



Broadcasting Legislation Amendment Act (No. 1) 2003

No. 4, 2003

**An Act to amend the law relating to broadcasting,
and for related purposes**

Note: An electronic version of this Act is available in SCALEplus
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No. 4, 2003

An Act to amend the law relating to broadcasting, and for related purposes

[Assented to 26 February 2003]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Broadcasting Legislation Amendment Act (No. 1) 2003*.

2 Commencement

This Act commences on the day on which it receives the Royal Assent.

3 Schedule(s)

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

Schedule 1—Amendment of the Broadcasting Services Act 1992

1 Clause 1 of Schedule 4

Omit “1 January 2000, 1 January 2004 and 31 December 2005”, substitute “specified dates”.

2 Paragraph 37E(2)(b) of Schedule 4

Omit “20 hours per week”, substitute “the HDTV quota”.

3 After subclause 37E(2A) of Schedule 4

Insert:

(2B) For the purposes of subclause (2), the HDTV quota is as follows:

- (a) the HDTV quota for each calendar year that starts after the end of a licensee’s phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
- (b) if a licensee’s phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
- (c) if a licensee’s phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours increased on a pro-rata basis (because the first quota period is more than a full calendar year).

4 Subclause 37EA(7) of Schedule 4

Repeal the subclause, substitute:

HDTV quota

- (7) In determining, after the end of the phase-in period referred to in subclause 37E(2A), whether a commercial television broadcasting licensee has met the HDTV quota (within the meaning of subclause 37E(2B)), ignore any HDTV demonstration programs transmitted by the licensee.

5 Subclause 37EA(10) of Schedule 4 (definition of *HDTV 20 hour requirement*)

Repeal the definition.

6 Paragraph 37F(2)(b) of Schedule 4

Omit “20 hours per week”, substitute “the HDTV quota”.

7 After subclause 37F(2A) of Schedule 4

Insert:

- (2B) For the purposes of subclause (2), the HDTV quota is as follows:
- (a) the HDTV quota for each calendar year that starts after the end of a national broadcaster’s phase-in period is 1040 hours (unless paragraph (b) or (c) applies to the calendar year or a part of it);
 - (b) if a national broadcaster’s phase-in period ends on or after 1 January and before the following 1 October, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on the following 31 December is 1040 hours reduced on a pro-rata basis (because the first quota period is less than a full calendar year);
 - (c) if a national broadcaster’s phase-in period ends on or after 1 October and before the following 31 December, the HDTV quota for the period (the *first quota period*) starting immediately after the end of the phase-in period and ending on 31 December in the next calendar year is 1040 hours increased on a pro-rata basis (because the first quota period is more than a full calendar year).

8 Subclause 37FA(7) of Schedule 4

Repeal the subclause, substitute:

HDTV quota

- (7) In determining, after the end of the phase-in period referred to in subclause 37F(2A), whether a national broadcaster has met the HDTV quota (within the meaning of subclause 37F(2B)), ignore any HDTV demonstration programs transmitted by the national broadcaster.

9 Subclause 37FA(10) of Schedule 4 (definition of *HDTV 20 hour requirement*)

Repeal the definition.

10 Clause 37L of Schedule 4

Repeal the clause, substitute:

37L High-definition television programs

- (1) For the purposes of the application of this Division to a commercial television broadcasting licensee, a ***high-definition television program*** is:
- (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
 - (b) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
 - (ii) it has been converted to a high-definition digital video format;
where the conversion has not resulted in a significant reduction in picture quality; or
 - (c) incidental material not covered by paragraph (a) or (b) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a) or (b).
- (2) For the purposes of the application of this Division to a national broadcaster, a ***high-definition television program*** is:

- (a) a television program, or incidental material, to the extent that it was originally produced in a high-definition digital video format; or
 - (b) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in a non-video format (for example, 16 mm or 35 mm film) that was of equivalent picture quality to a high-definition digital video format; and
 - (ii) it has been converted to a high-definition digital video format;where the conversion has not resulted in a significant reduction in picture quality; or
 - (c) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in a standard definition digital video format; and
 - (ii) it has been converted to a high-definition digital video format; or
 - (d) a television program, or incidental material, to the extent that:
 - (i) it was originally produced in an analog video format; and
 - (ii) it has been converted to a standard definition digital video format;where the converted program or material was subsequently converted to a high-definition digital video format; or
 - (e) incidental material not covered by paragraph (a), (b), (c) or (d) that is transmitted during breaks in so much of a television program as satisfies the requirements of paragraph (a), (b), (c) or (d).
- (3) If material (the *archival material*) included in a television program or in incidental material satisfies the following criteria:
- (a) the archival material was originally produced:
 - (i) before 1 July 2003; or
 - (ii) if another day is determined in writing by the Minister in relation to a class of television programs or incidental

material that includes the television program or incidental material concerned—before that other day;

- (b) the archival material would, apart from this subclause, prevent the part of the television program or incidental material which includes the archival material from satisfying the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be);
- (c) the archival material, taken together with any other material to which paragraphs (a) and (b) apply and that is also included in the same television program or incidental material, amounts to an insubstantial proportion of the television program or incidental material;

that part of the television program or incidental material is taken to satisfy the requirements of paragraph (1)(a) or (b) or (2)(a), (b), (c) or (d) (as the case may be).

- (4) The following provisions apply to determinations of a day under subparagraph (3)(a)(ii):
 - (a) a day so determined may be a specified day, or a day that is identified in some other way (for example, the day occurring a specified period before first transmission);
 - (b) the Minister must not make a determination that would result in a day so determined being earlier than 1 July 2003.
- (5) A determination under subparagraph (3)(a)(ii) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.
- (6) In this clause:

incidental material means:

- (a) advertising or sponsorship material (whether or not of a commercial kind); or
- (b) a promotion for a television program or a television broadcasting service; or
- (c) community information material or community promotional material; or
- (d) a news break or weather bulletin; or
- (e) any other similar material.

television program does not include incidental material (whether transmitted during or between television programs).

11 Clause 60A of Schedule 4

Omit “1 January 2004”, substitute “1 July 2005”.

Note: The heading to clause 60A is altered by omitting “**1 January 2004**” and substituting “**1 July 2005**”.

*[Minister’s second reading speech made in—
Senate on 11 December 2002
House of Representatives on 13 February 2003]*

(265/02)