



Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005

No. 45, 2005

**An Act to amend laws, and to deal with transitional
matters, in connection with the *Australian
Communications and Media Authority Act 2005*, and
for related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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**An Act to amend laws, and to deal with transitional
matters, in connection with the *Australian
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[Assented to 1 April 2005]

The Parliament of Australia enacts:

Australian Communications and Media Authority (Consequential and Transitional Provisions)

Act 2005 No. 45, 2005 1

1 Short title

This Act may be cited as the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	1 April 2005
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	
4. Schedule 3, items 1 and 2	The later of: (a) the commencement of section 6 of the <i>Australian Communications and Media Authority Act 2005</i> ; and (b) immediately after the commencement of item 1 of Schedule 1 to the <i>Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004</i> .	

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
5. Schedule 3, items 3 and 4	<p>The later of:</p> <p>(a) the commencement of section 6 of the <i>Australian Communications and Media Authority Act 2005</i>; and</p> <p>(b) immediately after the commencement of item 2 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2005</i>.</p> <p>However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur.</p>	
6. Schedule 3, items 5 and 6	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	
7. Schedule 3, item 7	<p>At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.</p> <p>However, if item 10 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2005</i> has commenced on or before that time, the provision(s) do not commence at all.</p>	
8. Schedule 3, item 8	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	
9. Schedule 3, items 9, 10 and 11	<p>The later of:</p> <p>(a) the commencement of section 6 of the <i>Australian Communications and Media Authority Act 2005</i>; and</p> <p>(b) immediately after the commencement of item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2005</i>.</p> <p>However, if item 11 of Schedule 1 to the <i>Postal Industry Ombudsman Act 2005</i> does not commence, the provision(s) do not commence at all.</p>	
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

3 Schedule(s)

- (1) Each Act, and each regulation, that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.
- (2) The amendment of any regulation under subsection (1) does not prevent the regulation, as so amended, from being amended or repealed by the Governor-General.
- (3) To avoid doubt, regulations amended under subsection (1) are taken to still be regulations.

Schedule 1—Amendments commencing on the establishment of the ACMA (other than general amendments to change abbreviated references)

Australian Broadcasting Corporation Act 1983

1 Subsection 3(1) (definition of ABA)

Repeal the definition.

2 Subsection 3(1)

Insert:

ACMA means the Australian Communications and Media
Authority.

3 Subparagraph 6(2)(a)(ii)

Omit “Australian Broadcasting Authority”, substitute “ACMA”.

4 Paragraph 8(1)(e)

Omit “Australian Broadcasting Authority”, substitute “ACMA”.

Australian Communications Authority Act 1997

5 The whole of the Act

Repeal the Act.

Broadcasting Services Act 1992

6 Paragraph 5(3)(a)

Repeal the paragraph.

7 Subsection 6(1) (definition of ABA)

Repeal the definition.

8 Subsection 6(1) (definition of ACA)

Repeal the definition.

9 Subsection 6(1)

Insert:

ACMA means the Australian Communications and Media Authority.

10 Subsection 6(1)

Insert:

Chair means the Chair of the ACMA.

11 Subsection 6(1) (definition of *Chairperson*)

Repeal the definition.

12 Subsection 6(1) (definition of *Deputy Chairperson*)

Repeal the definition.

13 Subsection 6(1) (definition of *member*)

Repeal the definition, substitute:

member means a member of the ACMA.

14 Section 93

Repeal the section.

15 Subsection 96(1)

Omit “other than a licence referred to in section 93”.

16 Subsections 96(3), (3A) and (3B)

Repeal the subsections.

17 Subsection 97(1)

Omit “93 or”.

18 Sections 98A, 98B and 98C

Repeal the sections.

19 Subsection 99(3)

Repeal the subsection.

20 Subsection 99(4)

Omit “otherwise than as a result of a direction under subsection (3)”.

21 Sections 101 and 103

Repeal the sections.

22 Subsection 121FK(3)

Repeal the subsection.

23 Subsections 121FL(2), (4) and (7)

Repeal the subsections.

24 Subsection 121FLH(6)

Repeal the subsection.

25 Subsection 121FQ(2)

Repeal the subsection.

26 Part 12

Repeal the Part.

27 Subsection 168(1)

Omit “functions”, substitute “broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*)”.

28 Subsection 168(2)

Omit “its”, substitute “those”.

29 Section 169

After “any matter”, insert “relating to the functions referred to in subsection 168(1)”.

30 Section 170

Omit “functions and”, substitute “broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related”.

31 Section 181

Repeal the section.

32 Section 182

Omit “functions or”, substitute “broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*) and related”.

33 Section 191

Omit “Chairperson”, substitute “Chair”.

34 Section 192

Omit “Chairperson” (wherever occurring), substitute “Chair”.

35 Subsection 193(1)

Omit “Chairperson” (wherever occurring), substitute “Chair”.

36 Section 194

Omit “Chairperson” (wherever occurring), substitute “Chair”.

37 Subsection 205B(5) (definition of *authorised officer*)

Omit “an associate member”.

38 Sections 216D and 216E

Repeal the sections.

39 Schedule 3

Repeal the Schedule.

40 Clause 2 of Schedule 4 (definition of *ACA*)

Repeal the definition.

41 Subclause 8(1) of Schedule 4

Omit “requiring the ACA to issue”, substitute “the issue of”.

42 Paragraph 8(4)(b) of Schedule 4

Omit “requiring the ACA to”, substitute “the”.

43 Paragraph 8(4)(b) of Schedule 4

After “period,”, insert “of”.

44 Subclauses 8(8) and (10A) of Schedule 4

Omit “requiring the ACA to issue”, substitute “the issue of”.

45 Subclause 8(11) of Schedule 4

Omit “requiring the ACA to vary”, substitute “the variation of”.

46 Paragraph 18(d) of Schedule 4

Repeal the paragraph.

47 Subclause 23(1) of Schedule 4

Omit “requiring the ACA to issue”, substitute “the issue of”.

48 Paragraph 23(4)(b) of Schedule 4

Omit “requiring the ACA to”, substitute “the”.

49 Paragraph 23(4)(b) of Schedule 4

After “period,”, insert “of”.

50 Subclauses 23(8) and (10A) of Schedule 4

Omit “requiring the ACA to issue”, substitute “the issue of”.

51 Subclause 23(11) of Schedule 4

Omit “requiring the ACA to vary”, substitute “the variation of”.

52 Paragraph 33(d) of Schedule 4

Repeal the paragraph.

53 Clauses 53, 59, 59A and 60C of Schedule 4

Repeal the clauses.

54 Clause 61 of Schedule 4

Repeal the clause.

55 Paragraphs 62(1)(c) and (3)(b) of Schedule 4

Omit “requiring the ACA”.

56 Paragraph 89(1)(d) of Schedule 5

Omit “the ABA’s functions”, substitute “the ACMA’s broadcasting, content and datacasting functions (as defined in the *Australian Communications and Media Authority Act 2005*)”.

57 Paragraph 89(1)(e) of Schedule 5

Omit “under subsection 165(3)”, substitute “under paragraph 55(1)(a) of the *Australian Communications and Media Authority Act 2005*”.

58 Clause 61 of Schedule 6

Repeal the clause.

Copyright Act 1968

59 Subsection 152(1) (paragraphs (b) and (c) of the definition of *broadcaster*)

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

60 Paragraphs 152(8)(a) and (9)(a)

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

61 Paragraph 184(1)(f)

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

62 Subsection 199(7)

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

Film Licensed Investment Company Act 1998

63 Subparagraphs 25(a)(i) and (ii)

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

Financial Management and Accountability Regulations 1997

64 Part 1 of Schedule 1 (after table item 107)

Insert:

- 107A Australian Communications and Media Authority Chair
(the *ACMA*), comprising:
- (a) the Chair, the Deputy Chair, the other members and the associate members of the ACMA; and
 - (b) the staff mentioned in subsection 54 (1) of the *Australian Communications and Media Authority Act 2005*; and
 - (c) persons whose services are made available for the purposes of the ACMA under subsection 55 (1) of that Act

See Note B

Freedom of Information Act 1982

65 Division 1 of Part II of Schedule 2

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

Income Tax Assessment Act 1997

66 Subsection 40-120(1) (example)

Omit “Australian Communication Authority”, substitute “Australian Communications and Media Authority”.

67 Subsection 995-1(1) (definition of ACA)

Repeal the definition.

Interactive Gambling Act 2001

68 Section 4 (definition of ABA)

Repeal the definition.

69 Section 4

Insert:

ACMA means the Australian Communications and Media Authority.

70 Paragraphs 66(1)(d), (e) and (f)

Repeal the paragraphs.

Radiocommunications Act 1992

71 Section 5 (definition of ABA)

Repeal the definition.

72 Section 5 (definition of ACA)

Repeal the definition.

73 Section 5

Insert:

ACMA means the Australian Communications and Media Authority.

74 Section 5

Insert:

BSA control rules means:

- (a) sections 54A and 56A of the *Broadcasting Services Act 1992*; and
- (b) clause 41 of Schedule 6 to the *Broadcasting Services Act 1992*.

75 Section 31

Repeal the section, substitute:

31 Planning of broadcasting services bands

- (1) The Minister may, after consulting the ACMA, and in accordance with the spectrum plan, by written instrument:
 - (a) designate a part of the spectrum as being primarily for broadcasting purposes; and
 - (b) refer it to the ACMA for planning under Part 3 of the *Broadcasting Services Act 1992*.

- (2) If a subsection (1) designation is in force in relation to a particular part of the spectrum, the ACMA may make a written determination that licences, or specified kinds of licences, can be issued in specified circumstances in relation to that part of the spectrum, or in relation to a specified part or parts of that part of the spectrum.
- (3) In making or varying a subsection (2) determination, the ACMA must:
 - (a) promote the objects, and have regard to the matters, described in section 23 of the *Broadcasting Services Act 1992*; and
 - (b) promote the object of this Act, to the extent this is not inconsistent with paragraph (a).This subsection has effect subject to subsection (4).
- (4) A subsection (2) determination (including as varied) must not be inconsistent with the spectrum plan.
- (5) Subject to subsections (3) and (4), the ACMA may, by written instrument, vary a subsection (2) determination.
- (6) The ACMA may, by written instrument, revoke a subsection (2) determination.

76 Subsection 32(2)

Repeal the subsection, substitute:

- (2) However, if a frequency band plan relates to a frequency band that is:
 - (a) within a part of the spectrum referred to the ACMA under subsection 31(1); and
 - (b) wholly or partly covered by a frequency allotment plan prepared under section 25 of the *Broadcasting Services Act 1992*;the frequency band plan must be consistent with the frequency allotment plan.

77 Subsection 36(5)

Omit “an agreement”, substitute “a determination”.

78 Paragraph 67(a)

TSchedule 1T Amendments commencing on the establishment of the ACMA (other than general amendments to change abbreviated references)T

T T T T

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

79 Paragraph 100(2)(b)

Omit “an agreement made between the ACA and the ABA”, substitute “a determination”.

80 Section 102B

Repeal the section, substitute:

102B Datacasting transmitter licences

The ACMA must not issue a datacasting transmitter licence to a person unless:

- (a) the person is a qualified company; and
- (b) if the issue of the licence is not under a price-based allocation system determined under section 106—the ACMA is satisfied that the issue of the licence would not result in a breach of any of the BSA control rules.

81 Subsections 106(6A), (6B) and (6C)

Repeal the subsections, substitute:

- (6A) The ACMA must not issue a datacasting transmitter licence under a system so determined if the ACMA is satisfied that the issue of the licence would result in a breach of one or more of the BSA control rules.

82 Subparagraph 107(1)(c)(i)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

83 Subparagraph 109(1)(b)(i)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

84 Subparagraph 109A(1)(b)(i)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

85 Subsection 114(5)

Repeal the subsection.

86 Paragraph 118(1)(c)

Omit “128C(2)”, substitute “128C(1)”.

87 Paragraph 118(1)(d)

Omit “or 128D(2)”, substitute “, or section 128D,”.

88 After subsection 122A(1)

Insert:

(1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to in subsection (1) of this section to a Division of the ACMA, the following provisions have effect:

- (a) the Division may delegate the power to a body or organisation referred to in subsection (1) of this section;
- (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.

89 Subsection 122A(2)

Omit “to the ACA for a final decision.”, substitute:

, for a final decision, to:

- (a) the ACMA, if the delegation to the delegate was under subsection (1); or
- (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).

90 Subsection 122A(3)

Repeal the subsection, substitute:

- (3) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by section 238 of this Act and by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

91 Division 6A of Part 3.3 (heading)

Repeal the heading, substitute:

Division 6A—Suspending and cancelling datacasting transmitter licences

92 Sections 128C and 128D

Repeal the sections, substitute:

128C Suspending datacasting transmitter licences

- (1) If the ACMA is satisfied that:
- (a) the licensee of a datacasting transmitter licence; or
 - (b) a person authorised by the licensee to operate a radiocommunications transmitter under the licence;
- has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (h), (i) or (j) or subsection 109A(2) or (3), the ACMA may, by written notice given to the licensee, suspend the licence.
- (2) The notice of suspension must specify, as the day on which the suspension ceases, the first day after the end of the period specified in the notice.
- (3) The ACMA may, at any time, by written notice given to the licensee, revoke the suspension of the licence.
- (4) Section 127 applies to a suspension under this section in a corresponding way to the way in which it applies to a suspension under section 126.

128D Cancelling datacasting transmitter licences

If the ACMA is satisfied that:

- (a) the licensee of a datacasting transmitter licence; or
-

(b) a person authorised by the licensee to operate a radiocommunications transmitter under the licence; has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (h), (i) or (j) or subsection 109A(2) or (3), the ACMA may, by written notice given to the licensee, cancel the licence.

93 Paragraph 128E(1)(a)

Omit “give a direction requiring the ACA to”.

94 Paragraph 128E(1)(b)

Repeal the paragraph.

95 Paragraph 128E(1)(c)

Omit “subsection 128D(1) to give a direction requiring the ACA”, substitute “section 128D”.

96 Paragraph 128E(1)(c)

Omit “paragraph 109A(1)(h); or”, substitute “paragraph 109A(1)(h).”.

97 Paragraph 128E(1)(d)

Repeal the paragraph.

98 Section 131ACA

Repeal the section, substitute:

131ACA Datacasting transmitter licences

The ACMA must not transfer a datacasting transmitter licence to a person unless:

- (a) the person is a qualified company; and
- (b) the ACMA is satisfied that the transfer would not result in a breach of any of the BSA control rules.

99 Paragraph 146(2)(b)

Repeal the paragraph, substitute:

- (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.

100 Subsection 188A(15) (definition of *radiocommunications community*)

Omit “*Australian Communications Authority Act 1997*”, substitute “*Australian Communications and Media Authority Act 2005*”.

101 Subsection 238(1)

Repeal the subsection, substitute:

- (1) The powers conferred on the ACMA by subsection (2), and on a Division of the ACMA by subsection (3), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

102 Subsection 238(3)

Repeal the subsection, substitute:

- (3) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated the power referred to in subsection (2) to a Division of the ACMA, the following provisions have effect:
 - (a) the Division may delegate the power to an authority of the Commonwealth;
 - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.

103 At the end of section 255

Add:

- (3) Nothing in this Part applies to an inquiry held by the ACMA under another Act.

104 Subsection 258(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

105 Paragraph 261(3)(a)

Omit “Chairman”, substitute “Chair”.

106 Paragraph 261(3)(b)

Repeal the paragraph, substitute:

- (b) if the functions or powers of the ACMA in relation to the hearing have been delegated to a person, or to a Division of the ACMA, under section 50, 51 or 52 of the *Australian Communications and Media Authority Act 2005*—that person or Division.

107 Subsection 261(4)

Omit “Chairman”, substitute “Chair”.

108 Subsection 261(5)

Repeal the subsection, substitute:

- (5) If the Chair is not present at a hearing, the hearing is to be presided over by:
 - (a) if paragraph (3)(a) applies—the member, specified in an instrument under that paragraph, as the member who is to preside at the hearing; or
 - (b) if paragraph (3)(b) applies and the delegation is to a person—that person; or
 - (c) if paragraph (3)(b) applies and the delegation is to a Division of the ACMA—a member of the Division chosen by the Division.

109 Paragraph 263(1)(b)

Repeal the paragraph, substitute:

- (b) the appropriate charge fixed by determination made under section 60 of the *Australian Communications and Media Authority Act 2005* has been paid.

110 Division 1 of Part 5.6 (heading)

Repeal the heading, substitute:

**Division 1—Decisions subject to internal reconsideration
before AAT review**

111 Paragraph 285(eb)

Omit “direction under subsection 102B(3)”, substitute “decision under paragraph 102B(b)”.

112 Paragraph 285(ma)

Omit “direction under subsection 131ACA(3)”, substitute “decision under paragraph 131ACA(b)”.

113 Division 2 of Part 5.6 (heading)

Repeal the heading, substitute:

Division 2—Decisions not subject to internal reconsideration before AAT review

114 Paragraph 292A(a)

Omit “to give a direction under subsection 102B(3)”, substitute “under paragraph 102B(b)”.

115 Paragraph 292A(b)

Omit “to give a direction as mentioned in subsection 106(6A)”, substitute “under subsection 106(6A)”.

116 Paragraph 292A(d)

Omit “to give a direction”.

117 Paragraph 292A(e)

Omit “to give a direction under subsection 128D(1)”, substitute “under section 128D”.

118 Paragraph 292A(f)

Omit “to give a direction under subsection 131ACA(3)”, substitute “under paragraph 131ACA(b)”.

Remuneration and Allowances Act 1990

119 Clause 3 of Schedule 2 (Part 3 of the table, table row relating to the Chairman of the Australian Broadcasting Tribunal)

Repeal the row.

120 Clause 3 of Schedule 2 (Part 3 of the table, table row relating to the Chairperson of the Australian Telecommunications Authority)

Repeal the row.

Spam Act 2003

121 Section 4 (definition of ACA)

Repeal the definition.

122 Section 4

Insert:

ACMA means the Australian Communications and Media Authority.

123 Clause 2 of Schedule 3 (paragraph (a) of the definition of *authorised person*)

Omit “Chairman”, substitute “Chair”.

Special Broadcasting Service Act 1991

124 Section 3 (definition of ABA)

Repeal the definition.

125 Section 3

Insert:

ACMA means the Australian Communications and Media Authority.

126 Paragraph 10(1)(j)

Omit “Australian Broadcasting Authority”, substitute “ACMA”.

Telecommunications Act 1997

127 Section 5

Omit “Australian Communications Authority (*ACA*)”, substitute “Australian Communications and Media Authority (*ACMA*)”.

128 Section 7 (definition of *ACA*)

Repeal the definition.

129 Section 7 (definition of *ACA's telecommunications functions*)

Repeal the definition.

130 Section 7 (definition of *ACA's telecommunications powers*)

Repeal the definition.

131 Section 7

Insert:

ACMA means the Australian Communications and Media Authority.

132 Section 7

Insert:

ACMA's telecommunications functions means the functions that are telecommunications functions, in relation to the ACMA, for the purposes of the *Australian Communications and Media Authority Act 2005*.

133 Section 7

Insert:

ACMA's telecommunications powers means the powers conferred on the ACMA by:

- (a) this Act; or
- (b) the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (c) the *Spam Act 2003*; or
- (d) Part XIC of the *Trade Practices Act 1974*; or
- (e) section 12 of the *Australian Communications and Media Authority Act 2005*, in so far as that section relates to the ACMA's telecommunications functions.

134 Section 7 (definition of *Chairman*)

Repeal the definition.

135 Paragraph 78(1)(a)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

136 Subsection 84(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

137 Subsection 136(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

138 Section 392

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

139 Subsection 403(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

140 Section 425

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

141 Subsection 440(4)

Omit “section 12 of the *Australian Communications Authority Act 1997*”, substitute “section 14 of the *Australian Communications and Media Authority Act 2005*”.

142 After subsection 441(1)

Insert:

(1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a function or power referred to in subsection (1) to a Division of the ACMA, the following provisions have effect:

- (a) the Division may delegate the function or power to a person;
- (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.

143 Subsection 441(2)

Omit “Subsection (1) does”, substitute “Subsections (1) and (1A) do”.

144 Subsection 441(3)

Omit “of the ACA.”, substitute:

of:

- (a) the ACMA, if the delegation to the delegate was under subsection (1); or
- (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).

145 Subsection 441(4)

Repeal the subsection, substitute:

- (4) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

146 Subsection 442(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

147 Paragraph 457(1)(a)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

148 Subsection 465(5)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

149 After subsection 467(1)

Insert:

- (1A) If, under section 50 of the *Australian Communications and Media Authority Act 2005*, the ACMA has delegated a power referred to in subsection (1) to a Division of the ACMA, the following provisions have effect:
- (a) the Division may delegate the power to a body corporate;
 - (b) subsections 52(2), (3), (4), (5) and (6) of the *Australian Communications and Media Authority Act 2005* have effect as if the delegation by the Division were a delegation under section 52 of that Act.

150 Subsection 467(2)

Omit “of the ACA.”, substitute:

of:

- (a) the ACMA, if the delegation to the delegate was under subsection (1); or
- (b) the Division that delegated the power, if the delegation to the delegate was under subsection (1A).

151 Subsection 467(3)

Omit “the ACA”, substitute “the ACMA or the Division (as the case requires)”.

152 At the end of section 467

Add:

- (4) The powers conferred on the ACMA by subsection (1), and on a Division of the ACMA by subsection (1A), are in addition to the powers conferred by sections 50, 51 and 52 of the *Australian Communications and Media Authority Act 2005*.

153 Subsection 489(3)

TSchedule 1T Amendments commencing on the establishment of the ACMA (other than general amendments to change abbreviated references)T

T T T T

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

154 Paragraph 491(3)(a)

Omit “Chairman”, substitute “Chair”.

155 Paragraph 491(3)(b)

Repeal the paragraph, substitute:

- (b) if the functions or powers of the ACMA in relation to the hearing have been delegated to a person, or to a Division of the ACMA, under section 50, 51 or 52 of the *Australian Communications and Media Authority Act 2005*—that person or Division.

156 Subsection 491(4)

Omit “Chairman”, substitute “Chair”.

157 Subsection 491(5)

Repeal the subsection, substitute:

- (5) If the Chair is not present at a hearing, the hearing is to be presided over by:
 - (a) if paragraph (3)(a) applies—the member, specified in an instrument under that paragraph, as the member who is to preside at the hearing; or
 - (b) if paragraph (3)(b) applies and the delegation is to a person—that person; or
 - (c) if paragraph (3)(b) applies and the delegation is to a Division of the ACMA—a member of the Division chosen by the Division.

158 Clause 23 of Schedule 3

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

159 Subclause 25(5) of Schedule 3

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

160 Clauses 56, 57, 58 and 59 of Schedule 3

Repeal the clauses.

Telecommunications (Consumer Protection and Service Standards) Act 1999

161 Subsection 21(3)

Repeal the subsection, substitute:

- (3) The Universal Service Account is to be administered by the ACMA.

162 Subsection 23(3)

Omit “section 53 of the *Australian Communications Authority Act 1997*”, substitute “section 60 of the *Australian Communications and Media Authority Act 2005*”.

163 Subsection 124(5)

Omit “section 12 of the *Australian Communications Authority Act 1997*”, substitute “section 14 of the *Australian Communications and Media Authority Act 2005*”.

164 Subsection 158D(2)

Omit “ACA or the Australian Broadcasting Authority”, substitute “ACMA”.

165 Subsection 158F(1)

Omit “Australian Broadcasting Authority”, substitute “ACMA”.

Telstra Corporation Act 1991

166 Section 3 (definition of ACA)

Repeal the definition.

167 Section 3

TSchedule 1T Amendments commencing on the establishment of the ACMA (other than general amendments to change abbreviated references)T

T T T T

Insert:

ACMA means the Australian Communications and Media Authority.

Trade Practices Act 1974

168 Section 151AB (definition of ACA)

Repeal the definition.

169 Section 151AB

Insert:

ACMA means the Australian Communications and Media Authority.

170 Section 152AC (definition of ACA)

Repeal the definition.

171 Section 152AC

Insert:

ACMA means the Australian Communications and Media Authority.

Schedule 2—General amendments to change abbreviated references

1 Amendment of Acts—changing references to the ABA and the ACA into references to the ACMA

The Acts listed in this Schedule are amended as follows:

- (a) by omitting “ABA” (wherever occurring) and substituting “ACMA”;
- (b) by omitting “**ABA**” (wherever occurring) and substituting “**ACMA**”;
- (c) by omitting “*ABA*” (wherever occurring) and substituting “*ACMA*”;
- (d) by omitting “ABA’s” (wherever occurring) and substituting “ACMA’s”;
- (e) by omitting “**ABA’s**” (wherever occurring) and substituting “**ACMA’s**”;
- (f) by omitting “*ABA’s*” (wherever occurring) and substituting “*ACMA’s*”;
- (g) by omitting “ACA” (wherever occurring) and substituting “ACMA”;
- (h) by omitting “**ACA**” (wherever occurring) and substituting “**ACMA**”;
- (i) by omitting “*ACA*” (wherever occurring) and substituting “*ACMA*”;
- (j) by omitting “ACA’s” (wherever occurring) and substituting “ACMA’s”;
- (k) by omitting “**ACA’s**” (wherever occurring) and substituting “**ACMA’s**”;
- (l) by omitting “*ACA’s*” (wherever occurring) and substituting “*ACMA’s*”.

Note 1: This Schedule commences immediately after the commencement of Schedule 1, and so this item amends the Acts listed in this Schedule, as already amended by Schedule 1.

Note 2: The headings to sections, subsections, clauses and subclauses of the Acts listed in this Schedule are altered as follows:

- (a) by omitting “**ABA**” (wherever occurring) and substituting “**ACMA**”;
- (b) by omitting “*ABA*” (wherever occurring) and substituting “*ACMA*”;

- (c) by omitting “**ABA’s**” (wherever occurring) and substituting “**ACMA’s**”;
- (d) by omitting “**ABA’s**” (wherever occurring) and substituting “**ACMA’s**”;
- (e) by omitting “**ACA**” (wherever occurring) and substituting “**ACMA**”;
- (f) by omitting “**ACA**” (wherever occurring) and substituting “**ACMA**”;
- (g) by omitting “**ACA’s**” (wherever occurring) and substituting “**ACMA’s**”;
- (h) by omitting “**ACA’s**” (wherever occurring) and substituting “**ACMA’s**”.

Australian Broadcasting Corporation Act 1983

Broadcasting Services Act 1992

Interactive Gambling Act 2001

Radiocommunications Act 1992

Radiocommunications Taxes Collection Act 1983

Spam Act 2003

Special Broadcasting Service Act 1991

Telecommunications Act 1997

Telecommunications (Consumer Protection and Service Standards) Act 1999

Telstra Corporation Act 1991

Trade Practices Act 1974

Schedule 3—Other amendments

Criminal Code Act 1995

1 Paragraph 474.21(4)(a) of the *Criminal Code*

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

2 Paragraph 474.24(4)(a) of the *Criminal Code*

Omit “Australian Broadcasting Authority”, substitute “Australian Communications and Media Authority”.

Ombudsman Act 1976

3 Subsection 3(1) (definition of *ACA*)

Repeal the definition.

4 Subsection 3(1)

Insert:

ACMA means the Australian Communications and Media Authority.

5 Subsection 6(4D)

Omit “ACA” (wherever occurring), substitute “ACMA”.

6 Subsection 6(4E)

Omit “ACA”, substitute “ACMA”.

7 Subsection 6(4F)

Repeal the subsection, substitute:

(4F) In subsections (4D) and (4E):

ACMA means the Australian Communications and Media Authority.

8 Subsection 6(6)

Omit “Australian Broadcasting Authority” (wherever occurring), substitute “Australian Communications and Media Authority”.

9 Subsection 19ZE(7)

Omit “ACA”, substitute “ACMA”.

10 Subsection 19ZE(8)

Repeal the subsection.

11 Subsection 19ZE(9)

Omit “ACA” (wherever occurring), substitute “ACMA”.

Schedule 4—Transitional provisions

Part 1—Preliminary

1 Definitions

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

ABA means the Australian Broadcasting Authority that was established by the *Broadcasting Services Act 1992*.

ACA means the body corporate that was continued in existence by the *Australian Communications Authority Act 1997*.

ACMA means the Australian Communications and Media Authority that is established by the ACMA Act.

ACMA Act means the *Australian Communications and Media Authority Act 2005*.

asset means:

- (a) any legal or equitable estate or interest in real or personal property, whether actual, contingent or prospective; and
- (b) any right, power, privilege or immunity, whether actual, contingent or prospective;

but does not include a right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act.

assets official, in relation to an asset other than land, means the person or authority who, under a law of the Commonwealth, a State or a Territory, under a trust instrument or otherwise, has responsibility for keeping a register in relation to assets of the kind concerned.

financial liability means a liability to pay a person an amount, where the amount, or the method for working out the amount, has been determined.

Imposition Act means any of the following Acts:

- (a) the *Datacasting Charge (Imposition) Act 1998*;
- (b) the *Radiocommunications (Receiver Licence Tax) Act 1983*;
- (c) the *Radiocommunications (Spectrum Licence Tax) Act 1997*;
- (d) the *Radiocommunications (Transmitter Licence Tax) Act 1983*;
- (e) the *Radio Licence Fees Act 1964*;

- (f) the *Telecommunications (Carrier Licence Charges) Act 1997*;
- (g) the *Telecommunications (Numbering Charges) Act 1997*;
- (h) the *Television Licence Fees Act 1964*.

land means any legal or equitable estate or interest in real property, whether actual, contingent or prospective.

land registration official, in relation to land, means the Registrar of Titles or other proper officer of the State or Territory in which the land is situated.

liability means any liability, duty or obligation, whether actual, contingent or prospective, but does not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act.

transition time means the commencement of section 6 of the ACMA Act.

- (2) Subject to subitem (1), an expression used in this Schedule that is also used in the ACMA Act has the same meaning in this Schedule as it has in that Act.

Part 2—Assets, liabilities and legal proceedings

2 Vesting of assets of ABA and ACA

- (1) This item applies to the assets of the ABA and of the ACA immediately before the transition time.
- (2) At the transition time, the assets to which this item applies cease to be assets of the ABA or the ACA and become assets of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these assets.

3 Vesting of liabilities of ABA and ACA

- (1) This item applies to the liabilities of the ABA and of the ACA immediately before the transition time.
- (2) At the transition time, the liabilities to which this item applies cease to be liabilities of the ABA or the ACA and become liabilities of the Commonwealth without any conveyance, transfer or assignment. The Commonwealth becomes the successor in law in relation to these liabilities.

4 Certificates relating to vesting of land

- (1) This item applies if:
 - (a) any land vests in the Commonwealth under this Part; and
 - (b) there is lodged with a land registration official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the land, whether by reference to a map or otherwise; and
 - (iii) states that the land has become vested in the Commonwealth under this Part.
- (2) The land registration official may:
 - (a) register the matter in a way that is the same as, or similar to, the way in which dealings in land of that kind are registered; and
 - (b) deal with, and give effect to, the certificate.

5 Certificates relating to vesting of assets other than land

- (1) This item applies if:
 - (a) any asset other than land vests in the Commonwealth under this Part; and
 - (b) there is lodged with an assets official a certificate that:
 - (i) is signed by the Minister; and
 - (ii) identifies the asset; and
 - (iii) states that the asset has become vested in the Commonwealth under this Part.
- (2) The assets official may:
 - (a) deal with, and give effect to, the certificate as if it were a proper and appropriate instrument for transactions in relation to assets of that kind; and
 - (b) make such entries in the register as are necessary having regard to the effect of this Part.

6 Substitution of ACMA or Commonwealth as a party to pending proceedings

- (1) Subject to subitem (2), if any proceedings to which the ABA or the ACA was a party were pending in any court or tribunal immediately before the transition time, the ACMA is substituted for the ABA or the ACA, from the transition time, as a party to the proceedings.
- (2) However, if the proceedings were, or were related to:
 - (a) proceedings taken by the ABA or the ACA in the exercise of a right that is vested in the Commonwealth by item 2; or
 - (b) proceedings taken against the ABA or the ACA in respect of a liability that is vested in the Commonwealth by item 3;the Commonwealth is substituted for the ABA or the ACA, from the transition time, as a party to the proceedings.
- (3) The regulations may determine that one of subitems (1) and (2), rather than the other of those subitems, applies in relation to a particular proceeding or a class of proceedings.

7 Transfer of custody of ABA and ACA records

- (1) This item applies to any records or documents that were in the custody of the ABA or the ACA immediately before the transition time.
-

- (2) The records and documents are to be transferred into the custody of the ACMA at or after the transition time.

Part 3—References to, and things done by or in relation to, ABA or ACA

8 References in instruments to ABA or ACA

- (1) This item applies to an instrument if it:
 - (a) was in force immediately before the transition time; and
 - (b) is an instrument covered by one or more of the following subparagraphs:
 - (i) an instrument that was made by the ABA or ACA; or
 - (ii) an instrument to which the ABA or ACA was a party; or
 - (iii) an instrument that was given to, or in favour of, the ABA or ACA; or
 - (iv) an instrument under which any right or liability accrues or may accrue to the ABA or ACA; or
 - (v) any other instrument in which a reference is made to the ABA or ACA.
 - (2) Subject to subitem (3), an instrument to which this item applies continues to have effect from the transition time as if a reference in the instrument to the ABA or ACA (whether the reference is in that abbreviated form or is in the full name of that Authority) were a reference to the ACMA.
 - (3) However, if:
 - (a) the reference is to the ABA or the ACA as an entity with a particular power or capacity (for example, as party to a contract or the holder of real or personal property); and
 - (b) the ACMA does not have that power or capacity (see sections 12 and 18 of the ACMA Act);the reference has effect from the transition time as if it were a reference to the Commonwealth.
 - (4) The regulations may determine that one of subitems (2) and (3), rather than the other of those subitems, applies in relation to a particular reference or class of references.
 - (5) For the purposes of this item, an *instrument*:
-

- (a) includes, but is not limited to, a regulation, declaration, determination, direction, licence, application or standard; but
- (b) does not include an Act, or an instrument made under an Imposition Act.

9 Transfer of appropriated money

- (1) For the purposes of the operation of an Appropriation Act after the commencement of this Schedule, references to the Australian Broadcasting Authority or the Australian Communications Authority are to be read as references to the Australian Communications and Media Authority.
- (2) In this item:
Appropriation Act means an Act appropriating money for expenditure out of the Consolidated Revenue Fund.

10 Things done by, or in relation to, ABA or ACA etc.

- (1) This item applies to a thing done by, or in relation to, the ABA or the ACA under:
 - (a) a provision (the *authorising provision*) of an Act, other than:
 - (i) a provision of an Imposition Act; or
 - (ii) a provision that is repealed by this Act; or
 - (b) a provision (the *authorising provision*) of an instrument made under a provision of an Act, other than:
 - (i) a provision of an Imposition Act; or
 - (ii) a provision that is repealed by this Act.
 - (2) Subject to subitem (3), the thing done has effect from the transition time as if it had been done by, or in relation to, the ACMA under the authorising provision as in force from the transition time. However this is not taken to change the time at which the thing was actually done.
 - (3) However if the thing done is a thing of a kind that, under the authorising provision as in force from the transition time, cannot be done by or in relation to the ACMA, the thing has effect from the transition time as if it had been done by or in relation to the Commonwealth.
 - (4) The regulations may:
 - (a) provide that this item does not apply to a specified class or classes of things done; or
-

- (b) determine that one of subitems (2) and (3), rather than the other of those subitems, applies in relation to a particular thing done, or class of things done; or
- (c) clarify how a thing has effect as mentioned in subitem (2) or (3).

11 Continuation of inquiries, investigations and hearings

(1) If the ABA or ACA (however constituted) was holding or conducting an inquiry, investigation or hearing (the *proceeding*) that had not ended or been discontinued by the transition time, the ACMA is to continue the proceeding in accordance with the provisions as amended by this Act (the *relevant provisions*) that apply in relation to that kind of inquiry, investigation or hearing.

(2) The ACMA is to take whatever action, under or for the purposes of the relevant provisions, as is necessary for the continuation of the proceeding. However this does not limit any power or discretion that the ACMA would otherwise have to discontinue such a proceeding.

Note: An example of an action that the ACMA may have to take is to determine how the ACMA is to be constituted for the purposes of the proceeding.

(3) Anything done for the purposes of the proceeding before the transition time is taken to have been done for the purposes of the proceeding as continued in accordance with this item.

(4) This item has effect despite item 10, but does not otherwise limit the generality of that item.

12 Continued effect of certain instruments made under the repealed provisions

(1) An instrument:

- (a) made or given under the *Australian Communications Authority Act 1997* and specified in the following table; and
- (b) in force immediately before the transition time;

continues to have effect from the transition time as if it were made or given under the corresponding provision of the ACMA Act specified in the table.

Instruments made under *Australian Communications Authority Act 1997* that continue to have effect

Item	This instrument made or given under this provision of the <i>Australian Communications Authority Act 1997</i>...	continues to have effect as if it were made or given under this provision of the ACMA Act...
1	instruction under paragraph 8(1)(aa)	paragraph 11(1)(a)
2	instruction under paragraph 8(1)(ab)	paragraph 11(1)(b)
3	arrangement under paragraph 41(1)(a)	paragraph 55(1)(a)
4	arrangement under paragraph 41(1)(b)	paragraph 55(1)(b)
5	direction given under subsection 52(3)	subsection 59(5)
6	determination under subsection 53(1)	subsection 60(1)
7	determination under subsection 54(1)	subsection 64(1)

- (2) A determination in force under clause 61 of Schedule 4 to the *Broadcasting Services Act 1992* immediately before the transition time has effect from the transition time as if it were a determination under subsection 60(1) of the ACMA Act.
- (3) A designation or reference in force under subsection 31(1) of the *Radiocommunications Act 1992* immediately before the transition time has effect from the transition time as if it were a designation or reference under subsection 31(1) of that Act as amended by Schedule 1 to this Act.
- (4) An agreement in force under subsection 31(2) of the *Radiocommunications Act 1992* immediately before the transition time has effect from the transition time as if it were a determination under subsection 31(2) of that Act as amended by Schedule 1 to this Act.
- (5) A suspension in force under subsection 128C(2) of the *Radiocommunications Act 1992* immediately before the transition time has effect from the transition time as if it were a suspension under subsection 128C(1) of that Act as amended by Schedule 1 to this Act.

Note: Instruments made by the ABA or ACA under provisions of Acts that are amended (rather than repealed) by this Act will continue to have effect as a result of item 10.

13 Saving advisory committees etc.

- (1) An advisory committee:
 - (a) established under section 51 of the *Australian Communications Authority Act 1997*; and
 - (b) in existence immediately before the transition time;continues in existence from the transition time as if it were established under subsection 58(1) of the ACMA Act.
- (2) The persons on the committee immediately before the transition time are taken to have been appointed at the transition time under subsection 58(2) of the ACMA Act.
- (3) A direction:
 - (a) given to the committee under subsection 51(3) of the *Australian Communications Authority Act 1997*; and
 - (b) in force immediately before the transition time;continues to have effect from the transition time as if it were given to the committee under subsection 58(4) of the ACMA Act.

Part 4—Reporting obligations

14 First annual report for ACMA

- (1) This item applies if the transition time is in April, May or June of a financial year (the *first year*).
- (2) Section 57 of the ACMA Act does not apply in relation to the first year.
- (3) That section applies in relation to the next financial year (the *next year*) as if the next year also included the period:
 - (a) starting at the transition time; and
 - (b) ending at the end of the first year.

15 Final annual report for ABA and ACA

ACMA must prepare final annual reports for ABA and ACA

- (1) For the transitional reporting period (see whichever of subitems (4) and (5) applies), the ACMA must prepare the report referred to in section 9 of the *Commonwealth Authorities and Companies Act 1997* for the ABA and the ACA.
- (2) A report for the ACA must include the matters described in section 50 of the *Australian Communications Authority Act 1997* as in force immediately before the transition time.
- (3) The obligation under section 9 of the *Commonwealth Authorities and Companies Act 1997* imposed on the final directors of the ABA and the ACA to prepare an annual report for the transitional reporting period is satisfied if the report is prepared by the ACMA.

Transitional reporting periods

- (4) If the transition time is on 1 July 2005, the financial year that started on 1 July 2004 is the *transitional reporting period*.
 - (5) If the transition time is in the financial year that started on 1 July 2004, the period that:
 - (a) started at the beginning of that financial year; and
 - (b) ended immediately before the transition time;is the *transitional reporting period*.
-

Miscellaneous

- (6) For the purposes of this item, references to a financial year in:
- (a) section 50 of the *Australian Communications Authority Act 1997*; and
 - (a) section 9 of the *Commonwealth Authorities and Companies Act 1997*;
- are taken to be references to the transitional reporting period.
- (7) In this item:
- final director*** means a person who was a director (as defined in the *Commonwealth Authorities and Companies Act 1997*) of the ABA or ACA immediately before the transition time.

Part 5—Miscellaneous

16 Protecting ACA's names and symbols

Despite the repeal of the *Australian Communications Authority Act 1997* by Schedule 1, section 55 of that Act, and regulations for the purposes of that section, as in force immediately before the transition time continue to apply in relation to a protected name and a protected symbol (within the meaning of that section), until the end of:

- (a) 12 months after the transition time; or
- (b) if a longer period is specified in the regulations—that longer period;

as if:

- (c) that Act had not been repealed; and
- (d) the reference in subsection 55(2A) of that Act to the ACA were a reference to the ACMA; and
- (e) any consent given under subsection 55(2A) of that Act that was in force immediately before the transition time had been given by the ACMA.

17 Exemption from stamp duty and other State or Territory taxes

- (1) No stamp duty or other tax is payable under a law of a State or a Territory in respect of an exempt matter, or anything connected with an exempt matter.
- (2) For the purposes of this item, an *exempt matter* is:
 - (a) the vesting of an asset or liability under this Schedule; or
 - (b) the operation of this Schedule in any other respect.
- (3) The Minister may certify in writing:
 - (a) that a specified matter is an exempt matter; or
 - (b) that a specified thing was connected with a specified exempt matter.
- (4) In all courts, and for all purposes (other than for the purposes of criminal proceedings), a certificate under subitem (3) is prima facie evidence of the matters stated in the certificate.

18 Constitutional safety net

- (1) If:
- (a) a provision of this Schedule would result in an acquisition of property; and
 - (b) the provision would not be valid, apart from this section, because a particular person has not been compensated;
- the Commonwealth must pay that person:
- (c) a reasonable amount of compensation agreed on between the person and the Commonwealth; or
 - (d) failing agreement—a reasonable amount of compensation determined by a court of competent jurisdiction.
- (2) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this item must be taken into account in assessing compensation payable in a proceeding begun under this item and arising out of the same event or transaction.
- (3) In this item:
- acquisition of property* has the same meaning as in paragraph 51(xxxi) of the Constitution.

19 Certificates taken to be authentic

A document that appears to be a certificate made or issued under a particular provision of this Schedule:

- (a) is taken to be such a certificate; and
 - (b) is taken to have been properly given;
- unless the contrary is established.

20 Delegation by Minister

- (1) The Minister may, by writing, delegate all or any of his or her powers and functions under this Schedule to:
- (a) the Secretary of the Department; or
 - (b) an SES employee, or acting SES employee, in the Department.
- (2) In exercising powers or functions under a delegation, the delegate must comply with any directions of the Minister.

21 Regulations

- (1) The Governor-General may make regulations prescribing matters:
 - (a) required or permitted by this Schedule to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Schedule.

 - (2) In particular, regulations may be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to:
 - (a) the amendments or repeals made by this Act; or
 - (b) the enactment of this Act or the ACMA Act.
-

*[Minister's second reading speech made in—
House of Representatives on 2 December 2004
Senate on 7 March 2005]*

(228/04)
