



# **Special Broadcasting Service Act 1991**

## **Act No. 180 of 1991 as amended**

This compilation was prepared on 29 September 2006  
taking into account amendments up to Act No. 101 of 2006

The text of any of those amendments not in force  
on that date is appended in the Notes section

The operation of amendments that have been incorporated may be  
affected by application provisions that are set out in the Notes section

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# An Act relating to the Special Broadcasting Service Corporation, and for related purposes

## Part 1—Preliminary

### 1 Short title [see Note 1]

This Act may be cited as the *Special Broadcasting Service Act 1991*.

### 2 Commencement [see Note 1]

- (1) Subject to subsection (2), this Act commences 28 days after the day on which it receives the Royal Assent.
- (2) Section 54 commences on a day to be fixed by Proclamation.

### 3 Interpretation

In this Act, unless the contrary intention appears:

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

**Board** means the Special Broadcasting Service Board referred to in section 7.

**borrowing**, includes raising money or obtaining credit, whether by dealing in securities or otherwise, but does not include obtaining credit in a transaction forming part of the day-to-day operations of the SBS.

**Chairperson** means the Chairperson of the Board.

**Charter** means the Charter of the SBS described in subsection 6(3).

**Community Advisory Committee** means the Community Advisory Committee established under section 50.

**datacasting licence** has the same meaning as in the *Broadcasting Services Act 1992*.

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*datacasting service* has the same meaning as in the *Broadcasting Services Act 1992*.

*Director* means a member of the Board and includes the Chairperson, the Deputy Chairperson and the Managing Director.

*Finance Minister* means the Minister who administers the *Financial Management and Accountability Act 1997*.

*interest*, in relation to money, includes compound interest.

*Managing Director* means the Managing Director of the SBS.

*national broadcasting service* has the same meaning as in the *Broadcasting Services Act 1992*.

*non-executive Director* means a Director other than the Managing Director.

*program* means a radio program or a television program.

*SBS* means the body corporate preserved and continued in existence as the Special Broadcasting Service Corporation under section 5.

#### 4 Extension to external Territories

This Act extends to all the external Territories.



## **Part 2—Establishment, functions and management of the SBS**

### **5 Special Broadcasting Service Corporation**

- (1) The body corporate that was, immediately before the day this section commences, in existence because of section 79C of the *Broadcasting Act 1942* under the name Special Broadcasting Service continues in existence, by force of this subsection, as a body corporate, under this Act, under the name Special Broadcasting Service Corporation.

Note: The *Commonwealth Authorities and Companies Act 1997* applies to the SBS. That Act deals with matters relating to Commonwealth authorities, including reporting and accountability, banking and investment, and conduct of officers.

- (2) The SBS:
- (a) has a seal; and
  - (b) may sue and be sued.
- (3) All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the SBS appearing on a document and must presume that the document was duly sealed.

### **6 Charter of the SBS**

- (1) The principal function of the SBS is to provide multilingual and multicultural radio and television services that inform, educate and entertain all Australians, and, in doing so, reflect Australia's multicultural society.
- (2) The SBS, in performing its principal function, must:
- (a) contribute to meeting the communications needs of Australia's multicultural society, including ethnic, Aboriginal and Torres Strait Islander communities; and
  - (b) increase awareness of the contribution of a diversity of cultures to the continuing development of Australian society; and
  - (c) promote understanding and acceptance of the cultural, linguistic and ethnic diversity of the Australian people; and

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- (d) contribute to the retention and continuing development of language and other cultural skills; and
  - (e) as far as practicable, inform, educate and entertain Australians in their preferred languages; and
  - (f) make use of Australia's diverse creative resources; and
  - (g) contribute to the overall diversity of Australian television and radio services, particularly taking into account the contribution of the Australian Broadcasting Corporation and the community broadcasting sector; and
  - (h) contribute to extending the range of Australian television and radio services, and reflect the changing nature of Australian society, by presenting many points of view and using innovative forms of expression.
- (3) The principal function of the SBS under subsection (1) and the duties imposed on the SBS under subsection (2) constitute the Charter of the SBS.
- (4) Nothing in this section imposes on the SBS a duty that is enforceable by proceedings in a court.
- (5) A subsidiary function of the SBS is to carry on, within or outside Australia, any business or other activity incidental to the fulfilment of the Charter.

**6A Datacasting functions**

- (1) If:
- (a) the SBS applies for a datacasting licence; and
  - (b) the licence is allocated to the SBS;
- then, in addition to the functions conferred on the SBS under section 6, the SBS has the function of providing a datacasting service under, and in accordance with the conditions of, the licence.
- (2) However, subsection (1) is not intended to impose any obligation on the SBS, in relation to the provision of such a service, beyond that imposed on the SBS as holder of such a licence.

## **7 Establishment of Special Broadcasting Service Board**

There is to be a Board of Directors of the SBS under the name Special Broadcasting Service Board.

## **8 Constitution of the Board**

The Board consists of:

- (a) the Managing Director; and
- (b) not fewer than 4 nor more than 8 non-executive Directors.

## **9 Role of the Board**

The role of the Board is:

- (a) to decide the objectives, strategies and policies to be followed by the SBS in performing its functions; and
- (b) to ensure that the SBS performs its functions in a proper, efficient and economical manner and with the maximum benefit to the people of Australia.

## **10 Duties of the Board**

- (1) It is the duty of the Board:
  - (a) to maintain the independence and integrity of the SBS; and
  - (b) to develop and publicise the SBS's programming policies; and
  - (c) to ensure, by means of the SBS's programming policies, that the gathering and presentation by the SBS of news and information is accurate and is balanced over time and across the schedule of programs broadcast; and
  - (d) to ensure that the SBS does not contravene:
    - (i) this Act or any other Act; or
    - (ii) any directions given to, or requirements made in relation to, the SBS under this Act or another Act; and
  - (e) to ensure the efficient and cost effective functioning of the SBS; and
  - (f) to ensure that the SBS seeks to co-operate closely with the Australian Broadcasting Corporation to maximise the efficiency of the publicly funded sectors of Australian broadcasting; and

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- (g) to be aware of, and responsive to, community needs and opinions on matters relevant to the Charter; and
  - (h) to develop and publicise the SBS's policies on the handling of complaints; and
  - (i) to ensure that the pursuit by the SBS of its subsidiary functions does not detract from the SBS fulfilling its Charter responsibilities; and
  - (j) to develop codes of practice relating to:
    - (i) programming matters; and
    - (ii) if the SBS has the function of providing a datacasting service under section 6A—that service;and to notify those codes to the ACMA.
- (2) Nothing in this section imposes on the Board a duty that is enforceable by proceedings in a court.

### **11 Minister may give directions to the Board**

- (1) Subject to subsections (2) and (3), the Minister may, after consultation with the Board, give to the Board such written directions in relation to the performance of the SBS's functions as appear to the Minister to be necessary in the public interest.
- (2) Subject to subsection (3), the Minister may only give a direction in relation to a prescribed matter or in prescribed circumstances.
- (3) The Minister must not give a direction in relation to the content or scheduling of programs to be broadcast.
- (4) Where the Minister gives a direction to the Board, the Minister must cause a copy of the direction to be laid before each House of the Parliament within 15 sitting days of that House after giving the direction.

### **12 Minister may give directions to the SBS in the national interest**

- (1) Where the Minister is of the opinion that the broadcasting of a particular matter by the SBS would be in the national interest, the Minister may direct the SBS to broadcast that matter from all the broadcasting stations from which the SBS programs are broadcast or from such of them as are specified in the direction.

- (2) Where the Minister gives a direction to the SBS, the SBS must broadcast the matter, free of charge, in accordance with the direction.
- (3) The Minister may direct that a matter be broadcast in a language or languages specified in the direction.
- (4) Subsection (1) has effect subject to section 116 of the *Broadcasting Act 1942*.
- (5) A direction must be given in writing, or sent by telex or facsimile transmission, to the Managing Director.
- (6) Where the Minister gives a direction to the SBS, the Minister must cause a statement setting out particulars of, and the reasons for, the direction to be laid before each House of the Parliament within 7 sitting days of that House after giving the direction.

### **13 Limits on Government directions to SBS**

- (1) Except as otherwise provided by or under this or any other Act, the SBS and its Board are not subject to direction by or on behalf of the Commonwealth Government.
- (2) The Minister may notify the Directors of general policies of the Commonwealth Government under section 28 of the *Commonwealth Authorities and Companies Act 1997*. However, the Minister must not notify the Directors of general policies that would affect the content or scheduling of programs.

### **14 Managing Director**

There is to be a Managing Director of the SBS, who is to be appointed and hold office as provided by Division 2 of Part 3.

### **15 Duties of the Managing Director**

- (1) Subject to subsection (2), the affairs of the SBS are to be managed by the Managing Director.
- (2) In managing any of the affairs of the SBS and in exercising any powers conferred on him or her by this Act, the Managing Director must act in accordance with any policies determined, and any directions given, by the Board.

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- (3) Anything done in the name of, or on behalf of, the SBS by the Managing Director is taken to have been done by the SBS.

## **Part 3—The Board of Directors and the Managing Director**

### **Division 1—Provisions relating to non-executive Directors**

#### **16 This Division applies to non-executive Directors**

This Division applies to the non-executive Directors.

#### **17 Appointment of non-executive Directors**

- (1) The Governor-General must appoint the non-executive Directors.
- (2) In appointing a person as a non-executive Director, the Governor-General must have regard to the need to ensure:
  - (a) that the Directors collectively possess an appropriate balance of expertise in the areas required to govern the SBS effectively, including an understanding of Australia's multicultural society and the needs and interests of the SBS's culturally diverse audience; and
  - (b) that the Directors collectively comprise persons with a diversity of cultural perspectives; and
  - (c) that the Directors include a person who the Governor-General is satisfied, having regard to consultations between the Minister and representatives of industrial organisations representing employees, has an appropriate understanding of the interests of employees.
- (3) The appointment of a person as a non-executive Director is not invalid merely because of a defect or irregularity in relation to the appointment.

#### **18 Term of appointment**

- (1) A non-executive Director holds office, subject to this Act, for such period (not longer than 5 years) as is specified in the instrument of appointment, but is eligible for re-appointment.
- (2) Where a person is re-appointed as a non-executive Director, the re-appointment must be for a period not exceeding 5 years.

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**19 Non-executive Directors hold office on part-time basis**

Non-executive Directors hold office on a part-time basis.

**20 Terms and conditions of appointment not provided for by Act**

A non-executive Director holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Governor-General.

**21 Appointment of Chairperson and Deputy Chairperson**

- (1) The Governor-General must appoint one of the non-executive Directors to be the Chairperson of the Board and another of the non-executive Directors to be the Deputy Chairperson of the Board.
- (2) A person must not continue to hold the position of Chairperson, Deputy Chairperson, acting Chairperson or acting Deputy Chairperson if the person ceases to be a non-executive Director.

**22 Board's functions and powers not affected by vacancy etc.**

The performance of the functions or the exercise of the powers of the Board is not affected merely because:

- (a) there is a vacancy in the office of the Chairperson or Deputy Chairperson; or
- (b) there is a vacancy in the office of Managing Director; or
- (c) the number of non-executive Directors falls below 4 for not longer than 6 months.

**23 Remuneration and allowances of non-executive Directors**

- (1) A non-executive Director must be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) A non-executive Director must be paid such allowances as are prescribed.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.



## **24 Acting Chairperson and other acting non-executive Directors**

- (1) Where:
  - (a) there is a vacancy in the office of Chairperson, whether or not an appointment has previously been made to the office; or
  - (b) the Chairperson is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his or her office;the Deputy Chairperson must act as Chairperson.
- (2) The Minister may appoint a non-executive Director to act as Deputy Chairperson:
  - (a) during a vacancy in the office of Deputy Chairperson, whether or not an appointment has previously been made to that office; or
  - (b) during any period, or during all periods, when the Deputy Chairperson is absent from duty or from Australia, is acting as Chairperson or is, for any other reason, unable to perform the duties of his or her office.
- (3) The Minister may appoint a person to act as a non-executive Director other than the Chairperson or the Deputy Chairperson:
  - (a) during a vacancy in the office of such a non-executive Director, whether or not an appointment has previously been made to the office; or
  - (b) during any period, or during all periods, when such a non-executive Director is acting as Chairperson or as Deputy Chairperson, is absent from duty or from Australia or is, for any other reason, unable to perform the duties of his or her office.
- (4) The Minister may determine the terms and conditions, other than terms and conditions relating to remuneration and allowances, applying to a person acting as Chairperson, as Deputy Chairperson or as another non-executive Director.
- (5) A person acting as Chairperson, as Deputy Chairperson or as another non-executive Director is to be paid the same remuneration and allowances as are payable to the Chairperson, the Deputy Chairperson or other non-executive Directors, as the case requires.

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- (6) Anything done by a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
  - (b) there is a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

**25 Leave of absence of non-executive Directors**

- (1) The Minister may grant leave to the Chairperson to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Minister thinks fit.
- (2) Where the Chairperson is unable to attend a meeting of the Board because of ill health, the Board may grant leave to the Chairperson to be absent from that meeting.
- (3) The Chairperson may grant leave to any other non-executive Director to be absent from a meeting of the Board upon such conditions as to remuneration or otherwise as the Chairperson thinks fit.

**26 Resignation of non-executive Directors**

A non-executive Director may resign his or her office by writing signed and delivered to the Governor-General.

**27 Removal of non-executive Directors from office**

- (1) The Governor-General may remove a non-executive Director from office for misbehaviour or physical or mental incapacity.
- (2) If:
  - (a) the Chairperson, or a non-executive Director acting as Chairperson, is absent, except with the leave of the Minister or the Board, from 3 consecutive meetings of the Board; or
  - (b) a non-executive Director (other than the Chairperson or a Director acting as Chairperson) is absent, except with the leave of the Chairperson, from 3 consecutive meetings of the Board; or

(c) a non-executive Director:

- (i) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
- (ii) fails, without reasonable excuse, to comply with section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;

the Governor-General may remove the non-executive Director concerned from office.

(3) If:

- (a) the Minister is of the opinion that the performance of the Board or the SBS has been unsatisfactory for a significant period of time; and
- (b) the Minister proposes that the appointment of all non-executive Directors, or specified non-executive Directors, be terminated;

the Governor-General must terminate the appointment of all non-executive Directors or the specified non-executive Directors, as the case may be.

(4) If:

- (a) the Minister is of the opinion that the performance of a particular non-executive Director has been unsatisfactory for a significant period of time; and
- (b) the Minister proposes that the appointment of the non-executive Director be terminated;

the Governor-General must terminate the appointment of the non-executive Director.

## **Division 2—Provisions relating to the Managing Director**

### **28 Appointment of Managing Director**

- (1) The Board must appoint the Managing Director.
- (2) The appointment of a person as Managing Director is not invalid merely because of a defect or irregularity in relation to the appointment.

### **29 Term of appointment of Managing Director**

- (1) Subject to subsection (2), the Managing Director must be appointed for a period not longer than 5 years, but is eligible for re-appointment.
- (2) Where the person holding office as Managing Director is re-appointed, the re-appointment must be for a period not longer than 5 years.

### **30 Managing Director holds office on a full-time basis**

The Managing Director holds office on a full-time basis.

### **31 Terms and conditions of appointment not provided for by Act**

The Managing Director holds office on such terms and conditions in relation to matters not provided for by this Act as are determined by the Board.

### **32 Remuneration and allowances of Managing Director**

- (1) The Managing Director must be paid such remuneration as is determined by the Remuneration Tribunal.
- (2) The Managing Director must be paid such allowances as are determined by the Board.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **33 Acting Managing Director**

- (1) The Board may appoint a person to act as Managing Director:
  - (a) during a vacancy in the office of Managing Director; or
  - (b) during any period, or during all periods, when the Managing Director is absent from duty or from Australia or is, for any other reason, unable to perform the functions of his or her office;but a person appointed to act during a vacancy must not continue so to act for more than 12 months.
- (2) The Board may determine the terms and conditions of appointment, excluding remuneration and allowances, of a person acting as Managing Director.
- (3) An employee of the SBS who is acting as Managing Director must be paid:
  - (a) remuneration at the same level as would be payable to the Managing Director under subsection 32(1); and
  - (b) such allowances as are determined by the Board.
- (4) Anything done by a person purporting to act under subsection (1) is not invalid merely because:
  - (a) the occasion for the appointment had not arisen; or
  - (b) there is a defect or irregularity in connection with the appointment; or
  - (c) the appointment had ceased to have effect; or
  - (d) the occasion for the person to act had not arisen or had ceased.

### **34 Leave of absence of Managing Director**

- (1) The Managing Director has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Managing Director may take recreation leave only with the approval of the Board.
- (3) The Board may grant leave of absence, other than recreation leave, to the Managing Director on such terms and conditions as the Board thinks fit.

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**35 Resignation of Managing Director**

The Managing Director may resign his or her office by writing signed and delivered to the Board.

**36 Duty of Managing Director to disclose certain interests**

The Managing Director must give written notice to the Chairperson of all direct and indirect pecuniary interests that the Managing Director has or acquires in any business or in any body corporate carrying on any business.

**37 Removal of Managing Director from office**

- (1) The Managing Director holds office during the Board's pleasure.
- (2) If the Managing Director:
  - (a) engages in paid employment outside the duties of his or her office without the approval of the Board; or
  - (b) is absent from duty, except on leave granted by the Board, for 14 consecutive days, or for 28 days in any 12 months; or
  - (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
  - (d) fails, without reasonable excuse, to comply with section 36 of this Act or section 27F or 27J of the *Commonwealth Authorities and Companies Act 1997*;the Board may remove the Managing Director from office.

## **Division 3—Meetings of the Board**

### **38 Meetings of the Board**

- (1) The Board is to hold such meetings as are necessary for the efficient performance of its role and duties.
- (2) The Chairperson:
  - (a) may convene a meeting at any time; and
  - (b) must convene a meeting on receipt of a written request signed by:
    - (i) if there are not more than 6 non-executive Directors holding office under section 17—not fewer than 4 Directors; or
    - (ii) if there are more than 6 non-executive Directors holding office under that section—not fewer than 5 Directors.
- (3) Meetings of the Board are to be held at such places as the Chairperson determines.

### **39 Presiding at meetings**

- (1) The Chairperson is to preside at all meetings of the Board at which he or she is present.
- (2) If the Chairperson is absent from a meeting of the Board, the Deputy Chairperson is to preside at the meeting.
- (3) If the Chairperson and the Deputy Chairperson are absent from a meeting of the Board:
  - (a) if a non-executive Director is acting as Chairperson—that non-executive Director is to preside at the meeting; or
  - (b) in any other case—the Directors present must elect one of their number other than the Managing Director to preside at the meeting.

### **40 Quorum and voting at meetings**

- (1) At a meeting of the Board:
  - (a) a quorum is constituted by:

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- (i) if there are not more than 6 non-executive Directors holding office under section 17—4 Directors; or
  - (ii) if there are more than 6 non-executive Directors holding office under that section—5 Directors; and
  - (b) all questions are to be decided by a majority of the votes of the Directors present; and
  - (c) the Director presiding has a deliberative vote and, if necessary, also has a casting vote.
- (2) If, because of section 27J of the *Commonwealth Authorities and Companies Act 1997*, a non-executive Director is not present at a meeting of the Board during a deliberation of the Board in relation to a matter, but there would be a quorum if the non-executive Director were present, the remaining Directors present constitute a quorum for the purpose of any deliberation or decision of the Board at the meeting in relation to the matter.
- (3) The Managing Director must not be present during any deliberation, or take part in any decision, of the Board with respect to the appointment, or any of the terms and conditions of employment, of the Managing Director.

**41 Conduct of meetings**

- (1) The Director presiding at a meeting of the Board may give directions regarding the procedure to be followed at or in connection with the meeting.
- (2) Without limiting subsection (1), the Board may permit Directors to participate in a particular meeting, or all meetings, by:
- (a) telephone; or
  - (b) closed-circuit television; or
  - (c) any other means of communication.
- (3) A Director who is permitted to participate in a meeting under subsection (2) is to be regarded as being present at that meeting.

**42 Resolutions without formal meetings**

Where the Board so determines, a resolution is taken to have been passed at a meeting of the Board if:



- (a) without a meeting, a majority of the number of the Directors indicate agreement with the resolution in accordance with the method determined by the Board; and
- (b) that majority would, if present at a meeting of the Board, have constituted a quorum under subsection 40(1).

## Part 4—Powers and duties of the SBS

### 44 General powers of the SBS

- (1) The SBS may do all things that are necessary or convenient to be done for or in connection with, or as incidental to, the performance of its functions and, in particular, has the following powers:
  - (a) to produce, promote or present programs or arrange, or provide facilities, for the production, promotion or presentation of programs;
  - (b) to transmit programs or other matter by means of guided or unguided electromagnetic energy, or provide facilities for such transmissions;
  - (c) to arrange for the transmission of programs or other matter by means of guided or unguided electromagnetic energy;
  - (d) to make facilities and staff available to persons for the production, presentation or transmission of programs;
  - (e) to acquire, accept, take on hire, dispose of or lease, personal property (including programs or rights or interests in programs);
  - (f) to prepare, promote and distribute printed material;
  - (g) to make, promote and distribute films, sound recordings, video-tapes, computer programs and other similar material;
  - (h) to make, promote and distribute any other thing associated with, or with the activities of, the SBS;
  - (i) to acquire, hold, dispose of or lease, real property;
  - (j) to erect buildings or structures or carry out works;
  - (k) to enter into contracts;
  - (l) to make arrangements for holding, organising or subsidising, any public concert or other public entertainment;
  - (m) to accept gifts, devises or bequests made to the SBS, whether on trust or otherwise, or to act as trustee of money or other property vested in the SBS on trust;
  - (n) to occupy, use and control any land or building owned or leased by the Commonwealth and made available for the purposes of the SBS;

- (o) to appoint agents and attorneys, and to act as an agent for other persons;
  - (p) to engage persons to perform services for the SBS otherwise than as employees of the SBS;
  - (q) to do anything incidental to any of its powers.
- (2) The SBS may, from time to time, determine charges payable in respect of any matter or activity referred to in subsection (1).
- (3) Subject to subsection (4), the SBS does not have power:
- (a) to accept the performance of any service, or the provision of any facility, for the SBS; or
  - (b) to accept any gift, devise or bequest to the SBS, whether offered or made unconditionally or subject to conditions;
- where it is likely that the independence or integrity of the SBS would be affected.
- (4) Nothing in subsection (3) precludes the SBS from accepting the performance of services, the provision of facilities or the payment of money by or on behalf of the Commonwealth, a State or a Territory or an authority of the Commonwealth, of a State or of a Territory.
- (5) Before the publication of program schedules of the SBS broadcasting stations, the SBS must make those schedules available at an office of the SBS on equal terms to the publishers of any newspaper, magazine or journal published in Australia.
- (6) The powers of the SBS may be exercised within or outside Australia.

#### **45 Advertising and sponsorship**

- (1) Subject to subsection (2) and section 70C, the SBS may broadcast advertisements and sponsorship announcements.
- (2) The SBS may only broadcast advertisements or sponsorship announcements:
- (a) that run during periods before programs commence, after programs end or during natural program breaks; and
  - (b) that run in total for not more than 5 minutes in any hour of broadcasting.

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- (3) In computing the length of time devoted to the broadcasting of advertisements and sponsorship announcements, account is not to be taken to the broadcasting by the SBS of any of the following:
  - (a) material that publicises programs to be broadcast by the SBS;
  - (b) material that promotes the SBS's products, services or activities for the broadcast of which the SBS does not receive any consideration in cash or in kind;
  - (c) community information or community promotional material for the broadcast of which the SBS does not receive any consideration in cash or in kind;
  - (d) advertisements or sponsorship announcements consisting of moving text that is overlaid on the test pattern.
- (4) The Board:
  - (a) must develop and publicise guidelines on the kinds of advertisements and sponsorship announcements that it is prepared to broadcast; and
  - (b) may develop guidelines on other matters relating to advertisements and sponsorship announcements including:
    - (i) the placement of such advertisements and announcements; and
    - (ii) the duration of such advertisements and announcements; and
    - (iii) the kinds of advertising and sponsorship (if any) that particular kinds of program may carry.
- (5) The Board must, from time to time, revise any guidelines developed by it and must ensure that the guidelines as so developed, or as so developed and revised, are included in the corporate plan, within the statement of strategies and policies to be followed by the SBS to achieve its objectives.
- (6) Without limiting the generality of subsection (4), the reference to kinds of advertisements and sponsorship announcements in that subsection includes a reference to such kinds of advertisements and sponsorship announcements identified by reference to products and services.

**46 Community information**

The Board must develop and publicise guidelines on the kinds of community information or community promotional material that it is prepared to broadcast.

**47 Corporate plans**

- (1) The Board must prepare corporate plans.
- (2) The first corporate plan:
  - (a) is to be for a period of not less than 3 years, and not more than 5 years; and
  - (b) must be given to the Minister within a period of 6 months after the day on which this section commences.
- (3) Each subsequent corporate plan is to be for a period of not less than 3 years, and not more than 5 years, beginning immediately after the period of the previous corporate plan.
- (4) The Board may review and revise a corporate plan at any time.

**48 Matters to be included in corporate plans**

- (1) Each corporate plan must:
  - (a) set out the objectives of the SBS and its subsidiaries; and
  - (b) outline the overall strategies and policies that the SBS and its subsidiaries are to follow:
    - (i) to achieve the objectives of the SBS; and
    - (ii) to fulfil the SBS's principal and subsidiary functions; and
    - (iii) to ensure that the Board performs its role under paragraph 9(b) and fulfils its duties under section 10; and
  - (c) include a forecast of the revenue and expenditure of the SBS and its subsidiaries, including a forecast of capital expenditure and borrowings; and
  - (d) include such performance indicators and targets (whether financial or operational) as the Board considers appropriate; and
  - (e) set out the Board's additional community consultative measures, that is to say, any measures that the Board

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proposes to adopt in addition to receiving advice from the Community Advisory Committee to ensure that it is aware of, and responsive to, community needs and opinions (including the needs and opinions of small or newly arrived ethnic groups) on matters relevant to the Charter; and

- (f) include such other matters as are prescribed.
- (2) The forecast of the revenue and expenditure of the SBS must include an assessment of all the taxes and charges that would be payable by the SBS under the laws of the Commonwealth and of each State and Territory if the SBS were subject to taxation liability under those laws.
- (3) In this section, unless the contrary intention appears, *subsidiary* means a prescribed company within the meaning of section 52 that the SBS controls.

**49 Corporate plans to be given to Minister**

As soon as practicable after the Board prepares or revises a corporate plan, it must give a copy of the plan to the Minister.

**50 Community Advisory Committee**

- (1) The Board must establish a committee to be known as the Community Advisory Committee.
- (2) The function of the Committee is to assist the Board to fulfil its duty under paragraph 10(1)(g) by advising the Board on community needs and opinions, including the needs and opinions of small or newly arrived ethnic groups, on matters relevant to the Charter.
- (3) Each member of the Committee is to be appointed by the Board.
- (4) The Board may only appoint a person to the Committee if the Board is satisfied that the person:
  - (a) has an understanding of Australia's multicultural society; and
  - (b) in particular, has interests relevant to, and an understanding of, ethnic, Aboriginal or Torres Strait Islander communities.
- (5) The Board is to determine the terms and conditions of appointment of each member of the Committee.

**51 Board to notify Minister of certain matters**

If the Board forms the opinion that matters have arisen:

- (a) that may prevent, or significantly affect, achievement of the objectives in the SBS corporate plan; or
- (b) that may significantly affect the strategies and policies that are to be followed under that plan; or
- (c) that may prevent, or significantly affect, the forecasts of revenue and expenditure under that plan;

the Board must immediately notify the Minister of its opinion and the reasons for the opinion.

**52 Power to form companies etc.**

- (1) In this section:

*authorised business* means a business or other activity related to or incidental to the performance of any of the functions of the SBS.

*prescribed company* means a public company that carries on, or proposes to carry on, an authorised business.

- (2) The SBS may:

- (a) form, or participate with other persons in the formation of, a public company to carry on an authorised business; and
- (b) acquire, hold and dispose of shares or stock in the capital of, or debentures or other securities of, a prescribed company; and
- (c) enter into a partnership, or an arrangement for the sharing of profits or expenses, with a person or body for the purpose of carrying on an authorised business; and
- (d) provide technical or other assistance and facilities (whether within or outside Australia) for a prescribed company or for a partnership, or for the purposes of an arrangement, referred to in paragraph (c).

Note: Section 15 of the *Commonwealth Authorities and Companies Act 1997* requires Directors to notify the Minister of significant business activities and arrangements.

- (4) Where:

- (a) the SBS has an interest in a prescribed company; and

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- (b) the prescribed company ceases to be a prescribed company; the Minister may give to the SBS such written directions as the Minister thinks appropriate with respect to the disposal of the interest of the SBS in the company and the SBS must comply with any such directions.
- (5) This section does not authorise a prescribed company to carry on an authorised business otherwise than in accordance with any applicable law.



## **Part 5—Staff**

### **53 Staff of the SBS until section 54 commences**

- (1) The employees of the SBS are to be persons appointed or employed under the *Public Service Act 1922*.
- (2) The Managing Director has all the powers of, or exercisable by, a Secretary under the *Public Service Act 1922* so far as those powers relate to the branch of the Australian Public Service comprising the employees of the SBS.
- (3) This section is taken to have been repealed by another Act on the day that is fixed by Proclamation for the commencement of section 54.

### **54 Staff of the SBS**

- (1) The SBS may engage such employees as are necessary for the performance of its functions and the exercise of its powers.
- (2) The terms and conditions of employment are to be determined by the SBS.

### **55 The SBS is to achieve and maintain high standards as an employer**

The SBS must endeavour to achieve and maintain high standards as an employer in relation to terms and conditions of employment, occupational health, industrial safety, industrial democracy, non-discriminatory employment practices and other related matters.

## **Part 6—Finance**

### **56 Money to be appropriated**

- (1) There is payable to the SBS such money as is from time to time appropriated by the Parliament for the purposes of the SBS.
- (2) The Finance Minister may give directions as to the amounts in which, and the times at which, money referred to in subsection (1) is to be paid to the SBS.

### **57 Money of the SBS**

The money of the SBS consists of:

- (a) money paid to the SBS under section 56; and
- (b) money borrowed by the SBS under sections 59 or 60; and
- (c) money received by the SBS in respect of the provision of services and facilities; and
- (d) the proceeds of the sale or other disposition of any property of the SBS (including programs and rights or interests in programs); and
- (e) money received by the SBS in respect of sponsorships and the sale and broadcasting of advertisements; and
- (f) any other money derived by the SBS in the performance of its functions; and
- (g) any money received by the SBS by way of, or as a result of, a gift, devise or bequest.

### **58 Application of money**

- (1) The money of the SBS is to be applied only:
  - (a) in payment or discharge of expenses, obligations and liabilities of the SBS arising under this Act; and
  - (b) in payment of remuneration, allowances and fees payable to non-executive Directors, the Managing Director and persons referred to in section 53 or 54; and

- (c) in payment of any remuneration, allowances and fees payable to the members of the Community Advisory Committee or other consultative body established by the Board.
- (2) Subsection (1) does not prevent investment of surplus money of the SBS under section 18 of the *Commonwealth Authorities and Companies Act 1997*.

### **59 Borrowing from the Commonwealth**

The Finance Minister may, on behalf of the Commonwealth, out of money appropriated by the Parliament for the purpose, lend money to the SBS on such terms and conditions as he or she determines in writing.

### **60 Borrowings otherwise than from the Commonwealth**

- (1) The SBS may, with the written approval of the Finance Minister, borrow money from persons other than the Commonwealth on terms and conditions specified in, or consistent with, the approval.
- (2) Money may be borrowed wholly or partly in foreign currency.

### **61 Guarantee of borrowing**

- (1) The Finance Minister may, on behalf of the Commonwealth, enter into a contract guaranteeing the performance by the SBS of obligations incurred by it under section 60.
- (2) If the Finance Minister determines in writing that obligations incurred by the SBS under that section are guaranteed by the Commonwealth, the obligations are so guaranteed by force of this subsection.
- (3) A contract under subsection (1) may include:
  - (a) a provision agreeing that proceedings under the contract may be taken in a court of a foreign country; or
  - (b) a provision waiving the immunity of the Commonwealth from suit in a court of a foreign country.

### **62 The SBS may give security**

The SBS may give security over the whole or part of its assets for:

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- (a) the performance by the SBS of any obligation incurred under section 59 or 60; or
- (b) the payment to the Commonwealth of amounts equal to amounts paid or payable by the Commonwealth under a guarantee under section 61.

**63 Borrowings not otherwise permitted**

The SBS must not borrow money except under this Part.

**64 Delegation by Finance Minister**

- (1) The Finance Minister may, by written instrument, delegate any of the Finance Minister's powers or functions under section 60 or 61 to an official (within the meaning of the *Financial Management and Accountability Act 1997*).
- (2) In exercising powers or functions under a delegation, the official must comply with any directions of the Finance Minister.

**65 Hedging contracts etc.**

- (1) Subject to subsection (3), the SBS may enter into or deal with contracts, and make other arrangements, in relation to financial futures or foreign currency (including foreign currency futures) for the purpose of reducing or eliminating risks of adverse financial consequences to the SBS in relation to:
  - (a) any contract (including a contract that may be entered into under this section), or any proposed contract, involving the payment or receipt of money by the SBS; or
  - (b) a borrowing or a proposed borrowing of money by the SBS; being risks that may arise from variations in the rate of currency exchange or rate of interest applicable to the contract or proposed contract, or to the borrowing or proposed borrowing of money, as the case may be, referred to in paragraph (a) or (b).
- (2) The Minister may, by determination in writing:
  - (a) set guidelines for the purpose of the exercise by the SBS of its power under subsection (1); and

- (b) revoke or vary guidelines set for that purpose or set new guidelines for that purpose;  
and must give to the SBS a copy of each determination made under this subsection.
- (3) The SBS may only enter into a contract, dealing or other arrangement under subsection (1) in accordance with the guidelines (if any) having effect from time to time under subsection (2).
- (4) A contract, dealing or other arrangement under subsection (1) does not require the approval of the Minister under subsection 67(1).
- (5) In this section:
- proposed borrowing* means a proposed borrowing of money that is in accordance with an approval under section 60.

## **68 Taxation**

The SBS is not subject to taxation under any law of the Commonwealth, of a State or of a Territory.

## Part 7—Miscellaneous

### 70 Application of Broadcasting Act

Except where the *Broadcasting Services Act 1992* otherwise expressly provides, that Act does not apply in relation to the broadcasting services provided by the SBS.

#### 70AA Report by ACMA on degradation of signal quality

If:

- (a) a person has made a complaint to the SBS about degradation of the quality of signal reception of a national broadcasting service; and
- (b) within 60 days after making the complaint, the person did not receive a response that the person regarded as adequate; and
- (c) the signal concerned is received from an analog terrestrial radiocommunications transmitter;

the Minister may direct the ACMA to conduct an investigation into the matter.

#### 70A Broadcasting of political or controversial matter

- (1) Subject to this Act, the SBS may determine to what extent and in what manner political matter or controversial matter will be broadcast by the SBS.
- (2) If the SBS broadcasts political matter at the request of another person, the SBS must, immediately afterwards:
  - (a) if the matter was broadcast by radio—cause the required particulars in relation to the matter to be announced; or
  - (b) if the matter was televised:
    - (i) cause the required particulars in relation to the matter (other than the particulars referred to in paragraph (c) of the definition of *required particulars* in subsection (5)) to be announced; and
    - (ii) cause all the required particulars in relation to the matter to be transmitted in the form of images of words.

- (3) The SBS 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 section, 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) In this section:

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

***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.

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**Parliament** means:

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

**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.

**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.

**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 the period of 2 years commencing on the day on which the matter was broadcast.

**70B Records of matter broadcast**

- (1) If the SBS broadcasts matter relating to a political subject or current affairs, being matter that is in the form of news, an address,
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a statement, a commentary or a discussion, the SBS must cause a record of the matter to be made:

- (a) in the case of a radio broadcast—by using a device for recording sound; or
  - (b) in the case of a television broadcast—by using a device for recording images and associated sound.
- (2) Subject to this section, the SBS must retain in its 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 70 days from the date on which the complaint was made.
- (3) 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 subsection (2), the person may give to the SBS a notice in writing informing the SBS that the record may be required for the purposes of the proceedings.
- (4) If such a notice is given to the SBS in respect of a record, the SBS must, subject to this section, retain the record until the proceedings or the proposed proceedings to which the notice relates have been finally determined.
- (5) If the proceedings are not instituted within a period of 3 months after the notice is given to the SBS, subsection (4) ceases to apply to the record at the end of that period.
- (6) The obligation imposed by this section on the SBS 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.

**70C Broadcasting of election advertisements**

- (1) If:
- (a) an election to a Parliament is to be held; and
  - (b) a radio or television service provided by the SBS would normally be received in the area of Australia to which the election relates;
- the SBS must not broadcast an election advertisement in relation to the election during the relevant period as part of that service.

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(2) In this section:

***election*** means an election to a Parliament.

***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 SBS 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.

***Parliament*** means:

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

***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.

**73 Matters to be included in annual report**

The Directors must include in each report on the SBS under section 9 of the *Commonwealth Authorities and Companies Act 1997*:

- (a) particulars of any broadcast by the SBS during the year because of a direction by the Minister under subsection 12(1); and
- (b) particulars of any broadcast by the SBS during the year because of a direction by the Minister otherwise than under this Act; and
- (c) particulars of any written statement of Commonwealth Government policy given to the Board by the Minister during the year and the action (if any) taken by the Board in respect of the statement; and
- (d) particulars of any gift, devise or bequest accepted by the SBS during the year; and
- (e) particulars of how the programming activities during the year have related to the SBS's Charter obligations; and
- (f) particulars of the total revenue earned during the year from advertising and sponsorship, of the identity of each advertiser or sponsor and of the programs (if any) with which each advertiser or sponsor is associated; and
- (g) particulars of any direction by the Minister during the year under section 11 or 12; and
- (h) particulars of any advice received by the Board during the year from the Community Advisory Committee and the action taken by the Board in response to that advice; and
- (i) particulars of any other measures taken by the Board during the year to ensure that the Board is aware of, and responsive to, community needs and opinions on matters relevant to the SBS's Charter; and
- (j) an assessment of the extent to which the operations of the SBS and its subsidiaries during the year have achieved the objectives of the SBS and its subsidiaries under the corporate plan and fulfilled the functions of the SBS; and
- (k) particulars of any activities carried out during the year by the SBS under subsection 52(2); and

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- (l) particulars of the activities during the year of any authorised business with which the SBS is associated under section 52; and
- (m) particulars of any significant changes during the year in the transmission coverage, or transmission quality, of national broadcasting services provided by the SBS.

**74 Delegation by the SBS**

The SBS may, by signed instrument, delegate to a Director or to an employee of the SBS all or any of its powers under this Act or the regulations.

**75 Delegation by Managing Director**

The Managing Director may, by signed instrument, delegate to an employee of the SBS all or any of his or her powers under this Act or the regulations.

**76 Regulations**

The Governor-General may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed by regulations; or
- (b) necessary or convenient to be prescribed by regulations for carrying out or giving effect to this Act.

## **Part 8—Transitional**

### **77 Interpretation**

In this Part:

*assets* means property of any kind including:

- (a) choses in action; and
- (b) rights, interests or claims in or to property, whether liquidated or unliquidated, certain or contingent or accrued or accruing.

*liabilities* means liabilities or obligations of any kind, whether liquidated or unliquidated, certain or contingent or accrued or accruing.

*old body corporate* means the Special Broadcasting Service established by Part IIIA of the *Broadcasting Act 1942*.

*restructured body corporate* means the body corporate preserved and continued in existence under section 5 as the Special Broadcasting Service Corporation.

*restructuring day* means the day section 5 commences.

### **78 Person holding office as Executive Director of the old body corporate**

- (1) The person who, immediately before the restructuring day, held office as Executive Director of the old body corporate under section 79Q of the *Broadcasting Act 1942* is, on that day, taken to have been duly appointed:
  - (a) under section 28 of this Act by the Board as Managing Director for the balance of the term of the person's appointment; and
  - (b) on the terms and conditions in respect of matters other than remuneration and allowances that, immediately before the restructuring day, were applicable to the person's appointment as Executive Director of the old body corporate.

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- (2) Any determination of remuneration payable to the Executive Director of the old body corporate, being a determination made in accordance with section 125F of the *Broadcasting Act 1942* that is in force immediately before the restructuring day, continues in force, according to its terms, on and after that day, as if it were a determination made in accordance with section 32 of this Act in respect of the Managing Director.
- (3) Regulations prescribing the allowances to be paid to the Executive Director of the old body corporate, being regulations made in accordance with section 125F of the *Broadcasting Act 1942* that were in force immediately before the restructuring day, continue in force, on and after that day, as if they had been made in accordance with section 32 of this Act and applied in respect of the Managing Director.

**79 Person holding office as member of the old body corporate**

- (1) A person who, immediately before the restructuring day, held office as a member of the old body corporate is, on that day, taken to have been duly appointed:
  - (a) under section 17 as a non-executive Director of the Board for the balance of the term of the person's appointment; and
  - (b) on the terms and conditions in respect of matters other than remuneration and allowances that, immediately before the restructuring day, were applicable to the person's appointment as a member of the old body corporate.
- (2) Any determination of remuneration payable to a member of the old body corporate, being a determination made in accordance with section 125F of the *Broadcasting Act 1942* that is in force immediately before the restructuring day, continues in force, according to its terms, on and after that day, as if it were a determination made in accordance with section 23 of this Act and applied in respect of each non-executive Director.
- (3) Regulations prescribing the allowances to be paid to members of the old body corporate, being regulations made in accordance with section 125F of the *Broadcasting Act 1942* that were in force immediately before the restructuring day, continue in force, on and after that day, as if they had been made in accordance with section 23 of this Act and applied in respect of each non-executive Director.

**80 Persons employed or engaged by the old body corporate**

- (1) A person who, immediately before the restructuring day, was an officer or employee of the old body corporate is, on that day, taken to have become an employee of the restructured body corporate under section 53 of this Act as if the person had been employed under that section on the terms and conditions that were applicable to the person immediately before that day.
- (2) A person who, immediately before the restructuring day, had been engaged to perform services for the old body corporate otherwise than as a member of the staff is, on that day, taken to have been engaged under paragraph 44(1)(p) of this Act by the restructured body corporate to perform those services for the restructured body corporate on the terms and conditions that were applicable to the person immediately before that day.

**81 Persons engaged under section 53**

- (1) A person who, immediately before the day on which section 53 is taken to have been repealed, was engaged, or was taken to have been engaged, by the restructured body corporate under that section is, on that day, taken to have become an employee of the restructured body corporate engaged under section 54 of this Act.
- (2) Where the restructured body corporate determines, on or before the day on which section 53 is taken to have been repealed, certain terms and conditions to be the terms and conditions of employment applicable to a person to whom subsection (1) applies, those terms and conditions are to take effect on that day and are to be taken to have been determined under subsection 54(2).
- (3) Before the SBS makes a determination mentioned in subsection (2), it must consult with the representatives of industrial organisations representing the interests of the employees who will be affected by the determination.

**82 Delegations and authorisations**

- (1) Any delegation of a power of the old body corporate that was made under section 79X of the *Broadcasting Act 1942* and was in force immediately before the restructuring day continues in force on and after that day for one month as a delegation made under section 74

## Section 83

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of this Act of the corresponding power of the restructured body corporate under this Act, being a power that the restructured body corporate is authorised by that section to delegate.

- (2) An authorisation in relation to the old body corporate that was in force immediately before the restructuring day continues in force on and after that day for one month as if it were an authorisation in relation to the restructured body corporate.

### **83 References to old body corporate in instruments etc.**

A reference to the old body corporate in any law of the Commonwealth, a State or Territory, or in any contract, award or other instrument to which the old body corporate was a party, is, except in relation to matters that occurred before the restructuring day, to be taken to be a reference to the restructured body corporate.

### **84 Property, powers, liabilities etc.**

- (1) The assets, powers, rights, liabilities and obligations of the old body corporate are to be treated, on and after the restructuring day, as assets, powers, rights, liabilities and obligations of the restructured body corporate.
- (2) Subsection (1) extends, so far as the powers of the Parliament permit, to:
  - (a) assets situated outside Australia and powers conferred by, or rights existing under, the law of a foreign country; and
  - (b) liabilities or obligations arising under the law of a foreign country.

### **85 Saving of proceedings**

- (1) The alteration, under this Act, of the name and constitution of the old body corporate does not render defective any legal or other proceedings instituted by or against the old body corporate, and any legal or other proceedings that might have been commenced by or against the old body corporate may be commenced by or against the restructured body corporate.
- (2) The alteration, under this Act, of the name and constitution of the old body corporate does not render defective any investigation



being undertaken by the Commonwealth Ombudsman under the *Ombudsman Act 1976* into any action taken by the old body corporate, and any investigation that might have been commenced into any action taken by the old body corporate may be commenced as if the action had been taken by the restructured body corporate.

### **86 Judicial notice**

All courts, judges and persons acting judicially must take judicial notice of the imprint of the seal of the old body corporate appearing on a document that was executed before the restructuring day and must presume that the document was duly sealed.

### **87 Application of money**

Despite section 58 of this Act, the money of the restructured body corporate may be applied:

- (a) in payment or discharge of any expenses, charges, obligations or liabilities that were incurred or undertaken before the restructuring day by the old body corporate in connection with the performance of its functions or the exercise of its powers and were not paid or discharged before that day; and
- (b) in payment of any remuneration or allowances the liability for which arose under Part IIIA of the *Broadcasting Act 1942* but which had not been paid before the restructuring day.

### **88 First estimates**

Unless the Minister otherwise directs, the first period for which estimates are to be prepared under section 66 of this Act is to be the period commencing on 1 July 1992 and ending on 30 June 1993.

### **89 Bank accounts to be treated as if opened under this Act**

Any bank account maintained by the old body corporate immediately before the restructuring day under section 79ZC of the *Broadcasting Act 1942* is to be treated, on and after that day, as if it had been opened by the restructured body corporate under

Section 90

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section 63J of the *Audit Act 1901* as that section applies to the restructured body corporate because of section 69.

**90 Audit**

Section 63L of the *Audit Act 1901* as that section applies to the restructured body corporate because of section 69 of this Act extends to accounts and records of financial transactions of the old body corporate that took place before the restructuring day as if they were accounts and records of financial transactions of the restructured body corporate.

**91 Annual report and financial statements**

- (1) If the old body corporate had not, before the restructuring day, furnished a report and financial statement in relation to its operations during the year that ended on 30 June last preceding that day, the Board of the restructured body corporate must prepare a report and financial statement in relation to those operations in accordance with section 79ZH of the *Broadcasting Act 1942* and, despite the repeal of that section effected by this Act, that section continues in force for the purpose of the preparation of that report and financial statement as if the body required to prepare and furnish the report and financial statement under that section were the restructured body corporate.
- (2) If the restructuring day is a day other than 1 July, the report and financial statement in relation to the operations of the restructured body corporate during the year ending on 30 June next following the restructuring day that is required to be prepared by section 63M of the *Audit Act 1901* as that section applies to the restructured body corporate because of section 69 of this Act must include details in relation to the operations of the old body corporate during the part of that year that preceded the restructuring day.
- (3) A report of the restructured body corporate that relates to operations of the old body corporate must include any matters that would have been required to have been included in a report relating to those operations prepared in accordance with section 79ZH of the *Broadcasting Act 1942* if this Act had not been enacted.

**92 Transfer of appropriations**

- (1) Where an Appropriation Act has appropriated, or appropriates, money to the old body corporate, the Appropriation Act is taken to have appropriated, or to appropriate, the money to the restructured body corporate.
- (2) Subsection (1) does not apply to money that has been spent by the old body corporate before the restructuring day.
- (3) In this section:

***Appropriation Act*** means an Act appropriating money for the financial year ending on 30 June 1992, and includes an Act making interim provision for such an appropriation.

## **Part 9—Consequential amendments of the Broadcasting Act 1942**

### **Sections 93 to 115**

**Note:**

The amendments made by this Part are incorporated in the compilation on ComLaw.

*Broadcasting Act 1942*

[repealed by Act No. 105, 1992 as amended by Act No. 120, 2002]

For access to the wording of the amendments made by this Part, *see* Act No. 180, 1991.

## **Part 10—Consequential amendments of other Acts**

### **116 Consequential amendments of other Acts**

- (1) The Acts specified in the Schedule are amended as set out in the Schedule.
- (2) The amendments made to section 91 of the *Copyright Act 1968* by subsection (1) do not affect the continued subsistence of any copyright that, immediately before the commencement of this section, subsisted in a television broadcast or sound broadcast that had been made from a place in Australia by the Special Broadcasting Service before the commencement of this section.

## **Schedule—Consequential amendments of other Acts**

Section 116

**Note:**

The amendments made by this Schedule are incorporated in the compilations on ComLaw.

*Archives Act 1983*

*Australian Broadcasting Corporation Act 1983*

For access to the wording of the amendments made by this Schedule, *see* Act No. 180, 1991.

**Table of Acts****Notes to the *Special Broadcasting Service Act 1991*****Note 1**

The *Special Broadcasting Service Act 1991* as shown in this compilation comprises Act No. 180, 1991 amended as indicated in the Tables below.

For application, saving or transitional provisions made by the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*, see Act No. 45, 2005.

All other relevant information pertaining to application, saving or transitional provisions prior to 22 February 2005 is not included in this compilation. For subsequent information see Table A.

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Special Broadcasting Service Act 1991</i>	180, 1991	25 Nov 1991	S. 54: 24 Mar 1994 (see <i>Gazette</i> 1994, No. GN10) Remainder: 23 Dec 1991	
<i>Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992</i>	105, 1992	9 July 1992	5 Oct 1992 (see s. 2 and <i>Gazette</i> 1992, No. GN38)	—
<i>Sales Tax Amendment (Transitional) Act 1992</i>	118, 1992	30 Sept 1992	28 Oct 1992	—
<i>Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992</i>	167, 1992	11 Dec 1992	1 July 1993	—
<i>Transport and Communications Legislation Amendment Act (No. 3) 1992</i>	216, 1992	24 Dec 1992	Part 9 (ss. 33–35): Royal Assent (a)	—
<i>Communications and the Arts Legislation Amendment Act (No. 1) 1995</i>	32, 1995	12 Apr 1995	S. 3 (item 122): Royal Assent (b)	—
<i>Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997</i>	59, 1997	3 May 1997	Schedule 1 (items 49, 50): 1 July 1997 (c)	—

**Table of Acts**

Act	Number and year	Date of Assent	Date of commencement	Application, saving or transitional provisions
<i>Audit (Transitional and Miscellaneous) Amendment Act 1997</i>	152, 1997	24 Oct 1997	Schedule 2 (items 1207–1218): 1 Jan 1998 (see <i>Gazette</i> 1997, No. GN49) (d)	—
<i>National Transmission Network Sale (Consequential Amendments) Act 1998</i>	131, 1998	21 Dec 1998	21 Dec 1998	S. 4
<i>Public Employment (Consequential and Transitional) Amendment Act 1999</i>	146, 1999	11 Nov 1999	Schedule 1 (items 826, 827): 5 Dec 1999 (see <i>Gazette</i> 1999, No. S584) (e)	—
<i>Corporate Law Economic Reform Program Act 1999</i>	156, 1999	24 Nov 1999	Schedule 10 (items 119–121): 13 Mar 2000 (see <i>Gazette</i> 2000, No. S114) (f)	—
<i>Broadcasting Legislation Amendment Act 2001</i>	23, 2001	6 Apr 2001	6 Apr 2001	—
<i>Statute Law Revision Act 2002</i>	63, 2002	3 July 2002	Schedule 1 (item 29): (g)	—
<i>Financial Framework Legislation Amendment Act 2005</i>	8, 2005	22 Feb 2005	Schedule 2 (items 162–168, 174): Royal Assent	Sch. 2 (item 174) [see Table A]
<i>Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005</i>	45, 2005	1 Apr 2005	Schedule 1 (items 124–126) and Schedule 4: 1 July 2005 (h) Schedule 2: (h)	Sch. 4 [see Note 1]
<i>Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006</i>	101, 2006	14 Sept 2006	Schedule 5 (item 138) and Schedule 6 (items 5–11): Royal Assent	Sch. 6 (items 5–11) [see Table A]



**Act Notes**

- (a) The *Special Broadcasting Service Act 1991* was amended by Part 9 (sections 33–35) only of the *Transport and Communications Legislation Amendment Act (No. 3) 1992*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (b) The *Special Broadcasting Service Act 1991* was amended by section 3 (item 122) only of the *Communications and the Arts Legislation Amendment (No. 1) Act 1995*, subsection 2(1) of which provides as follows:
- (1) Subject to this section, this Act commences on the day on which it receives the Royal Assent.
- (c) The *Special Broadcasting Service Act 1991* was amended by Schedule 1 (items 49 and 50) only of the *Telecommunications (Transitional Provisions and Consequential Amendments) Act 1997*, subsection 2(2)(d) of which provides as follows:
- (2) The following provisions commence on 1 July 1997:
    - (d) Schedule 1;
- (d) The *Special Broadcasting Service Act 1991* was amended by Schedule 2 (items 1207–1218) only of the *Audit (Transitional and Miscellaneous) Amendment Act 1997*, subsection 2(2) of which provides as follows:
- (2) Schedules 1, 2 and 4 commence on the same day as the *Financial Management and Accountability Act 1997*.
- (e) The *Special Broadcasting Service Act 1991* was amended by Schedule 1 (items 826 and 827) only of the *Public Employment (Consequential and Transitional) Amendment Act 1999*, subsections 2(1) and (2) of which provide as follows:
- (1) In this Act, **commencing time** means the time when the *Public Service Act 1999* commences.
  - (2) Subject to this section, this Act commences at the commencing time.
- (f) The *Special Broadcasting Service Act 1991* was amended by Schedule 10 (items 119–121) only of the *Corporate Law Economic Reform Program Act 1999*, subsection 2(2)(c) of which provides as follows:
- (2) The following provisions commence on a day or days to be fixed by Proclamation:
    - (c) the items in Schedules 10, 11 and 12.
- (g) The *Special Broadcasting Service Act 1991* was amended by Schedule 1 (item 29) only of the *Statute Law Revision Act 2002*, subsection 2(1) (item 23) of which provides as follows:
- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, on the day or at the time specified in column 2 of the table.

**Commencement information**

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
23. Schedule 1, item 29	Immediately after subsection 53(2) of the <i>Special Broadcasting Service Act 1991</i> commenced	23 December 1991

- (h) Subsection 2(1) (items 2, 3 and 10) of the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* provide as follows:
- (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.

## Act Notes

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<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005
3. Schedule 2	Immediately after the commencement of the provision(s) covered by table item 2.	1 July 2005
10. Schedule 4	At the same time as section 6 of the <i>Australian Communications and Media Authority Act 2005</i> commences.	1 July 2005

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**Table of Amendments****Table of Amendments**

ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
<b>Part 1</b>	
S. 3 .....	am. No. 167, 1992; No. 131, 1998; No. 23, 2001; Nos. 8 and 45, 2005
<b>Part 2</b>	
Note to s. 5(1) .....	ad. No. 152, 1997
S. 6 .....	am. No. 105, 1992
S. 6A .....	ad. No. 23, 2001
S. 10 .....	am. No. 105, 1992; No. 23, 2001; No. 45, 2005
Heading to s. 13 .....	rs. No. 152, 1997
S. 13 .....	am. No. 152, 1997
<b>Part 3</b>	
<b>Division 1</b>	
S. 27 .....	am. No. 152, 1997; No. 156, 1999
<b>Division 2</b>	
S. 34 .....	am. No. 146, 1999
S. 37 .....	am. No. 152, 1997; No. 156, 1999
<b>Division 3</b>	
S. 40 .....	am. No. 152, 1997; No. 156, 1999
S. 43 .....	rep. No. 152, 1997
<b>Part 4</b>	
S. 44 .....	am. No. 131, 1998
S. 45 .....	am. Nos. 105 and 216, 1992
S. 52 .....	am. No. 152, 1997
Note to s. 52(2) .....	ad. No. 152, 1997
<b>Part 5</b>	
S. 53 .....	am. No. 63, 2002
<b>Part 6</b>	
S. 56 .....	am. No. 8, 2005
Heading to s. 58 .....	am. No. 152, 1997
S. 58 .....	am. No. 152, 1997
Ss. 59–61 .....	am. No. 8, 2005
S. 64 .....	rs. No. 8, 2005
S. 66 .....	rep. No. 152, 1997
S. 67 .....	rep. No. 32, 1995
S. 68 .....	am. No. 118, 1992; No. 101. 2006
S. 69 .....	rep. No. 152, 1997
<b>Part 7</b>	
S. 70 .....	am. No. 105, 1992
Heading to s. 70AA .....	am. No. 45, 2005

## Table of Amendments

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ad. = added or inserted   am. = amended   rep. = repealed   rs. = repealed and substituted

Provision affected	How affected
S. 70AA .....	ad. No. 131, 1998 am. No. 45, 2005
S. 70A .....	ad. No. 105, 1992 am. No. 45, 2005
S. 70B .....	ad. No. 105, 1992
S. 70C .....	ad. No. 216, 1992
S. 71 .....	rep. No. 131, 1998
S. 72 .....	am. No. 59, 1997 rep. No. 131, 1998
S. 73.....	am. No. 152, 1997; No. 131, 1998
<b>Part 8</b>	
S. 81.....	am. No. 146, 1999

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**Table A**

**Table A**

**Application, saving or transitional provisions**

*Financial Framework Legislation Amendment Act 2005* (No. 8, 2005)

**Schedule 2**

**174 Saving provision—provisions that formerly referred to the Treasurer**

- (1) Any thing that:
- (a) was done by the Treasurer, or by a delegate of the Treasurer, before the commencing time under an affected provision; and
  - (b) was in effect immediately before the commencing time;
- continues to have effect after the commencing time as if it had been done by the Finance Minister under the affected provision.

- (2) In this item:
- affected provision*** means a provision that is amended by an item in this Schedule so as to replace references to the Treasurer with references to the Finance Minister.

***commencing time*** means the day this Act receives the Royal Assent.

***Finance Minister*** means the Minister who administers the *Financial Management and Accountability Act 1997*.

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*Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*  
(No. 101, 2006)

**Schedule 6**

**5 Application of Schedule 5 amendments**

The repeals and amendments made by Schedule 5 apply to acts done or omitted to be done, or states of affairs existing, after the commencement of the amendments.

## Table A

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### 6 Object

The object of this Part is to ensure that, despite the repeals and amendments made by this Act, the full legal and administrative consequences of:

- (a) any act done or omitted to be done; or
- (b) any state of affairs existing; or
- (c) any period ending;

before such a repeal or amendment applies, can continue to arise and be carried out, directly or indirectly through an indefinite number of steps, even if some or all of those steps are taken after the repeal or amendment applies.

### 7 Making and amending assessments, and doing other things, in relation to past matters

Even though an Act is repealed or amended by this Act, the repeal or amendment is disregarded for the purpose of doing any of the following under any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*):

- (a) making or amending an assessment (including under a provision that is itself repealed or amended);
- (b) exercising any right or power, performing any obligation or duty or doing any other thing (including under a provision that is itself repealed or amended);

in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

Example 1: On 31 July 1999, Greg Ltd lodged its annual return under former section 160ARE of the *Income Tax Assessment Act 1936*. The return stated that the company had a credit on its franking account and that no franking deficit tax was payable for the 1998-99 franking year. Under former section 160ARH of that Act, the Commissioner was taken to have made an assessment consistent with the return.

Following an audit undertaken after the repeal of Part IIIAA of that Act, the Commissioner concludes that Greg Ltd fraudulently overfranked dividends it paid during the 1998-99 franking year, and had a franking account deficit for that franking year. As a result, the Commissioner considers that franking deficit tax and a penalty by way of additional tax are payable.

The Commissioner can amend the assessment under former section 160ARN of that Act, because item 7 of this Schedule disregards the repeal of that section for the purposes of making an assessment in relation to the 1998-99 franking year. Item 7 will also

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disregard the repeal of Division 11 of former Part IIIAA to the extent necessary for the Commissioner to assess Greg Ltd's liability to a penalty by way of additional tax.

Despite the repeal of sections 160ARU and 160ARV, item 9 will ensure that the general interest charge will accrue on the unpaid franking deficit tax and penalty until they are paid.

Item 7 will also preserve Greg Ltd's right, under former section 160ART of that Act, to object against the Commissioner's amended assessment (including the penalty), since the objection is the exercise of a right in relation to a franking year that ended before the repeal of Part IIIAA.

Example 2: During the 1997-98 income year, Duffy Property Ltd withheld amounts from its employees' wages as required by former Divisions 1AAA and 2 of Part VI of the *Income Tax Assessment Act 1936*. The company failed to notify the Commissioner of those amounts, and failed to remit them to the Commissioner.

Following an audit undertaken after the repeal of those Divisions, the Commissioner discovers that the withheld amounts have not been remitted. The company's records are incomplete and the Commissioner is unable to completely ascertain the extent of its liability for the withheld amounts. Under section 222AGA of that Act, the Commissioner makes an estimate of the liability.

Item 7 will disregard the repeal of section 220AAZA of that Act (which empowered the Commissioner to recover the amount of the estimate). Even though the estimate is made after the repeal, it relates to amounts withheld before the repeal.

**8 Saving of provisions about effect of assessments**

If a provision or part of a provision that is repealed or amended by this Act deals with the effect of an assessment, the repeal or amendment is disregarded in relation to assessments made, before or after the repeal or amendment applies, in relation to any act done or omitted to be done, any state of affairs existing, or any period ending, before the repeal or amendment applies.

**9 Saving of provisions about general interest charge, failure to notify penalty or late reconciliation statement penalty**

If:

- (a) a provision or part of a provision that is repealed or amended by this Act provides for the payment of:
  - (i) general interest charge, failure to notify penalty or late reconciliation statement penalty (all within the meaning of the *Income Tax Assessment Act 1936*); or

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(ii) interest under the *Taxation (Interest on Overpayments and Early Payments) Act 1983*; and

(b) in a particular case, the period in respect of which the charge, penalty or interest is payable (whether under the provision or under the *Taxation Administration Act 1953*) has not begun, or has begun but not ended, when the provision is repealed or amended;

then, despite the repeal or amendment, the provision or part continues to apply in the particular case until the end of the period.

**10 Repeals disregarded for the purposes of dependent provisions**

If the operation of a provision (the *subject provision*) of any Act or legislative instrument (within the meaning of the *Legislative Instruments Act 2003*) made under any Act depends to any extent on an Act, or a provision of an Act, that is repealed by this Act, the repeal is disregarded so far as it affects the operation of the subject provision.

**11 Schedule does not limit operation of section 8 of the *Acts Interpretation Act 1901***

This Schedule does not limit the operation of section 8 of the *Acts Interpretation Act 1901*.