  - (ii) the reception equipment is set to receive the radio program;

the reception equipment will also receive the content.

***digital radio moratorium period*** for a licence area has the meaning given by subsection 35C(3).

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

***digital radio start-up day*** for a licence area has the meaning given by section 8AC.

***domestic digital television receiver*** has the same meaning as in the *Radiocommunications Act 1992*.

***evidential burden***, in relation to a matter, means the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter exists or does not exist.

***Federal Court*** means the Federal Court of Australia.

***final digital television switch-over day*** has the meaning given by section 8AE.

***foundation digital radio multiplex transmitter licence*** has the same meaning as in the *Radiocommunications Act 1992*.

***infringement notice*** means an infringement notice under section 205Y.

***international broadcasting guidelines*** means guidelines in force under section 121FP.

***international broadcasting licence*** means a licence to provide an international broadcasting service.

***international broadcasting service*** has the meaning given by section 18A.

***legislature of a Territory*** means:

- (a) the Legislative Assembly for the Australian Capital Territory; or
- (b) the Legislative Assembly of the Northern Territory; or
- (c) such other Territory legislative bodies as are prescribed.

***licence*** means:

- (a) in the definition of *associate*, section 7, Part 5 and Schedule 1:
  - (i) a licence allocated by the ACMA under this Act (other than a class licence); or
  - (ii) a datacasting transmitter licence; and
- (b) in any other provision of this Act—a licence allocated by the ACMA under this Act (other than a class licence).

***licence area*** means:

- (a) an area designated by the ACMA under section 29, 40 or 92G; or
- (b) an area specified in column 1 of the table in subsection 38C(1).

Note 1: See also section 8AD, which deals with deemed radio broadcasting licence areas.

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Note 2: See also section 8 of the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*, which deals with deemed licence areas.

**licence area population**, in relation to a licence area, means the population of the licence area determined under section 30.

**line** has the same meaning as in the *Telecommunications Act 1997*.

**MDS system** means a system for transmitting radiocommunications on a frequency or frequencies within:

- (a) the frequency band from 2076 Megahertz up to and including 2111 Megahertz; or
- (b) the frequency band from 2300 Megahertz up to and including 2400 Megahertz.

**member** means a member of the ACMA.

**Minister for Foreign Affairs** means the Minister administering the *Diplomatic Privileges and Immunities Act 1967*.

**multiplex capacity** has the same meaning as in Division 4B of Part 3.3 of the *Radiocommunications Act 1992*.

**national broadcaster** means the provider of a national broadcasting service referred to in paragraph 13(1)(a) or (b).

**national broadcasting service** has the meaning given by section 13.

**national radio broadcasting service** means a national broadcasting service that provides radio programs.

**newspaper** means a newspaper that is in the English language and is published on at least 4 days in each week, but does not include a publication if less than 50% of its circulation is by way of sale.

**offence against this Act** includes an offence against section 136.1 or 137.1 of the *Criminal Code* that relates to this Act.

**open narrowcasting radio service** means an open narrowcasting service that provides radio programs.

**open narrowcasting service** has the meaning given by section 18.



***open narrowcasting television service*** means an open narrowcasting service that provides television programs.

***overlap area***, in relation to a licence area part of which is within another licence area, means the area of overlap between the 2 licence areas.

***parent***: without limiting who is a parent of a person for the purposes of this Act, someone is the ***parent*** of a person if the person is his or her child because of the definition of ***child*** in this section.

***Parliament*** means:

- (a) the Parliament of the Commonwealth; or
- (b) a State Parliament; or
- (c) the legislature of a Territory.

***penalty unit*** has the meaning given by section 4AA of the *Crimes Act 1914*.

***political party*** means an organisation whose objects or activities include the promotion of the election of candidates endorsed by it to a Parliament.

***population of Australia*** means the Australian population determined by the ACMA under section 30.

***program***, in relation to a broadcasting service, means:

- (a) matter the primary purpose of which is to entertain, to educate or to inform an audience; or
- (b) advertising or sponsorship matter, whether or not of a commercial kind.

***program standards*** means standards determined by the ACMA relating to the content or delivery of programs.

***radio program*** has a meaning affected by section 8AB.

***reception certificate*** means a reception certificate issued under a conditional access scheme registered under Part 9C.

***registered code of practice*** means a code of practice registered under:

- (a) section 123; or

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- (b) clause 62 of Schedule 5; or
- (c) clause 28 of Schedule 6; or
- (d) clause 85 of Schedule 7.

***remote Indigenous community*** has the meaning given by section 8B.

***restricted datacasting licence*** means a datacasting licence allocated as a result of an application for a restricted datacasting licence.

***restricted datacasting service*** means a datacasting service provided under, and in accordance with the conditions of, a restricted datacasting licence.

***satellite subscription television broadcasting licence*** means a licence under Part 7 to provide a subscription television broadcasting service with the use of a subscription television satellite.

***scheme administrator*** has the meaning given by subsection 130ZB(8).

***shares***, in relation to a company, means shares in, or stock forming part of, the capital of the company.

***spouse*** of a person includes a de facto partner of the person within the meaning of the *Acts Interpretation Act 1901*.

***subscription broadcasting service*** has the meaning given by section 16.

***subscription fee*** includes any form of consideration.

***subscription narrowcasting service*** has the meaning given by section 17.

***subscription radio broadcasting service*** means a subscription broadcasting service that provides radio programs.

***subscription radio narrowcasting service*** means a subscription narrowcasting service that provides radio programs.

**subscription television broadcasting licence** means a licence under Part 7 to provide one or more subscription television broadcasting services.

**subscription television broadcasting service** means a subscription broadcasting service that provides television programs.

**subscription television narrowcasting service** means a subscription narrowcasting service that provides television programs.

**subscription television satellite** means a satellite that was, at any time before 1 July 1997, operated under the general telecommunications licence that was granted to AUSSAT Pty Ltd and notified on 26 November 1991 in *Gazette* No. S323.

**telecommunications carrier** means a carrier (within the meaning of the *Telecommunications Act 1997*).

**temporary community broadcasting licence** means a community broadcasting licence that:

- (a) is a broadcasting services bands licence; and
- (b) is allocated under Part 6A.

**transaction** includes:

- (a) arrangements under which a person becomes a director of a company; and
  - (b) the acquisition of things by gift or inheritance.
- (2) A determination under paragraph (c) of the definition of **broadcasting service** in subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (3) For the purposes of paragraph (a) of the definition of **associate** in subsection (1), if one person is the child of another person because of the definition of **child** in this section, relationships traced to or through the person are to be determined on the basis that the person is the child of the other person.