

2004

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**AUSTRALIAN COMMUNICATIONS AND MEDIA AUTHORITY  
(CONSEQUENTIAL AND TRANSITIONAL PROVISIONS) BILL 2004**

**DATACASTING CHARGE (IMPOSITION) AMENDMENT BILL 2004**

**RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX) AMENDMENT  
BILL 2004**

**RADIOCOMMUNICATIONS (SPECTRUM LICENCE TAX) AMENDMENT  
BILL 2004**

**RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX)  
AMENDMENT BILL 2004**

**RADIO LICENCE FEES AMENDMENT BILL 2004**

**TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) AMENDMENT  
BILL 2004**

**TELECOMMUNICATIONS (NUMBERING CHARGES) AMENDMENT BILL  
2004**

**TELEVISION LICENCE FEES AMENDMENT BILL 2004**

**EXPLANATORY MEMORANDUM**

(Circulated by authority of Senator the Hon. Helen Coonan, Minister for  
Communications, Information Technology and the Arts)

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**OUTLINE**

*Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004*

The Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 ('the Bill') contains transitional provisions and consequential amendments related to the establishment of the Australian Communications and Media Authority ('the ACMA') by the Australian Communications and Media Authority Bill 2004 ('the ACMA Bill').

The Bill deals with the consequences of the proposed merger of the Australian Communications Authority ('the ACA') and the Australian Broadcasting Authority ('the ABA') to form the ACMA. Among other things, it contains provisions dealing with the vesting of assets and liabilities of the ACA and the ABA in the Commonwealth (since the ACMA will be a prescribed Agency under the *Financial Management and Accountability Act 1997* (FMA Act) and will not hold money or other property in its

own name). The Bill also provides for the continuing operation of ACA and ABA instruments after the commencement of the Bill.

As a result of the ACMA Bill, Schedules 1 and 2 to the Bill make a number of consequential amendments to other Commonwealth Acts. Among other things, these amendments provide for the repeal of the *Australian Communications Authority Act 1997* and provisions in the *Broadcasting Services Act 1992* relating to the establishment and constitution of the ABA and the administrative provisions applicable to the ABA. They also remove provisions dealing with the interaction between the ACA and the ABA that are no longer required as a consequence of the merger of those bodies. They also change references in Commonwealth legislation to the ABA and the ACA to the ACMA.

Schedule 3 to the Bill will amend references to the ABA and the ACA in provisions of Bills that will be before the Parliament at or close to the time of the introduction of this Bill, in the event that those provisions are passed by the Parliament, as well as amending references to the ABA in certain provisions of the Criminal Code that are not yet in force. Schedule 3 will replace references to the Australian Broadcasting Authority in amendments to the *Criminal Code Act 1995* made by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004*, which will commence on 1 March 2005, with references to the Australian Communications and Media Authority. Similar amendments will also be made to references to the Australian Communications Authority in proposed amendments to the *Ombudsman Act 1976* contained in the Postal Industry Ombudsman Bill 2004. In addition, Schedule 3 will amend current references to the Australian Communications Authority and the Australian Broadcasting Authority in the Ombudsman Act which will not be amended by the Postal Industry Ombudsman Bill 2004.

Schedule 4 to the Bill contains transitional provisions, including provisions dealing with the vesting of assets and liabilities of the ACA and the ABA in the Commonwealth given that the ACMA will be a prescribed agency for the purposes of the FMA Act, and provisions for the continuing operation of ACA and ABA instruments after the commencement of the Bill.

#### *Datacasting Charge (Imposition) Amendment Bill 2004*

The Datacasting Charge (Imposition) Amendment Bill 2004 amends the *Datacasting Charge (Imposition) Act 1998* to replace references to the ACA with references to the ACMA. It also amends a note consequential upon the ACMA Bill and gives continuing effect to any existing determination made by the ACA providing for the amount of charge imposed on a transmitter licence in respect of a financial year, as if it had been made by the ACMA.

#### *Radiocommunications (Receiver Licence Tax) Amendment Bill 2004*

The Radiocommunications (Receiver Licence Tax) Amendment Bill 2004 amends the *Radiocommunications (Receiver Licence Tax) Act 1983* to replace references to the ACA with references to the ACMA. It also gives continuing effect to any existing notice given to the ACA by the holder of a receiver licence electing to pay tax under the

Radiocommunications (Receiver Licence Tax) Act on each anniversary of the day the licence came into force. In addition, it gives continuing effect to any existing determination made by the ACA for the amount of tax in respect of the issue of a receiver licence, the anniversary of a receiver licence coming into force or the holding of a receiver licence, as if it had been made by the ACMA.

*Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004*

The Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004 amends the *Radiocommunications (Spectrum Licence Tax) Act 1997* to replace references to the ACA with references to the ACMA. It also amends notes consequential upon the ACMA Bill and gives continuing effect to any existing determinations made by the ACA providing for an initial holding date for spectrum licences included in a specified class of spectrum licences and for the amount of tax imposed in relation to a spectrum licence, as if they had been made by the ACMA.

*Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004*

The Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004 amends the *Radiocommunications (Transmitter Licence Tax) Act 1983* to replace references to the ACA with references to the ACMA. It also gives continuing effect to any existing notice given to the ACA by the holder of a transmitter licence electing to pay tax under the Radiocommunications (Receiver Licence Tax) Act on each anniversary of the day the licence came into force. In addition, it gives continuing effect to any existing approved forms of the ACA and any determination made by the ACA for the amount of tax in respect of the issue of a transmitter licence, the anniversary of a transmitter licence coming into force or the holding of a transmitter licence, as if they had been made by the ACMA.

*Radio Licence Fees Amendment Bill 2004*

The Radio Licence Fees Amendment Bill 2004 amends the *Radio Licence Fees Act 1964* to replace references to the ABA with references to the ACMA. It also gives continuing effect to any direction made by the ABA about the gross earnings of a commercial radio broadcasting licensee, which is relevant in calculating the licence fees payable under the Radio Licence Fees Act, as if it had been made by the ACMA.

*Telecommunications (Carrier Licence Charges) Amendment Bill 2004*

The Telecommunications (Carrier Licence Charges) Amendment Bill 2004 amends the *Telecommunications (Carrier Licence Charges) Act 1997* to replace references to the ACA with references to the ACMA and makes other minor consequential amendments. It also gives continuing effect to any existing determinations made by the ACA for the amount of application charge payable by an applicant for a carrier licence, the amount of annual charge payable by a carrier, the proportion of the ACA's costs for the immediately preceding financial year that is attributable to the ACA's telecommunications functions and powers and the proportion of the Commonwealth's annual contribution to the budget of the International Telecommunication Union, as if they had been made by the ACMA. In addition, it repeals Part 4 of the Telecommunications (Carrier Licence Charges) Act, which relates to the exercise of

powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

*Telecommunications (Numbering Charges) Amendment Bill 2004*

The Telecommunications (Numbering Charges) Amendment Bill 2004 amends the *Telecommunications (Numbering Charges) Act 1997* to replace references to the ACA with references to the ACMA. It also gives continuing effect to any existing notice given to the ACA about the transfer of a number between two carriage service providers and to any existing determinations made by the ACA for the amount of charge imposed on the allocation of a number, exempting a specified number from charge, specifying the day on which charge is imposed and specifying the amount of charge imposed on a number held at a particular time, as if they had been made by the ACMA. In addition, it repeals Part 4 of the Telecommunications (Numbering Charges) Act, which relates to the exercise of powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

*Television Licence Fees Amendment Bill 2004*

The Television Licence Fees Amendment Bill 2004 amends the *Television Licence Fees Act 1964* to replace references to the ABA with references to the ACMA. It also gives continuing effect to any direction made by the ABA about the gross earnings of a commercial television broadcasting licensee, which is relevant in calculating the licence fees payable under the Television Licence Fees Act, as if it had been made by the ACMA.

## **FINANCIAL IMPACT STATEMENT**

The Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004 is not expected to have a significant impact on Commonwealth expenditure. The Bill provides for all of the assets and liabilities of the ABA and the ACA to vest in the Commonwealth with effect from the date on which the ACMA is established.

The Datacasting Charge (Imposition) Amendment Bill 2004, the Radiocommunications (Receiver Licence Tax) Amendment Bill 2004, the Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004, the Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004, the Radio Licence Fees Amendment Bill 2004, the Telecommunications (Carrier Licence Charges) Amendment Bill 2004, the Telecommunications (Numbering Charges) Amendment Bill 2004 and the Television Licence Fees Amendment Bill 2004 are not expected to have a significant impact on Commonwealth expenditure or revenue.

## ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ABA:	Australian Broadcasting Authority
ACA:	Australian Communications Authority
ACA Act:	<i>Australian Communications Authority Act 1997</i>
ACMA:	Australian Communications and Media Authority
ACMA Bill:	Australian Communications and Media Authority Bill 2004
AIA:	<i>Acts Interpretation Act 1901</i>
Bill:	Australian Communications and Media Authority (Consequential and Transitional Provisions) Bill 2004
BSA:	<i>Broadcasting Services Act 1992</i>
CAC Act:	<i>Commonwealth Authorities and Companies Act 1997</i>
FMA Act:	<i>Financial Management and Accountability Act 1997</i>
Radcom Act:	<i>Radiocommunications Act 1992</i>
Telecom Act:	<i>Telecommunications Act 1997</i>

## NOTES ON CLAUSES

### Part 1—Preliminary

#### Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2004*.

#### Clause 2 – Commencement

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and the provision explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedule 1 to the Bill, containing various consequential amendments to Commonwealth legislation, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on a day to be fixed by proclamation or 1 July 2005, if clause 6 has not commenced by that date (item 2 of the table in clause 2 of the ACMA Bill).

Item 3 of the table provides that Schedule 2 to the Bill, which changes abbreviated references to the ACA and the ABA to abbreviated references to the ACMA in the Acts specified in that Schedule, will commence immediately after the commencement of Schedule 1 to the Bill.

Item 4 of the table provides that items 1 and 2 in Schedule 3 to the Bill, which will change references to the ABA in provisions of the *Criminal Code Act 1995* which will be inserted in that Act by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* on 1 March 2005 (the CLA Act), will commence either immediately after the commencement of item 1 of Schedule 1 to the CLA Act (1 March 2005) or at the time that the ACMA is established by clause 6 of the ACMA Bill, whichever is the later.

Item 5 of the table provides that items 3 and 4 in Schedule 3 to the Bill, which will amend subsection 3(1) of the *Ombudsman Act 1976* as proposed to be amended by the Postal Industry Ombudsman Bill 2004 (PIO Bill), will commence either immediately after the commencement of item 2 of Schedule 1 to the PIO Bill or at the time that the ACMA is established by clause 6 of the ACMA Bill, whichever is the later. However, if item 2 of Schedule 1 to the PIO Bill does not commence, items 3 and 4 of Schedule 3 will not commence at all.

Item 6 of the table provides that items 5 and 6 in Schedule 3 to the Bill, which will change references to the ACA in subsections 6(4D) and 6(4E) of the *Ombudsman Act 1976* to references to the ACMA, will commence at the same time that the ACMA is established.

Item 7 of the table provides that item 7 in Schedule 3 to the Bill, which will repeal subsection 6(4F) of the *Ombudsman Act 1976* and replace it with a new subsection which provides a definition of 'ACMA', will commence at the same time that the ACMA is established. However, as item 10 of Schedule 1 to the PIO Bill proposes to repeal subsection 6(4F), if that item commences on or before the time that the ACMA is established, item 7 of Schedule 3 will not commence at all.

Item 8 of the table provides that item 8 in Schedule 3 to the Bill, which would omit references in subsection 6(6) of the *Ombudsman Act 1976* to the ABA and replace them with references to the ACMA, would commence at the same time that the ACMA is established.

Items 9 and 11 in Schedule 3 would omit references to the 'ACA' in subsections 19ZE(7) and (9) of the *Ombudsman Act 1976*, as proposed to be amended by the PIO Bill, and would replace them with references to the 'ACMA'. Item 10 would repeal subsection 19ZE(8) of the *Ombudsman Act 1976*, which would be inserted into that Act by the PIO Bill. Item 9 of the table provides that items 9, 10 and 11 will commence either immediately after the commencement of item 11 of Schedule 1 to the PIO Bill or at the time that the ACMA is established by clause 6 of the ACMA Bill, whichever is the later. However, if item 11 of Schedule 1 to the PIO Bill does not commence, items 9, 10 and 11 would not commence at all.

Item 10 of the table provides that Schedule 4 to the Bill, which contains transitional provisions relating to the establishment of the ACMA, will commence at the same time that the ACMA is established by clause 6 of the ACMA Bill.

### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill provides for the repeal of the ACA Act and provisions in the BSA relating to the establishment and constitution of the ABA and the administrative provisions applicable to the ABA. It also removes provisions dealing with the interaction between the ACA and the ABA that are no longer required as a consequence of the merger of those bodies and makes other consequential amendments to Commonwealth legislation.

Schedule 2 to the Bill also changes references in Commonwealth legislation to the ABA and the ACA to the ACMA.

Schedule 3 to the Bill amends references to the ABA and the ACA in provisions of Bills that will be before the Parliament at or close to the time of the introduction of this Bill, in the event that those provisions are passed by the Parliament, as well as amending



references to the ABA in certain provisions of the Criminal Code that are not yet in force. Schedule 3 would replace references to the Australian Broadcasting Authority in amendments to the *Criminal Code Act 1995* to be made by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Bill (No. 2) 2004* with effect from 1 March 2005 with references to the Australian Communications and Media Authority. Similar amendments would also be made to references to the Australian Communications Authority in proposed amendments to the *Ombudsman Act 1976* contained in the Postal Industry Ombudsman Bill 2004. In addition, Schedule 3 would amend current references to the Australian Communications Authority and the Australian Broadcasting Authority in the Ombudsman Act which would not be amended by the Postal Industry Ombudsman Bill.

Schedule 4 to the Bill contains transitional provisions, including provisions dealing with the vesting of assets and liabilities of the ACA and the ABA in the Commonwealth, and provisions for the continuing operation of ACA and ABA instruments after the commencement of the Bill.

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

Schedule 1 to the Bill provides for the repeal of the ACA Act and provisions in the BSA relating to the establishment and constitution of the ABA and the administrative provisions applicable to the ABA. It also removes provisions dealing with the interaction between the ACA and the ABA that are no longer required as a consequence of the merger of those bodies and makes other consequential amendments to Commonwealth legislation.

#### ***Australian Broadcasting Corporation Act 1983***

##### **Item 1 – Subsection 3(1) (definition of ABA)**

##### **Item 2 – Subsection 3(1)**

Item 1 repeals the definition of the ABA in subsection 3(1) as this definition will be redundant upon the commencement of the ACMA Bill and item 2 inserts a definition of ‘ACMA’ in subsection 3(1).

##### **Item 3 – Subparagraph 6(2)(a)(ii)**

##### **Item 4 – Paragraph 8(1)(e)**

Items 3 and 4 are minor consequential amendments to change the references to the ‘Australian Broadcasting Authority’ in subparagraph 6(2)(a)(ii) and paragraph 8(1)(e) to a reference to the ACMA.

***Australian Communications Authority Act 1997***

**Item 5 – The whole of the Act**

As a consequence of the proposed merger of the ACA and the ABA and the establishment of the ACMA by the ACMA Bill, item 5 repeals the ACA Act, which provides for the establishment of the ACA, and its functions and powers.

Item 13 in Schedule 4 to the Bill provides for the continued existence of an advisory committee established under section 51 of the ACA Act that is in existence before the commencement of the ACMA Bill.

***Broadcasting Services Act 1992***

**Item 6 – Paragraph 5(3)(a)**

Item 6 repeals paragraph 5(3)(a) of the BSA. Section 5 of the BSA provides that the Parliament charges the ABA with responsibility for monitoring the broadcasting industry, the datacasting industry and the Internet industry. Paragraph 5(3)(a) provides that section 5 does not, by implication, limit the powers and functions of the ACA. As a consequence of the merger of the ABA and the ACA to form the ACMA, paragraph 5(3)(a) will no longer be required.

**Item 7 – Subsection 6(1) (definition of ABA)**

**Item 8 – Subsection 6(1) (definition of ACA)**

**Item 9 – Subsection 6(1)**

Items 7, 8 and 9 repeal the definitions of ‘ACA’ and ‘ABA’ in subsection 6(1) and insert a new definition of ‘ACMA’ as a consequence of the merger of the ACA and the ABA to form the ACMA.

**Item 10 – Subsection 6(1)**

**Item 11 – subsection 6(1) (definition of *Chairperson*)**

The definition of Chairperson in subsection 6(1) provides that this is the Chairperson of the ABA. As a consequence of the merger of the ACA and the ABA to form the ACMA, there will no longer be a Chairperson of the ABA but instead a Chair of the ACMA. Item 11 therefore repeals the definition of ‘Chairperson’ and item 10 inserts a new definition of ‘Chair’ to mean the Chair of the ACMA.

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

Item 12 repeals the definition of Deputy Chairperson because it refers to the Deputy Chairperson of the ABA. There is no need to provide a new definition of the Deputy Chairperson that refers to the ACMA because this term is not referred to in the BSA.

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

Item 13 repeals the definition of ‘member’ in subsection 6(1) (which is defined as a member of the ABA) and replaces it with a new definition of member that provides that a member is a member of the ACMA.

**Item 14 – Section 93****Item 15 – Subsection 96(1)**

Item 14 repeals section 93 of the BSA because it is a spent provision. Section 93 provides that the Minister is to determine a price-based allocation for two satellite pay TV services (known as ‘licence A’ and ‘licence B’), and to allocate a third pay TV satellite licence (‘licence C’) to the ABC. Licences A, B and C are no longer in force. Since 1 July 1997, the ABA has been able to issue subscription television broadcasting licences.

Item 15 makes a minor consequential amendment to subsection 96(1) to remove the reference in that subsection to section 93.

**Item 16 – Subsections 96(3), (3A) and (3B)**

Item 16 repeals subsections 96(3), (3A) and (3B) because these provisions are spent.

Subsection 96(3) prevented the ABA from allocating a subscription television broadcasting licence before 1 July 1997. Subsection 96(3A) prevented the ABA from allocating such a licence before services commenced under licence A, B or C for a service that was dependant on an MDS system (microwave delivery) as its means of transmission or as part of its means of transmission. The effect of subsection 96(3B) was that subsection 96(3A) ceased to have effect on 31 December 1994.

**Item 17 – Subsection 97(1)**

Item 17 makes a minor consequential amendment to subsection 96(1) to remove the reference in that subsection to section 93 (which will be repealed by item 14).

**Item 18 – Sections 98A, 98B and 98C**

Item 18 repeals sections 98A, 98B and 98C because these provisions are spent. These provisions dealt with the payment of deposits by applicants for licences A and B, which were the licences issued prior to 1 July 1997 under a price-based allocation system determined by the Minister under section 93. These licences are no longer in force.

**Item 19 – Subsection 99(3)****Item 20 – Subsection 99(4)**

Item 19 repeals subsection 99(3) because this subsection is spent. Section 99 deals with the conditions applicable to subscription television broadcasting licences. Subsection 99(2) allows the ABA to specify additional conditions to which a licence is subject. Subsection 99(3) allows the Minister to give the ABA a notice in writing requiring the

ABA to take action under subsection (2) in relation to licence C as specified by the Minister's notice. Licence C is no longer in force.

Item 20 makes a minor consequential amendment to remove the reference in subsection 99(4) to a direction under subsection 99(3).

**Item 21 – Sections 101 and 103**

Item 21 repeals sections 101 and 103. Section 101 provided a special licence condition for each subscription broadcasting licence that prevented the broadcasting of advertisements or sponsorship announcements by a licensee before 1 July 1997. This provision is now redundant.

Section 103 provides a special condition applying to licences A and B. As licences A and B are no longer in force, this provision is redundant.

**Item 22 – Subsection 121FK(3)**

Item 22 repeals subsection 121FK(3). Subsections 121FK(1) and (2) allow the ABA to cancel an international broadcasting licence if the international broadcasting service has not commenced within 2 years after the allocation of the licence. The ABA has to notify the licensee of its intention to cancel the licence and allow the licensee a reasonable opportunity to make representations to the ABA about the proposed cancellation. Subsection 121FK(3) requires the ABA to notify the ACA if it cancels a licence.

Following the merger of the ABA and the ACA to form the ACMA, subsection 121FK(3) will be redundant.

**Item 23 – Subsection 121FL(2), (4) and (7)**

Item 23 repeals subsections 121FL(2), (4) and (7) which require the ABA to notify the ACA of the issue of a formal warning to the licensee of, or the suspension or cancellation of, an international broadcasting licence where an international broadcasting service provided under the licence is, in the opinion of the Minister for Foreign Affairs, contrary to the national interest. Following the merger of the ABA and the ACA to form the ACMA, subsections 121FL(2), (4) and (7) will be redundant.

**Item 24 – Subsection 121FLH(6)**

Item 24 repeals subsection 121FLH(6) which requires the ABA to notify the ACA of the cancellation of an international broadcasting licence if a nominated broadcaster declaration ceases to be in force and the licensee is not an Australian company. Following the merger of the ABA and the ACA to form the ACMA, subsection 121FLH(6) will be redundant.

**Item 25 – Subsection 121FQ(2)**

Item 25 repeals subsection 121FQ(2). Subsection 121FQ(1) allows an international broadcasting licensee to surrender the licence by notice in writing given to the ABA. The ABA must notify the ACA of the surrender of the licence (s. 121FQ(2)). Following the merger of the ABA and the ACA to form the ACMA, subsection 121FQ(2) will be redundant.

#### **Item 26 – Part 12**

As a consequence of the proposed merger of the ACA and the ABA to form the ACMA to be effected by the ACMA Bill, item 26 repeals Part 12 of the BSA. Part 12 provides for the establishment of the ABA, including its functions and powers.

#### **Item 27 – Subsection 168(1)**

#### **Item 28 – Subsection 168(2)**

Item 27 amends subsection 168(1). Subsection 168(1) provides that the ABA, in informing itself on any matter relevant to its functions, may consult such persons or bodies as it thinks fit, conduct investigations and hold hearings and otherwise inform itself in any manner that it thinks fit. Subsection 168(2) provides that, subject to any directions given by the Minister under Part 13 of the BSA, the procedure that the ABA adopts in informing itself on any matter relevant to its functions is to be that which the ABA considers will be the quickest and most economical and will promote the due administration of the BSA.

The amendment in item 1 of Schedule 2 to the Bill would change the references to the ABA in section 168 to references to the ACMA. Item 27 will preserve the effect of subsection 168(1) by providing that the ACMA, in informing itself on any matter relevant to its broadcasting, content and datacasting functions (as defined in the ACMA Bill), may obtain information in the same manner that the ABA may obtain information.

Item 28 makes a minor amendment to subsection 168(2) to reflect the specific functions of the ACMA that would be specified in subsection 168(1).

#### **Item 29 – Section 169**

Item 29 makes a minor amendment to section 169, which provides that the ABA's decision-making on a matter is not limited to the consideration of material made available through an investigation or hearing conducted in relation to the matter, to reflect the amendments to section 168 made by item 27.

#### **Item 30 – Section 170**

Item 30 amends section 170 of the BSA. Section 170 provides that the ABA may conduct its investigations for the performance or exercise of any of its functions and powers.

Item 1 of Schedule 2 to the Bill will change the reference to the ABA in section 170 to a reference to the ACMA. As the ACMA will have the statutory functions currently performed by the ACA as well as the statutory functions performed by the ABA, the

effect of item 30 would be that the ACMA would have the power to conduct investigations for the performance of its broadcasting, content and datacasting functions (as defined in clause 10 of the ACMA Bill). This would not affect the ACMA's power to conduct investigations as provided by other Acts.

### **Item 31 – Section 181**

Item 31 repeals section 181 of the BSA. Section 181 provides that in Division 3 of Part 13 of the BSA (which deals with hearings of the ABA), 'member' includes a reference to an associate member. As a consequence of clause 27 of the ACMA Bill, this section is no longer required. The effect of clause 27 of the ACMA Bill would be that where the BSA refers to a member (which would be a reference to a member of the ACMA following the commencement of item 13), an associate member of the ACMA would be taken to be a member for all purposes in connection with any inquiry, hearing or other matter specified in his or her instrument of appointment, unless there is a contrary intention expressed. For example, section 191 in Division 3 of Part 13 of the BSA, as amended by item 33, would allow the Chair of the ACMA to direct that a certain member(s) or associate member(s) is to constitute the ACMA for the purposes of the hearing.

### **Item 32 – Section 182**

Item 32 amends section 182. Section 182 provides that the ABA may conduct hearings for the performance or exercise of any of its functions or powers.

Item 1 of Schedule 2 to the Bill will change the reference to the ABA in section 182 to a reference to the ACMA. As the ACMA will have the functions currently performed by the ACA as well as the functions performed by the ABA, the effect of item 32 would be that the ACMA would be able to conduct hearings for the performance of its broadcasting, content and datacasting functions (as defined in clause 10 of the ACMA Bill). This would not affect the ACMA's power to conduct hearings as provided by other Acts.

### **Item 33 – Section 191**

### **Item 34 – Section 192**

### **Item 35 – Subsection 193(1)**

### **Item 36 – Section 194**

Items 33, 34, 35 and 36 are minor amendments which would change the reference to the 'Chairperson' in section 191, section 192, subsection 193(1) and section 194 to a reference to the 'Chair'. This would reflect the new definition of 'Chair' in item 10 (which would be defined as the Chair of the ACMA), which would replace the definition of 'Chairperson' in subsection 6(1) (which is defined to mean the Chairperson of the ABA).

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

Item 37 amends the definition of 'authorised officer' in subsection 205B(5) by omitting the reference to 'associate member'. This is because, as a consequence of clause 27 of

the ACMA Bill, it is no longer necessary to include a reference to an associate member in that definition. The effect of clause 27 of the ACMA Bill would be that where the BSA refers to a member (which would be a reference to a member of the ACMA following the commencement of item 13), an associate member of the ACMA would be taken to be a member for all purposes in connection with any inquiry, hearing or other matter specified in his or her instrument of appointment, unless there is a contrary intention expressed. As there is no contrary intention expressed in the definition of 'authorised officer', the effect of clause 27 of the ACMA Bill would be that an associate member could be authorised in writing by the ABA for the purposes of section 205B if that authorisation was connected to a matter specified in the associate member's instrument of appointment.

### **Item 38 – Sections 216D and 216E**

Item 38 repeals sections 216D and 216E of the BSA because these provisions are spent. Section 216D provides the Minister may cause a review to be conducted of the operation of Schedule 4 (the digital television regulatory framework) and Schedule 6 (the datacasting regulatory framework) after 1 January 2003 and before 1 January 2004. There is no need to retain this section and these dates have passed. The review was optional and has not been conducted (although several elements of Schedule 4 are currently being reviewed under other provisions and Schedule 6 was in effect reviewed under clause 61 of Schedule 6 in 2002).

Section 216E required the Minister to cause to be conducted, before 1 January 2002, a review of whether streamed Internet, audio and video content should be regarded as a broadcasting service. The report of this review was tabled in March 2001.

### **Item 39 – Schedule 3**

Item 39 repeals Schedule 3 to the BSA as a consequence of the proposed merger of the ACA and the ABA to form the ACMA. Schedule 3 sets out a number of administrative provisions applicable to the ABA and, for example, deals with such matters as acting appointments and meetings of the ABA.

### **Item 40 – Clause 2 of Schedule 4 (definition of ACA)**

Item 40 repeals the definition of the ACA in clause 2 of Schedule 4 as a consequence of the proposed merger of the ACA and the ABA to form the ACMA. As the definition of the ACMA, to be inserted in subsection 6(1) of the BSA by item 9, would apply to the whole of the Act, it is not necessary to provide a definition of the ACMA for the purposes of Schedule 4.

### **Item 41 – Subclause 8(1) of Schedule 4**

### **Item 42 – Paragraph 8(4)(b) of Schedule 4**

### **Item 43 – Paragraph 8(4)(b) of Schedule 4**

### **Item 44 – Subclauses 8(8) and (10A) of Schedule 4**

### **Item 45 – Subclause 8(11)**

Clause 8 of Schedule 4 requires the commercial television conversion scheme to make provision for the issue of transmitter licences by the ACA which will authorise the

transmission of commercial television broadcasting services in digital mode. As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, items 41, 42, 43, 44 and 45 make minor amendments to a number of subclauses and paragraphs in clause 8 to refer to the issue of transmitter licences, rather than requiring the ACA to issue transmitter licences. Item 1 in Schedule 2 to the Bill would change the references to the ABA in clause 8 to references to the ACMA.

**Item 46 – Paragraph 18(d) of Schedule 4**

Item 46 repeals paragraph 18(d) of Schedule 4. Paragraph 18(d) requires the ABA, in formulating or varying the commercial television conversion scheme, to make provision for consultation with the ACA. As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, this requirement will become redundant. Item 1 of Schedule 2 to the Bill will change the reference to the ABA in paragraph 18(d) to a reference to the ACMA.

**Item 47 – Subclause 23(1) of Schedule 4**

**Item 48 – Paragraph 23(4)(b) of Schedule 4**

**Item 49 – Paragraph 23(4)(b) of Schedule 4**

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

**Item 51 – Subclause 23(11) of Schedule 4**

Clause 23 of Schedule 4 requires the national television conversion scheme to make provision for the issue of transmitter licences by the ACA which will authorise the transmission of national television broadcasting services in digital mode. As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, items 47, 48, 49, 50 and 51 make minor amendments to a number of subclauses and paragraphs in clause 23 to refer to the issue of transmitter licences, rather than requiring the ACA to issue transmitter licences. Item 1 of Schedule 2 to the Bill would change the references to the ABA in clause 23 to references to the ACMA.

**Item 52 – Paragraph 33(d) of Schedule 4**

Item 52 repeals paragraph 33(d) of Schedule 4. Paragraph 33(d) requires the ABA, in formulating or varying the national television conversion scheme, to make provision for consultation with the ACA. As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, this requirement will become redundant. Item 1 of Schedule 2 to the Bill will change the reference to the ABA in paragraph 33(d) to a reference to the ACMA.

**Item 53 – Clauses 53, 59, 59A and 60C of Schedule 4**

Item 53 repeals clauses 53, 59, 59A and 60C of Schedule 4 as these provisions are spent.

Clause 53 required the ACA, before making its first determination under section 7 of the *Datacasting Charge (Imposition) Act 1998*, to prepare, and give to the Minister, a report about proposals that were to be embodied in the determination. The report was tabled in April 2001.



Clause 59 required the Minister to cause a series of reviews to be conducted, before 1 January 2000, relating to a number of provisions of the digital television regulatory framework. The reviews were conducted and reports on most of the provisions tabled in the Parliament in May 2000, with reviews in paragraph 59(1)(e) being reported on in the context of subsequent reviews on which reports were tabled in 2002.

Clause 59A of Schedule 4 required a review, before 31 October 2000, on aspects of the ABA's spectrum allocation powers. This review report was tabled in March 2002.

Clause 60C of Schedule 4 required a review, before 1 January 2002, of regulatory arrangements that should apply to the digital transmission of community television. This review report was tabled in June 2002.

#### **Item 54 – Clause 61 of Schedule 4**

Item 54 repeals clause 61 of Schedule 4. Clause 61 allows the ABA to make determinations fixing charges for any matter in relation to which expenses are incurred by the ABA under the commercial television conversion scheme, the national television conversion scheme or subclauses 45(5), 45A(6) or 46(5) (which deal with the issue of certificates). Clause 60 of the ACMA Bill will allow the ACMA to make determinations fixing charges for services provided by the ACMA and for any matter in relation to which expenses are incurred by the ACMA under the ACMA Bill, the Telecom Act, the TCPSS Act, the Radcom Act, the BSA or any instrument made under those Acts. A charge fixed under such a determination must not be such as to amount to taxation. As clause 60 of the ACMA Bill would allow the ACMA to make a determination fixing charges for any matter in relation to which expenses are incurred by it under the commercial television conversion scheme, the national television conversion scheme or subclauses 45(5), 45A(6) or 46(5), clause 61 would no longer be required.

#### **Item 55 – Paragraphs 62(1)(c) and 62(3)(b) of Schedule 4**

Item 55 amends paragraphs 62(1)(c) and 62(3)(b) of Schedule 4. Clause 62 deals with review by the AAT of decisions made by the ABA in relation to the commercial television conversion scheme and the national television conversion scheme, including decisions requiring the ACA to issue a replacement transmitter licence to the holder of commercial television broadcasting licence or the holder of a national television broadcasting licence. As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, item 55 removes the references to decisions of the ABA requiring the ACA to issue replacement licences and would instead refer to decisions of the ACMA to issue replacement transmitter licences.

#### **Item 56 – Paragraph 89(1)(d) of Schedule 5**

Subclause 89(1) of Schedule 5 defines 'protected person' for the purposes of clause 89, which provides protection from criminal proceedings for a protected person in relation to certain acts. Under paragraph 89(1)(d), a consultant engaged to assist with the performance of the ABA's functions is a protected person. Item 56 would amend paragraph 89(1)(d) to refer to a consultant engaged to assist with the performance of the

ACMA's broadcasting, datacasting and content functions, as defined in clause 10 of the ACMA Bill.

**Item 57 – Paragraph 89(1)(e) of Schedule 5**

Item 57 omits a reference to subsection 165(3) (which deals with the ability of the ABA to make arrangements with an authority of the Commonwealth for the services of officers of that authority to be made available to the ABA) in paragraph 89(1)(e) and would replace it with a reference to clause 55 of the ACMA Bill. Clause 55 of the ACMA Bill would provide a similar ability for the ACMA.

**Item 58 – Clause 61 of Schedule 6**

Item 58 repeals clause 61 of Schedule 6 because this is a spent provision. Clause 61 required the Minister to cause a review to be conducted of whether any amendments should be made to Schedule 6. This review report was tabled in December 2002.

***Copyright Act 1968***

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

**Item 60 – Paragraphs 152(8)(a) and (9)(a)**

**Item 61 – Paragraph 184(1)(f)**

**Item 62 – Subsection 199(7)**

As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, items 59, 60, 61 and 62 make minor amendments to provisions in the *Copyright Act 1968* to replace current references in those provisions to the Australian Broadcasting Authority with references to the Australian Communications and Media Authority.

***Film Licensed Investment Company Act 1998***

**Item 63 – Subparagraphs 25(a)(i) and (ii)**

As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, item 63 makes a minor amendment to subparagraphs 25(a)(i) and (ii) of the *Film Licensed Investment Company Act* to replace the current references in those paragraphs to the Australian Broadcasting Authority with references to the Australian Communications and Media Authority.

***Financial Management and Accountability Regulations 1997***

**Item 64 – Part 1 of the Schedule 1 (after table item 107)**

Item 64 amends Part 1 of Schedule 1 to the *Financial Management and Accountability Regulations 1997* to prescribe the Australian Communications and Media Authority, comprising the Chair, the Deputy Chair, members and associate members of the ACMA, the staff of the ACMA mentioned in subclause 54(1) of the ACMA Bill and persons whose services are made available for the purposes of the ACMA under subclause 55(1) of the ACMA Bill, as an agency for the purposes of the FMA Act. The

proposed amendment would also prescribe the Chair of the ACMA as Chief Executive of the prescribed agency for the purposes of the FMA Act.

### ***Freedom of Information Act 1982***

#### **Item 65 – Division 1 of Part II of Schedule 2**

As a consequence of the proposed merger of the ABA and the ACA to form the ACMA, item 65 makes a minor amendment to Division 1 of Part II of Schedule 2 to the Freedom of Information Act to replace the current reference in that Division to the Australian Broadcasting Authority with a reference to the Australian Communications and Media Authority. Division 1 of Part II of the FOI exempts the ABA from the application of the Act in relation to exempt Internet-content documents concerning the performance of a function, or the exercise of a power, under Schedule 5 to the *Broadcasting Services Act 1992*.

### ***Income Tax Assessment Act 1997***

#### **Item 66 – Subsection 40-120(1) (example)**

Item 66 makes a minor consequential amendment to the example in subsection 40-120(1) to change the current reference to the ‘Australian Communication Authority’ to a reference to the Australian Communications and Media Authority.

#### **Item 67 – Subsection 995-1(1) (definition of ACA)**

Item 67 repeals the definition of the ACA in section 995-1 of the Income Tax Assessment Act. There would be no need to insert a definition of the ACMA in section 995-1 as there is currently no reference to the ACA in the Income Tax Assessment Act. However, there is one reference to the ‘Australian Communication Authority’ in an example in subsection 40-120(1) which item 66 would change to a reference to the Australian Communications and Media Authority.

### ***Interactive Gambling Act 2001***

#### **Item 68 – Section 4 (definition of ABA)**

#### **Item 69 – Section 4**

Item 68 repeals the definition of the ABA in section 4 as this definition would become redundant as a consequence of the proposed merger of the ABA and the ACA to form the ACMA. Item 69 inserts a definition of ‘ACMA’ in section 4.

#### **Item 70 – Paragraphs 66(1)(d), (e) and (f)**

Item 70 repeals paragraphs 66(1)(d), (e) and (f) of the Interactive Gambling Act. The effect of paragraph 66(1)(d) is that paragraph 158(n) of the BSA has effect as though each reference in paragraph 158(n) to the BSA includes a reference to the Interactive Gambling Act. Paragraph 158(n) currently provides that the ABA has the function of monitoring and reporting the Minister on the operation of the BSA and the effect of paragraph 66(1)(d) is that the ABA also has this function in relation to the Interactive Gambling Act. It is proposed to repeal paragraph 66(1)(d) because paragraph 158(n) would be repealed by item 26 of Schedule 1 to the Bill. This is because, under clauses 8, 9 and 10 of the ACMA Bill, the ACMA would have the function of monitoring and

reporting on the operation of the BSA and any other Act, or provisions of Acts, which confers functions on it, including the Interactive Gambling Act.

***Radiocommunications Act 1992***

**Item 71 – Section 5 (definition of ABA)**

**Item 72 – Section 5 (definition of ACA)**

**Item 73 – Section 5**

Items 71, 72 and 73 repeal the definitions of ACA and ABA in section 5 of the Radcom Act and replace them with a definition of ACMA.

**Item 74 – Section 5**

Item 74 inserts a definition of ‘BSA control rules’ in section 5 of the Radcom Act.

Currently, a number of references to a ‘breach of the BSA control rules’ is used in the Radcom Act and a number of proposed amendments to the Radcom in Schedule 1 (see items 80 and 81 for example). A number of subsections specify when something is taken to be a breach of the BSA control rules (for example ss.102B(7) of the Radcom Act) if it would breach section 54A or 56A of the BSA or clause 41 of Schedule 6 to the BSA.

The proposed definition would not alter the current meaning of BSA control rules but would simplify a number of provisions by defining this expression for the purposes of the Radcom Act, rather than in each section that refers to such an expression.

**Item 75 – Section 31**

Item 75 repeals section 31 of the Radcom and replaces it with new proposed section 31.

Section 31 currently allows the Minister, after consulting the ACA and ABA, to designate part of the spectrum as being primarily for broadcasting purposes and refer it to the ABA for planning under Part 3 of the BSA. If such a designation is in force in relation to a particular part of the spectrum, the ABA and the ACA may make a written agreement allowing licences, or specified kinds of licences, to be issued in specified circumstances in relation to that part of the spectrum or parts of that part of the spectrum. The agreement must not be inconsistent with the spectrum plan prepared by the ACA under section 30 of the Radcom Act. An agreement may be revoked or varied by agreement of the ABA and ACA and, in addition, the ABA, after consulting the ACA and the holders of any licences that were issued in accordance with the agreement, may revoke an agreement if it considers that it is preventing the ABA from properly performing its functions under the BSA. If an agreement between the ACA and ABA is made, varied or revoked the ACA must publish a notice in the Gazette to this effect.

New proposed section 31 would reflect the merger of the ACA and ABA to form the ACMA by replacing the agreement between the ACA and ABA with a determination made by ACMA in relation to the licences, or specified kinds of licences, to be issued in specified circumstances in relation to that part of the spectrum or parts of that part of the spectrum. Proposed subsection 31(3) would require the ACMA, in making or varying a

determination, to promote the objects, and have regard to the matters described in section 23 of the BSA (which deals with the planning of those parts of the spectrum designated by the Minister under section 31(1) for primarily broadcasting purposes) and to promote the objects of the Radcom Act, to the extent that this is not inconsistent with the promotion of the objects in section 23 of the BSA. Proposed subsection 31(3) would preserve the current focus in section 31 on the issue of licences in spectrum that has been designated as primarily for broadcasting purposes being consistent with the planning functions specified in section 23 of the BSA.

Consistent with the current provisions in section 31, a determination must be consistent with the spectrum plan prepared under section 30 and the ACMA will be able to vary or revoke the determination. An example of a circumstance in which the ACMA might decide to revoke a determination is where it considers that the determination is preventing it from performing its planning functions under section 23 of the BSA properly.

A provision equivalent to subsection 31(7), which requires the Gazettal of a notice about an agreement, is not included in new proposed section 31 because a determination made under proposed subsection 31(2) would be legislative instrument for the purposes of the LIA. This means that it would need to be lodged for registration on the Federal Register of Legislative Instruments.

#### **Item 76 – Subsection 32(2)**

Item 76 repeals subsection 32(2) and replaces it with new proposed subsection 32(2).

Section 32 deals with frequency band plans that may be prepared by the ACA. Subsection 32(2) provides that the ACA may only prepare a frequency band plan in relation to a part of the spectrum referred to the ABA under subsection 31(1) if the frequency band is within a part of the spectrum that is covered by an agreement under subsection 31(2) and the plan is not inconsistent with any frequency allotment plan prepared under section 25 of the BSA. Item 1 in Schedule 2 to the Bill would change the reference to the ACA in subsection 32(1) to a reference to the ACMA.

Proposed subsection 32(2) would retain these limitations on the ability of the ACMA to make a frequency band plan by providing that if a frequency band plan relates to a frequency band within a part of the spectrum that is to be planned in accordance with section 25 of the BSA and is wholly or partly covered by a frequency allotment plan prepared under section 25 of the BSA, then the frequency band plan must be consistent with the frequency allotment plan.

#### **Item 77 – Subsection 36(5)**

Item 77 is an amendment consequential to item 75, which would enable the ACMA to make determinations under proposed subsection 31(2), to replace agreements that may be made between the ACA and the ABA. Item 77 therefore replaces the reference to ‘an agreement’ made under subsection 31(2) in subsection 36(5) with a reference to a determination made by the ACMA.

#### **Item 78 – Paragraph 67(a)**

Item 78 makes a minor amendment to paragraph 67(a), which currently refers to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 79 – Paragraph 100(2)(b)**

Item 79 is an amendment consequential to item 75, which would enable the ACMA to make determinations under proposed subsection 31(2), to replace agreements that may be made between the ACA and the ABA. Item 79 therefore replaces the reference to ‘an agreement’ made under subsection 31(2) in paragraph 100(2)(b) with a reference to a determination made by the ACMA.

**Item 80 – Section 102B**

Item 80 repeals section 102B and replaces it with new section 102B.

Section 102B deals with the issue of datacasting transmitter licences by the ACA. The ACA must not issue a datacasting transmitter licence to a person unless the person is a qualified company. If the applicant for a licence is a qualified company and the licence is not to be issued in accordance with a price-based allocation system, the ACA is required to refer the application to the ABA. If the ABA is satisfied that the issue of the licence would result in a breach of the BSA control rules, the ABA may direct the ACA not to issue the licence. Subsection 102B(7) specified when the issue of a licence results in a breach of the BSA control rules.

New proposed section 102B is a consequential amendment arising from the merger of the ACA and ABA. Proposed section 102B has the same effect as current section 102B by providing that the ACMA may only issue a datacasting transmitter licence to a person if the person is a qualified company and if the issue of the licence is not under a price-based allocation system, it is satisfied that would not result in a breach of the BSA control rules. ‘BSA control rules’ would be defined in section 5 of the Radcom Act (see item 74).

**Item 81 – Subsections 106(6A), (6B) and (6C)**

Item 81 repeals subsections 106(6A), (6B) and (6C) and inserts new proposed subsection 106(6A).

Section 106 allows the ACA to determine a price-based allocation system for allocating and/or issuing specified transmitter licences (other than transmitter licences for temporary community broadcasting and transmitter licences that are for use in transmitting a national broadcasting service). Subsection 106(6A) provides that the system determined by the ACA may provide that before a datacasting transmitter licence is issued in accordance with the system, the ABA is to be given an opportunity to direct the ACA not to issue the licence because the ABA is satisfied that the issue would result in a breach of section 54A or 56A of the BSA or clause 41 of Schedule 6 to the BSA. The ACA is required to comply with any direction given by the ABA (subsection 106(6B)) and the ACA would need to provide a copy of the direction with the refusal to issue the licence (subsection 106(6C)).

New proposed subsection 106(6A) would retain the effect of the current provisions by providing that the ACMA must not issue a datacasting transmitter licence under a system for the price-based allocation of transmitter licences unless the ACMA is satisfied that the issue of the licence would not result in a breach of the BSA control rules. 'BSA control rules' would be defined in section 5 of the Radcom Act to mean a breach of section 54A or 56A of the BSA or clause 41 of Schedule 6 to the BSA (see item 74).

**Item 82 – Subparagraph 107(1)(c)(ii)**

**Item 83 – Subparagraph 109(1)(b)(i)**

**Item 84 – Subparagraph 109A(1)(b)(i)**

Items 82, 83 and 84 make minor amendments to subparagraphs 107(1)(c)(ii), 109(1)(b)(i) and 109A(1)(b)(i) which currently refer to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 85 – Subsection 114(5)**

Item 85 repeals subsection 114(5) as a consequence of item 74 which will insert a definition of 'BSA control rules' in section 5 of the Radcom Act.

Section 114 deals with the ability of the licensee of an apparatus licence to authorise other persons to operate radiocommunications devices under the licence. If the licence is a datacasting transmitter licence, the effect of subsection 114(3B) is that, at least 30 days before the authorisation of the person, the licensee must give a notice to the ABA stating the licensee's intention to authorise the person to operate devices under the licence. The ABA has the ability under subsection 114(3C) to direct the licensee not to authorise the person if the ABA is satisfied that the authorisation would result in a breach of the BSA control rules. As a result of the amendments to the BSA made by item 1 in Schedule 2 to the Bill, the references to the ABA in section 114 will be changed to references to the ACMA.

**Item 86 – Paragraph 118(1)(c)**

Item 86 amends paragraph 118(1)(c) as a consequence of the proposed amendment in item 92 which would remove the concept of the ABA giving a direction to the ACA to suspend a datacasting transmitter licence and would allow the ACMA to suspend a datacasting transmitter licence on the same grounds on which the ABA may currently issue a direction to the ACA.

**Item 87 – Paragraph 118(1)(d)**

Item 87 amends paragraph 118(1)(d) as a consequence of the proposed amendment in item 92 which would remove the concept of the ABA giving a direction to the ACA to cancel a datacasting transmitter licence and would allow the ACMA to cancel a datacasting transmitter licence on the same grounds on which the ABA may currently issue a direction to the ACA to cancel a datacasting transmitter licence.

**Item 88 – After subsection 122A(1)****Item 89 – Subsection 122A(2)****Item 90 – Subsection 122A(3)**

Item 88 inserts a new subsection after subsection 122A(1) and items 89 and 90 amend subsections 122A(2) and (3).

Subsection 122A(1) of the Radcom Act enables the ACA to delegate the power to issue a certificate of proficiency under section 121 of the Radcom Act to a body or organisation approved by the ACA by written instrument for the purposes of section 122. However, the delegate is not entitled to make a final decision refusing to issue a certificate of proficiency (ss.122A(2)). If the delegate decides not to issue the certificate, the delegate must refer the application to the ACA for a final decision. Subsection 122A(3) provides that the delegation power in section 441 is in addition to the powers conferred by section 238 of the Radcom Act (which deals with delegations) and the general delegation power in section 49 of the ACA Act, which enables the ACA to delegate any or all of its functions and powers (apart from the power to make a disallowable instrument) to a member or associate member of the ACA, a member of staff of the ACA or a person whose services have been made available to the ACA by another Commonwealth authority.

The current references to the ACA in section 122A would be changed to references to the ACMA by item 1 in Schedule 2 to the Bill.

In addition, the amendments items 88, 89 and 90 take account of the possibility that the ACMA will be able to delegate any or all of its functions and powers to a Division under clause 50 of the ACMA Bill. Proposed subsection 122A(1A) would provide that if the ACMA has delegated to a Division the power referred to in subsection 122A(1), the Division may delegate the power to a body or organisation referred to in subsection 122A(1) and subclauses 52(2) to (6) of the ACMA Bill would have effect as if the delegation were a delegation made under clause 52 of the ACMA Bill. This would mean that the delegation would continue in force despite a change in membership of the Division and the delegation could be varied or revoked by the Division, irrespective of whether or not there has been a change in membership of the Division (subclauses 52(2) and (3) of the ACMA Bill). A member, or associate member in certain circumstances, of the Division would be able to sign a certificate stating any matter with respect to the delegated function and this would constitute prima facie evidence of that matter which could be rebutted by evidence to the contrary (subcl. 52(4) of the ACMA Bill). A document purporting to be such a certificate will be taken to be such and to have been duly given unless the contrary is established (subcl. 52(5) of the ACMA Bill). Sections 34AA, 34AB and 34A of the AIA would apply to a delegation under subclause 441(1A) by the Division in the same way that those provisions would apply to a delegation by ACMA to the Division (subcl. 52(6) of the ACMA Bill).

Item 89 would amend subsection 122A(2) to provide that if the delegate decides not to issue the certificate, the delegate must refer the application to the ACMA for a final decision if the delegation to the delegate was under subsection 122A(1) or to the Division that delegated the power if the delegation was under proposed subsection 122A(1A).



Item 90 would amend subsection 122A(3) to provide that the powers conferred by the ACMA under subsection 122A(1), and on a Division under proposed subsection 122A(1A), are in addition to section 238 of the Radcom Act and clauses 50, 51 and 52 of the ACMA Bill (the general delegations and sub-delegations provisions in that Bill).

**Item 91 – Division 6A of Part 3.3 (heading)**

Item 91 amends the heading to Division 6A of Part 3.3 of the Radcom Act as a consequence of the proposed amendments made by item 92 which would remove the concept of the ABA giving the ACA a direction to suspend or cancel a datacasting transmitter licence.

**Item 92 – Sections 128C and 128D**

Item 92 repeals sections 128C and 128D and inserts new proposed sections 128C and 128D.

Section 128C provides that the ACA must suspend a datacasting transmitter licence where the ABA gives it a direction to suspend the licence for the period specified in the notice. The ABA may give the ACA a direction where it is satisfied that the licensee or a person authorised by the licensee has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (h), (i), or (j) or subsection 109A(2) or (3) (which specify a number of conditions that apply to datacasting transmitter licences). Similarly, section 128D provides that the ACA must cancel a datacasting transmitter licence where the ABA gives it a direction to cancel the licence. The ABA may give the ACA a direction where it is satisfied that the licensee or a person authorised by the licensee has contravened a condition of the licence set out in paragraph 109A(1)(g), (ga), (h), (i), or (j) or subsection 109A(2) or (3) (which specify a number of conditions that apply to datacasting transmitter licences).

New proposed section 128C would preserve the effect of section 128C by providing that the ACMA may suspend a datacasting licence in the same circumstances in which the ABA may currently give the ACA a notice to suspend a datacasting licence. Consistent with the ability of a licensee to seek review by the AAT of a decision by the ABA to give the ACA a direction to suspend the licence under section 128C, a licensee will be able to seek review by the AAT of a decision of the ACMA under new proposed section 128C (see item 116).

New proposed section 128D would preserve the effect of section 128D by providing that the ACMA may cancel a datacasting licence in the same circumstances in which the ABA may currently give the ACA a notice to cancel a datacasting licence. Consistent with the ability of a licensee to seek review by the AAT of a decision by the ABA to give the ACA a direction to cancel the licence under section 128D, a licensee will be able to seek review by the AAT of a decision of the ACMA under new proposed section 128D (see item 117).

**Item 93 – Paragraph 128E(1)(a)**

**Item 94 – Paragraph 128E(1)(b)**

Item 93 amends paragraph 128E(1)(a) and item 94 repeals paragraph 128E(1)(b) as a consequence of the proposed amendment in item 92 which would remove the concept of the ABA giving a direction to the ACA to suspend a datacasting transmitter licence and would allow the ACMA to suspend a datacasting transmitter licence on the same grounds on which the ABA may currently issue a direction to the ACA.

**Item 95 – Paragraph 128E(1)(c)**

**Item 96 – Paragraph 128E(1)(c)**

**Item 97 – Paragraph 128E(1)(d)**

Items 95 and 96 amend paragraph 128E(1)(c) and item 97 repeals paragraph 128E(1)(d) as a consequence of the proposed amendment in item 92 which would remove the concept of the ABA giving a direction to the ACA to cancel a datacasting transmitter licence and would allow the ACMA to cancel a datacasting transmitter licence on the same grounds on which the ABA may currently issue a direction to the ACA to cancel a datacasting transmitter licence.

**Item 98 – Section 131ACA**

Item 98 repeals section 131ACA and inserts new proposed section 131ACA.

Section 131ACA deals with the transfer of datacasting transmitter licences and prevents the ACA from doing so unless the licence is being transferred to a qualified person and/or where the ABA gives the ACA a direction not to transfer the licence on the ground that the ABA is satisfied that the transfer of the licence would result in a breach of the BSA control rules. Subsection 131ACA(7) sets out when a transfer would result in a breach of the BSA control rules.

New proposed section 131ACA would preserve the effect of current section 131ACA by preventing the ACMA from transferring a datacasting transmitter licence to a person unless the person is a qualified person and the ACMA is satisfied that that transfer would not result in a breach of the BSA control rules. ‘BSA control rules’ would be defined in section 5 of the Radcom Act to mean a breach of section 54A or 56A of the BSA or clause 41 of Schedule 6 to the BSA (see item 74).

**Item 99 – Paragraph 146(2)(b)**

Item 99 repeals paragraph 146(2)(b) and replaces it with new proposed paragraph 146(2)(b).

Paragraph 146(2)(b) currently provides that the ACA does not need to make changes to the Register of Radiocommunications Licences (the Register) unless it has been paid the appropriate charge fixed by determination under section 53 of the ACA Act. Item 1 of Schedule 2 to the Bill would change the reference to the ACA in subsection 146(2) to a reference to the ACMA. The effect of proposed paragraph 146(2)(b) would be the same as current paragraph 146(2)(b) in that the ACMA would not need to make changes to the Register unless the appropriate charge fixed by determination under clause 60 of the ACMA Bill has been paid. However, the new paragraph reflects that the charge would be paid to the Commonwealth under clause 60 and not to the ACMA (see clause 61 of the ACMA Bill).

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

Item 100 makes a minor amendment to subsection 122A(3), which currently refers to the ACA Act, to refer the ACMA Bill.

**Item 101 – Subsection 238(1)****Item 102 – Subsection 238(3)**

Items 101 and 102 repeal subsections 238(1) and (3) and replace them with new proposed subsections 238(1) and (3).

Subsection 238(1) provides that the powers of delegation conferred on the ACA by section 238 are in addition to those provided by section 49 of the ACA Act. Subsection 238(2) enables the ACA to delegate the power to issue or cancel certificates of proficiency under Division 5 of Part 3.3 of the Radcom Act, or the power to make standards under Part 4.1 of the Radcom Act, to an authority of the Commonwealth. Subsection 238(3) provides that the ACA may delegate the powers specified in that subsection to the ABA. This power would become redundant as a result of the proposed merger of the ABA and the ACA to form the ACMA.

The current references to the ACA in section 238 would be changed to references to the ACMA by item 1 in Schedule 2 to the Bill.

In addition, the proposed amendments in items 101 and 102 take account of the possibility that the ACMA will be able to delegate any or all of its functions and powers to a Division under clause 50 of the ACMA Bill. Proposed subsection 238(1) would provide that the powers conferred by the ACMA by subsection 238(2) and the powers conferred on a Division of the ACMA under subsection 238(3) are in addition to those conferred by clauses 50, 51 and 52 of the ACMA Bill (the general delegation and sub-delegation provisions in that Bill). Proposed subsection 238(3) would provide that if the ACMA has delegated to a Division the power referred to in subsection 238(2), the Division may delegate the power to an authority of the Commonwealth and subclauses 52(2) to (6) of the ACMA Bill would have effect as if the delegation were a delegation made under clause 52 of the ACMA Bill. This would mean that the delegation would continue in force despite a change in membership of the Division and the delegation could be varied or revoked by the Division, irrespective of whether or not there has been a change in membership of the Division (subclauses 52(2) and (3) of the ACMA Bill). A member, or associate member in certain circumstances, of the Division would be able to sign a certificate stating any matter with respect to the delegated function and this would constitute prima facie evidence of that matter which could be rebutted by evidence to the contrary (subcl. 52(4) of the ACMA Bill). A document purporting to be such a certificate will be taken to be such and to have been duly given unless the contrary is established (subcl. 52(5) of the ACMA Bill). Sections 34AA, 34AB and 34A of the AIA would apply to a delegation under subclause 238(3) by the Division in the same way that those provisions would apply to a delegation by ACMA to the Division (subcl. 52(6) of the ACMA Bill).

**Item 103 – At the end of section 255**

Item 103 inserts new proposed subsection 255(3) at the end of section 255. Section 255 allows the ACA to hold public inquiries about any matter relating to the management of the radiofrequency spectrum or any other aspect of radio emissions and prevents the ACA from holding public inquiries relating to the operation or proposed operation of a broadcasting station unless it relates to interference or the risk of interference to non-broadcasting-related radiocommunications or the transmission or reception of non-broadcasting-related radio.

Subsection 255(3) would provide that nothing in Part 5.2 of the Radcom Act (which contains section 255) applies to an inquiry under another Act. This is to ensure, once the references to the ACA in section 255 are changed to references to the ACMA (see item 1 in Schedule 2 to the Bill), that the limitations in section 255 would not affect the ACMA's ability to exercise powers under another Act to hold a public inquiry (for example, under the BSA).

**Item 104 – Subsection 258(3)**

Item 104 makes a minor amendment to subsection 258(3), which currently refers to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is a provision equivalent to section 53 of the ACA Act.

**Item 105 – Paragraph 261(3)(a)**

**Item 106 – Paragraph 261(3)(b)**

**Item 107 – Subsection 261(4)**

**Item 108 – Subsection 261(5)**

Section 261 of the Radcoms Act allows the ACA to hold hearings for the purpose of a public inquiry. At a hearing, the ACA may be constituted by a member or members determined in writing by the Chairman of the ACA or, if the functions and powers of the ACA in relation to the hearing have been delegated to a person under section 49 of the ACA Act, that person (ss. 261(3)). The Chairman presides at all hearings at which he or she is present (ss.261(4)) and if at a hearing the Chairman is not present, and the ACA is not constituted by a person to whom the ACA's functions and powers in relation to the hearing have been delegated, the member specified in the instrument of appointment under paragraph 261(5)(a) as the member who is to preside at the hearing presides.

As a consequence of the proposed merger of the ACA and ABA to form the ACMA, item 1 in Schedule 2 to the Bill would change the references to the ACA in section 261 to references to the ACMA. Items 105 and 107 would change the references to the Chairman in paragraph 261(3)(a) and subsection 261(4) to references to the Chair (which would be the Chair of the ACMA).

Items 106 and 108 would take into account the possibility that the ACMA may delegate to a person, under clause 51 of the ACMA Bill, or to a Division, under clause 50 of the ACMA Bill, the functions and powers of the ACMA in relation to a hearing. In addition, those items would also reflect the possibility that a Division may itself delegate those delegated functions and powers to a person under clause 52 of the ACMA Bill. Item 106 therefore amends paragraph 261(3)(b) to provide that, if the functions or powers of the ACMA in relation to a hearing have been delegated to a

person or to a Division, the ACMA is constituted at the hearing by that person or that Division. Item 108 would amend subsection 261(5) to specify who is to preside at a hearing if the Chair is not present. If the Chair has determined under paragraph 261(3)(a) that the ACMA is to be constituted by a particular member or members, the member specified by the Chair as the presiding member would preside at the hearing (para. 261(5)(a)). If the ACMA has delegated its functions or powers in relation to a hearing to a person, then that person would preside at the hearing (para. 261(5)(b)) and if the ACMA has delegated its functions or powers to a Division, a member of the Division chosen by the Division to preside would preside at the hearing (para. 261(5)(c)).

**Item 109 – Paragraph 263(1)(b)**

Item 109 repeals paragraph 263(1)(b) and replaces it with new proposed paragraph 263(2)(b).

Paragraph 263(1)(b) currently provides that the ACA may give to a person an accreditation of a particular kind if it has been paid the appropriate charge fixed by determination under section 53 of the ACA Act. Item 1 of Schedule 2 to the Bill would change the references to the ACA in sections to references to the ACMA. The effect of proposed paragraph 263(1)(b) would be the same as current paragraph 263(1)(b) in that the ACMA would be able to give an accreditation to a person if the appropriate charge fixed by determination under clause 60 of the ACMA Bill has been paid. However, the new paragraph reflects that the charge would be paid to the Commonwealth under clause 60 and not to the ACMA (see clause 61 of the ACMA Bill).

**Item 110 – Division 1 of Part 5.6 (heading)**

**Item 111 – Paragraph 285(eb)**

**Item 112 – Paragraph 285(ma)**

Items 110, 111 and 112 make amendments to the heading of Division 1 of Part 5.6 of the Radcom Act and paragraphs 285(eb) and (ma) as a consequence of the proposed amendments in items 80 and 98.

Item 80 would result in section 102B giving the ACMA the ability to issue a datacasting transmitter licence only if the person is a qualified company and the issue of the licence would not result in a breach of the BSA control rules, in place of the current section which gives the ABA the power to give the ACA a direction not to issue a datacasting transmitter licence because the issue of the licence would result in a breach of the BSA control rules. Item 98 would result in section 131ACA giving the ACMA the ability to transfer a datacasting transmitter licence only if the person is a qualified company and the transfer of the licence would not result in a breach of the BSA control rules, in place of the current section which gives the ABA the power to give the ACA a direction not to transfer a datacasting transmitter licence because the transfer of the licence would result in a breach of the BSA control rules.

Currently, the effect of paragraph 285(eb) is that a decision by the ACA not to issue a datacasting transmitter licence in compliance with a direction of the ABA under subsection 102B(3) cannot be subject to an application for reconsideration by the ACA (however, an application for review of the decision of the ABA to give the direction to

the ACA may be made to the AAT under paragraph 292A(a)). The effect of paragraph 285(ma) is that a decision by the ACA not to transfer a datacasting transmitter licence in compliance with a direction of the ABA under subsection 131ACA(3) cannot be subject to an application for reconsideration by the ACA (but an application for review of the decision of the ABA to give the direction to the ACA may be made to the AAT under paragraph 292A(f)). Items 111 and 112 preserve this distinction by providing that a decision of the ACMA to refuse to issue a datacasting transmitter licence otherwise than under paragraph 102B(b), and a decision of the ACMA to refuse to transfer a datacasting transmitter licence otherwise than under paragraph 131ACA(b), may be subject to an application for reconsideration by the ACMA. Items 116 and 118 would provide that an application for review may be made to the AAT of a decision of the ACMA under paragraph 102B(b) or under paragraph 131ACA(b).

Item 110 provides a new heading for Division 1 of Part 5.6 to reflect that Division 1 deals with decisions that are subject to internal reconsideration by the ACMA before an application for review may be made to the AAT.

**Item 113 – Division 2 of Part 5.6 (heading)**

Item 113 would give Division 2 of Part 5.6 a new heading to reflect that Division 2 deals with decisions of the ACMA that are not subject to internal review before AAT review. This means that an application for review may be made to the AAT of a decision of the ACMA under paragraph 102B(b).

**Item 114 – Paragraph 292A(a)**

Item 114 amends paragraph 292A(a) as a consequence of the proposed amendments in items 80 and 111.

Currently, the effect of paragraph 285(eb) and 292A(a) is that a decision by the ACA not to issue a datacasting transmitter licence in compliance with a direction of the ABA under subsection 102B(3) cannot be subject to an application for reconsideration by the ACA but an application for review of the decision of the ABA to give the direction to the ACA may be made to the AAT. Item 114, in conjunction with item 111, preserves this distinction by providing that a decision of the ACMA to refuse to issue a datacasting transmitter licence otherwise than under paragraph 102B(b) may be subject to an application for reconsideration by the ACMA and an application for review may be made to the AAT of a decision of the ACMA under paragraph 102B(b).

**Item 115 – Paragraph 292A(b)**

Item 115 amends paragraph 292A(b) as a consequence of the proposed amendment in item 81 which would result in subsection 106(6A) preventing the ACMA from issuing a datacasting transmitter licence under a price-based allocation system if it is satisfied that the issue of the licence would result in a breach of the BSA control rules, in place of current subsections 106(6A), (6B) and (6C) which would enable the system determined by the ACA to give the ABA the power to give the ACA a direction not to issue a datacasting transmitter licence because the issue of the licence would result in a breach of the BSA control rules.

Currently, the effect of paragraph 292A(b) is that a decision by the ABA to give the ACA a direction not to issue a datacasting transmitter licence because the issue would result in a breach of the BSA control rules may be the subject of an application for review by the AAT. Item 115 would provide a similar ability to seek AAT review of a decision of the ACMA under proposed subsection 106(6A) to refuse to issue a datacasting transmitter licence because the issue of the licence would result in a breach of the BSA control rules.

#### **Item 116 – Paragraph 292A(d)**

Item 116 amends paragraph 292A(d) as a consequence of the proposed amendment in item 92 which would provide that the ACMA may suspend a datacasting licence in the same circumstances in which the ABA may currently give the ACA a direction to suspend a datacasting licence.

Currently, the effect of paragraph 292A(d) is that a decision by the ABA to give the ACA a direction to suspend a datacasting transmitter licence may be the subject of an application for review by the AAT. Item 116 would provide a similar ability to seek AAT review of a decision of the ACMA under proposed subsection 128C(1) to suspend a datacasting transmitter licence.

#### **Item 117 – Paragraph 292A(e)**

Item 117 amends paragraph 292A(e) as a consequence of the proposed amendment in item 92 which would provide that the ACMA may cancel a datacasting licence in the same circumstances in which the ABA may currently give the ACA a direction to cancel a datacasting licence.

Currently, the effect of paragraph 292A(e) is that a decision by the ABA to give the ACA a direction to cancel a datacasting transmitter licence may be the subject of an application for review by the AAT. Item 117 would provide a similar ability to seek AAT review of a decision of the ACMA under proposed subsection 128D(1) to cancel a datacasting transmitter licence.

#### **Item 118 – Paragraph 292A(f)**

Item 118 makes amendments to paragraph 292A(f) as a consequence of the proposed amendment in item 98 which would result in section 131ACA giving the ACMA the ability to transfer a datacasting transmitter licence to a person only if the person is a qualified company and the transfer of the licence would not result in a breach of the BSA control rules, in place of the current section which gives the ABA the power to give the ACA a direction not to transfer a datacasting transmitter licence because the transfer of the licence would result in a breach of the BSA control rules.

Currently, the effect of paragraphs 285(ma) and 292A(f) is that a decision by the ACA not to transfer a datacasting transmitter licence in compliance with a direction of the ABA under subsection 131ACA(3) cannot be subject to an application for reconsideration by the ACA but an application for review of the decision of the ABA to give the direction to the ACA may be made to the AAT. Item 118, in conjunction with

item 112, preserves this distinction by providing that an application for review may be made to the AAT of a decision of the ACMA under paragraph 131ACA(b).

***Remuneration and Allowances Act 1990***

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

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

Items 119 and 120 repeal two table rows in Part 3 of the table in clause 3 of Schedule 2 to the *Remuneration and Allowances Act 1990*. These rows refer to the Chairman of the Australian Broadcasting Tribunal and the Chairperson of the Australian Telecommunications Authority and no longer serve any purpose because the Australian Broadcasting Tribunal and the Australian Telecommunications Authority no longer exist. It is not necessary to add the Australian Communications and Media Authority to the table in Schedule 2 because clause 28 of the ACMA Bill provides that a member or associate member of the ACMA is to be paid the remuneration that is determined by the Remuneration Tribunal.

***Spam Act 2003***

**Item 121 – Section 4 (definition of ACA)**

**Item 122 – Section 4**

Items 121 and 122 repeal the definition of ‘ACA’ in section 4 of the Spam Act and insert a new definition of ‘ACMA’ in that section as a consequence of the merger of the ACA and the ABA to form the ACMA.

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

Item 123 repeals the reference to the ‘Chairman’ in paragraph (a) of the definition of ‘authorised person’ in clause 2 of Schedule 3 to the Spam Act (which is a reference to the Chairman on the ACA) and replaces it with a reference to ‘Chair’ (being a reference to the Chair of the ACMA).

***Special Broadcasting Service Act 1991***

**Item 124 – Section 3 (definition of ABA)**

**Item 125 – Section 3**

Items 124 and 125 repeal the definition of ‘ABA’ in section 3 of the *Special Broadcasting Service Act 1991* and insert a new definition of ‘ACMA’ in that section as a consequence of the merger of the ACA and the ABA to form the ACMA.

**Item 126 – Paragraph 10(1)(j)**

Item 126 amends paragraph 10(1)(j). Paragraph 10(1)(j) provides that it is a duty of the SBS Board to develop codes of practice relating to programming matters and, if the



SBS has the function of providing a datacasting service, to that service. The Board is required to notify the codes of practice to the Australian Broadcasting Authority. Item 126 amends paragraph 10(1)(j) by replacing the reference to the ‘Australian Broadcasting Authority’ with a reference to the ‘Australian Communications and Media Authority’.

***Telecommunications Act 1997***

**Item 127 – Section 5**

Section 5 of the Telecom Act contains a simplified outline of that Act. Item 127 replaces the reference to the Australian Communications Authority (ACA) in that section with a reference to the Australian Communications and Media Authority (ACMA).

**Item 128 – Section 7 (definition of ACA)**

**Item 129 – Section 7 (definition of ACA’s telecommunications functions)**

**Item 130 – Section 7 (definition of ACA’s telecommunications powers)**

**Item 131 – Section 7**

**Item 132 – Section 7**

**Item 133 – Section 7**

As a consequence of the proposed merger of the ACA and the ABA to form the ACMA, items 128, 129, 130, 131, 132 and 133 repeal the definitions of ‘ACA’, ‘ACA’s telecommunications functions’ and ‘ACA’s telecommunications powers’ and replace them with definitions of ‘ACMA’, ‘ACMA’s telecommunications functions’ and ‘ACMA’s telecommunications powers’. The telecommunications functions and powers of the ACMA would be the same as the ACA’s telecommunications functions and powers.

**Item 134 – Section 7 (definition of *Chairman*)**

Item 134 repeals the definition of ‘Chairman’ in section 7 of the Telecom Act as it is defined to mean the Chairman of the ACA. It is not necessary to insert a definition of ‘Chair’ (to mean the Chair of the ACMA) in section 7, as this term would only be referred to in section 491 of the Telecom Act. It would be clear that the reference to ‘Chair’ in that section is a reference to the Chair of the ACMA, just as it is clear that the reference to ‘Chairperson’ in section 501 is a reference to the Chairperson of the Australian Competition and Consumer Commission.

**Item 135 – Paragraph 78(1)(a)**

**Item 136 – Subsection 84(3)**

**Item 137 – Subsection 136(3)**

**Item 138 – Section 392**

**Item 139 – Subsection 403(3)**

**Item 140 – Section 425**

Items 135, 136, 137, 138, 139 and 140 make minor amendments to paragraph 78(1)(a), subsection 84(3), subsection 136(3), section 392, subsection 403(3) and section 425,

which currently refer to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 141 – Subsection 440(4)**

Item 141 amends subsection 440(4) by replacing the reference to section 12 of the ACA Act in that subsection with a reference to clause 14 of the ACMA Bill. Section 12 of the ACA Act allows the Minister to give written directions to the ACA in relation to the performance of its functions and the exercise of its powers. Clause 14 provides an equivalent power in relation to the ACMA.

**Item 142 – After subsection 441(1)**

**Item 143 – Subsection 441(2)**

**Item 144 – Subsection 441(3)**

**Item 145 – Subsection 441(4)**

Item 142 inserts a new subsection after subsection 441(1), items 143 and 144 amend subsections 441(2) and (3) and item 145 repeals subsection 441(4) and replaces it with new proposed subsection 441(4).

Subsection 441(1) of the Telecom Act enables the ACA to delegate to a person any or all of its powers or functions under Division 9 of Part 21 of the Telecom Act (which deals with cabling providers). However, the ACA is not able to delegate the power to refuse an application for a cabling licence, the power conferred by subsection 432(3) (which enables the ACA to impose additional conditions on a cabling licence or to vary or revoke any condition of a cabling licence), the power to cancel or suspend a cabling licence or the power to make a declaration under section 439 (which enables the ACA to declare that Division 9, or certain provisions in Division 9, do not apply to specified kinds of cabling licences) (ss.441(2)). Subsection 441(3) provides that the delegate is, in the exercise of the delegated function or power, subject to the direction of the ACA. Subsection 441(4) provides that the delegation power in section 441 is in addition to the general delegation power in section 49 of the ACA Act, which enables the ACA to delegate any or all of functions and powers (apart from the power to make a disallowable instrument) to a member or associate member of the ACA, a member of staff of the ACA or a person whose services have been made available to the ACA by another Commonwealth authority.

The current references to the ACA in section 441 would be changed to references to the ACMA by item 1 in Schedule 2 to the Bill.

In addition, the amendments items 142, 143, 144 and 145 take account of the possibility that the ACMA will be able to delegate any or all of its functions and powers to a Division under clause 50 of the ACMA Bill. Proposed subsection 441(1A) would provide that if the ACMA has delegated to a Division a function or power under Division 9, the Division may delegate the function or power to a person and subclauses 52(2) to (6) of the ACMA Bill would have effect as if the delegation were a delegation made under clause 52 of the ACMA Bill (see item 142). This would mean that the delegation would continue in force despite a change in membership of the Division and the delegation could be varied or revoked by the Division, irrespective of whether or not there has been a change in membership of the Division (subclauses 52(2) and (3)). A

member, or associate member in certain circumstances, of the Division would be able to sign a certificate stating any matter with respect to the delegated function and this would constitute prima facie evidence of that matter which could be rebutted by evidence to the contrary (subcl. 52(4)). A document purporting to be such a certificate will be taken to be such and to have been duly given unless the contrary is established (subcl. 52(5)). Sections 34AA, 34AB and 34A of the AIA would apply to a delegation under subclause 441(1A) by the Division in the same way that those provisions would apply to a delegation by ACMA to the Division (subcl. 52(6)).

The limits on the ability of the ACMA to delegate a function or power under subsection 441(1) would also apply to the ability of a Division to delegate a power or function under Division 9 that has been delegated to it by the ACMA (subcl. 441(2) – see item 143).

Item 144 would provide that a delegate would need to comply with the directions of the ACMA, if the delegation to the delegate was under subsection 441(1), or the Division that delegated the power, if the delegation to the delegate was under proposed subsection 441(1A).

New proposed subsection 441(4) would provide that the powers conferred by the ACMA under subsection 441(1), and the powers conferred on a Division of the ACMA under proposed subsection 441(1A), are in addition to clauses 50, 51 and 52 of the ACMA Bill, the general delegation and sub-delegation provisions in that Bill (see item 145).

**Item 146 – Subsection 442(3)**

**Item 147 – Paragraph 457(1)(a)**

**Item 148 – subsection 465(5)**

Items 146, 147 and 148 make minor amendments to subsection 442(3), paragraph 457(1)(a) and subsection 465(5), which currently refer to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 149 – After subsection 467(1)**

**Item 150 – Subsection 467(2)**

**Item 151 – Subsection 467(3)**

**Item 152 – At the end of section 467**

Item 149 inserts a new subsection after subsection 467(1), items 150 and 151 amend subsections 467(2) and (3) and item 152 inserts a new proposed subsection 467(4).

Subsection 467(1) allows the ACA to delegate, in writing, any or all of the powers conferred by the numbering plan to a body corporate. If the ACA delegates such a power, the delegate is subject to the directions of the ACA in the exercise of the power (ss.467(2)). Before giving such a direction, the ACA is required to consult with the ACCC (ss.467(3)).

The current references to the ACA in section 467 would be changed to references to the ACMA by item 1 in Schedule 2 to the Bill.

The amendments made by items 149, 150, 151 and 152 take account of the possibility that the ACMA will be able to delegate any or all of the powers under the numbering plan to a Division under clause 50 of the ACMA Bill. Proposed subsection 467(1A) would provide that if the ACMA has delegated to a Division a power under the numbering plan, the Division may delegate the power to a body corporate and subclauses 52(2) to (6) of the ACMA Bill would have effect as if the delegation were a delegation made under clause 52 of the ACMA Bill (see item 149). This would mean that the delegation would continue in force despite a change in membership of the Division and the delegation could be varied or revoked by the Division, irrespective of whether or not there has been a change in membership of the Division (subclauses 52(2) and (3)). A member, or associate member in certain circumstances, of the Division would be able to sign a certificate stating any matter with respect to the delegated power and this would constitute prima facie evidence of that matter which could be rebutted by evidence to the contrary (subcl. 52(4)). Sections 34AA, 34AB and 34A of the AIA would apply to a delegation under subclause 467(1A) by the Division in the same way that those provisions would apply to a delegation by ACMA to the Division (subcl. 52(6)).

Item 150 would provide that a delegate would need to comply with the directions of the ACMA, if the delegation to the delegate was under subsection 467(1), or the Division that delegated the power, if the delegation to the delegate was under proposed subsection 467(1A).

Item 151 would amend subsection 467(3) to require the ACMA, or the Division, as the case requires, to consult the ACCC before giving a direction to a delegate under subsection 467(2).

New proposed subsection 441(4) would provide that the powers conferred by the ACMA under subsection 467(1), and the powers conferred on a Division of the ACMA under proposed subsection 467(1A), are in addition to clauses 50, 51, 52 of the ACMA Bill, the general delegation and sub-delegation provisions in that Bill (see items 145 and 152).

### **Item 153 – Subsection 489(3)**

Item 153 makes a minor amendment to subsection 489(3), which currently refers to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

### **Item 154 – Paragraph 491(3)(a)**

### **Item 155 – Paragraph 491(3)(b)**

### **Item 156 – Subsection 491(4)**

### **Item 157 – Subsection 491(5)**

Subsection 491(1) allows the ACA to hold hearings for the purpose of a public inquiry. At the hearing, the ACA may be constituted by a member or members determined in writing by the Chairman of the ACA or, if the functions and powers of the ACA in

relation to the hearing have been delegated to a person under section 49 of the ACA, that person. The Chairman presides at all hearings at which he or she is present (ss.491(4)) and if at a hearing the Chairman is not present, and the ACA is not constituted by a person to whom the ACA's functions and powers in relation to the hearing have been delegated, the member specified in the instrument of appointment under paragraph 491(3)(a) as the member who is to preside at the hearing presides.

As a consequence of the proposed merger of the ACA and ABA to form the ACMA, item 1 in Schedule 2 to the Bill would change the references to the ACA in section 491 to references to the ACMA. Items 154, 156 and 157 would change the references to the 'Chairman' to references to the 'Chair'. It would be clear that the reference to 'Chair' in section 491 is a reference to the Chair of the ACMA, just as it is clear that the reference to 'Chairperson' in section 501 is a reference to the Chairperson of the Australian Competition and Consumer Commission.

Items 155 and 157 would take into account the possibility that the ACMA may delegate to a Division, under clause 50 of the ACMA Bill, the functions and powers of the ACMA in relation to a hearing, or delegate its functions and powers to a member, associate member or member of staff of the ACMA under clause 51 of the ACMA Bill. In addition, those items would also reflect the possibility that a Division may itself delegate those delegated functions and powers to a member, associate member or member of staff of the ACMA under clause 52 of the ACMA Bill. Item 155 therefore amends paragraph 491(3)(b) to provide that, if the functions or powers of the ACMA in relation to a hearing have been delegated to a person or to a Division, the ACMA is constituted at the hearing by that person or that Division. Item 157 would amend subsection 491(5) to specify who is to preside at a hearing if the Chair is not present. If the Chair has determined under paragraph 491(3)(a) that the ACMA is to be constituted by a particular member or members, the member specified by the Chair as the presiding member would preside at the hearing (para. 491(5)(a)). If the ACMA has delegated its functions or powers in relation to a hearing to a person, then that person would preside at the hearing (para. 491(5)(b)) and if the ACMA has delegated its functions or powers to a Division, a member of the Division chosen by the Division to preside would preside at the hearing (para.491(5)(c)).

**Item 158 – Clause 23 of Schedule 3**

**Item 159 – Subclause 25(5) of Schedule 3**

Items 158 and 159 make minor amendments to clause 23 and subclause 25(5) of Schedule 3 to the Telecom Act, which currently refer to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 160 – Clauses 56, 57, 58 and 59 of Schedule 3**

Item 160 repeals clauses 56, 57, 58 and 59 of Schedule 3 to the Telecom Act as these provisions are spent. These clauses were transitional provisions that provided for the continued application of the former *Telecommunications Act 1991* to certain activities of telecommunications carriers in relation to land access and the installation of infrastructure for a transitional period between 1 July 1997 and 30 September 1997 or 31 December 1997.

***Telecommunications (Consumer Protection and Service Standards) Act 1999***

**Item 161 – Subsection 21(3)**

Section 21 of the TCPSS Act provides for the continued existence of the Universal Service Account. The Universal Service Account is a Special Account within the meaning of the FMA Act. Subsection 21(3) provides that the Universal Service Account is to be administered by the Department of Communications, Information Technology and the Arts or the ACA, if the ACA is a prescribed agency within the meaning of the FMA Act.

Item 161 repeals subsection 21(3) replaces it with new proposed subsection 21(3). Proposed subsection 21(3) would provide that the Universal Service Account is to be administered by the ACMA. This is because the ACMA would be a prescribed agency within the meaning of the FMA Act (see item 64).

**Item 162 – Subsection 23(3)**

Item 162 makes a minor amendment to subsection 23(3), which currently refers to section 53 of the ACA Act, to refer to clause 60 of the ACMA Bill. Clause 60 of the ACMA Bill is equivalent to section 53 of the ACA Act.

**Item 163 – Subsection 124(5)**

Item 163 amends subsection 124(5) by replacing the reference to section 12 of the ACA Act in that subsection with a reference to clause 14 of the ACMA Bill. Section 12 of the ACA Act allows the Minister to give written directions to the ACA in relation to the performance of its functions and the exercise of its powers. Clause 14 provides an equivalent power in relation to the ACMA.

**Item 164 – Subsection 158D(2)**

**Item 165 – Subsection 158F(1)**

Items 164 and 165 make minor amendments to change the reference to the ‘ACA and the Australian Broadcasting Authority’ in subsection 158D(2) to a reference to the ACMA and the reference to the ‘Australian Broadcasting Authority’ in subsection 158F(1) to a reference to the ACMA.

***Telstra Corporation Act 1991***

**Item 166 – Section 3 (definition of ACA)**

**Item 167 – Section 3**

Items 166 and 167 repeal the definition of ‘ACA’ in section 3 of the Telstra Corporation Act and insert a new definition of ‘ACMA’ in that section as a consequence of the merger of the ACA and the ABA to form the ACMA.

### ***Trade Practices Act 1974***

**Item 168 – Section 151AB (definition of ACA)**

**Item 169 – Section 151AB**

**Item 170 – Section 152AC (definition of ACA)**

**Item 171 – Section 152AC**

Items 168, 169, 170 and 171 repeal the definition of ‘ACA’ in sections 151AB and 152AC of the Trade Practices Act and insert a new definition of ‘ACMA’ in those sections as a consequence of the merger of the ACA and the ABA to form the ACMA.

### **Schedule 2 – General amendments to change abbreviated references**

Schedule 2 to the Bill contains general amendments to change abbreviated references to the ACA and the ABA to an abbreviated reference to the ACMA in the *Australian Broadcasting Corporation Act 1983*, the *Broadcasting Services Act 1992*, the *Interactive Gambling Act 2001*, the *Radiocommunications Act 1992*, the *Radiocommunications Taxes Collection Act 1983*, the *Spam Act 2003*, the *Special Broadcasting Service Act 1991*, the *Telecommunications Act 1997*, the *Telecommunications (Consumer Protection and Service Standards) Act 1999*, the *Telstra Corporation Act 1991* and the *Trade Practices Act 1974*. References in Acts to the Australian Communications Authority or the Australian Broadcasting Authority are amended by Schedule 1 to the Bill. Schedule 1 to the Bill also contains amendments to provisions in Acts that currently provide for interaction between the ACA and ABA (for example, section 31 of the *Radiocommunications Act 1992* - see item 75 of Schedule 1).

### **Schedule 3 – Other amendments**

Schedule 3 to the Bill would amend references to the ABA and the ACA in provisions of Bills that will be before the Parliament at or close to the time of the introduction of this Bill, in the event that those provisions are passed by the Parliament, as well as amending references to the ABA in certain provisions of the Criminal Code that are not yet in force. Schedule 3 would replace references to the Australian Broadcasting Authority in amendments to the *Criminal Code Act 1995* made by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004*, which will commence on 1 March 2005, with references to the Australian Communications and Media Authority. Similar amendments would also be made to references to the Australian Communications Authority in proposed amendments to the *Ombudsman Act 1976* contained in the Postal Industry Ombudsman Bill 2004. In addition, Schedule 3 would amend current references to the Australian Communications Authority and the Australian Broadcasting Authority in the Ombudsman Act which would not be amended by the Postal Industry Ombudsman Bill.

### ***Criminal Code Act 1995***

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

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

Paragraph 474.21(4)(a) of the *Criminal Code*, in the *Criminal Code Act 1995* (as proposed to be amended by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* with effect from 1 March 2005), relating to defences in respect of child pornography material, includes a reference to the ABA. Paragraph 474.24(4)(a) of the *Criminal Code*, in the *Criminal Code Act 1995* (as proposed to be amended by the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* with effect from 1 March 2005), relating to defences in respect of child abuse material, also includes a reference to the ABA. Items 1 and 2 would replace the references to the ABA in these paragraphs to references to the ACMA. The effect of item 4 of the table in clause 2 of the Bill would be that items 1 and 2 would commence on the later of the time that the ACMA is established by the ACMA Bill or the day on which item 1 of Schedule 1 to the *Crimes Legislation Amendment (Telecommunications Offences and Other Measures) Act (No. 2) 2004* commences ie. 1 March 2005.

### ***Ombudsman Act 1976***

#### **Item 3 – Subsection 3(1) (definition of ACA)**

#### **Item 4 – Subsection 3(1)**

Subsection 3(1) of the Ombudsman Act (as proposed to be amended by the Postal Industry Ombudsman Bill 2004) would define ‘ACA’ to mean the Australian Communications Authority. Items 3 and 4 of Schedule 3 would repeal the proposed definition of the ACA in subsection 3(1), and would substitute a new definition of ‘ACMA’ to mean the Australian Communications and Media Authority. The effect of item 5 of the table in clause 2 of the Bill would be that items 3 and 4 would commence on the later of the establishment of the ACMA or the commencement of item 2 of Schedule 1 to the Postal Industry Ombudsman Bill. However, in the event that the Postal Industry Ombudsman Bill does not commence, items 3 and 4 would not commence at all.

#### **Item 5 – Subsection 6(4D)**

#### **Item 6 – Subsection 6(4E)**

Section 6 of the Ombudsman Act relates to the Ombudsman’s discretion not to investigate certain complaints. Subsections 6(4D) and (4E) include references to the ACA. Items 5 and 6 would replace the references to ‘ACA’ in subsections 6(4D) and (4E) with references to ‘ACMA’. Items 5 and 6 would commence at the same time that the ACMA is established (see item 6 of the table in clause 2 of the Bill).

#### **Item 7 – Subsection 6(4F)**

Item 7 repeals subsection 6(4F) of the Act (which defines the ACA) and replaces it with a new subsection which provides a definition of ‘ACMA’. Item 7 of the table in clause 2 provides that item 7 would commence at the same time that the ACMA is established.



However, as item 10 of Schedule 1 to the Postal Industry Ombudsman Bill would repeal subsection 6(4F) if that item commences, if the Postal Industry Ombudsman Bill commences before the ACMA is established, item 7 would not commence at all.

#### **Item 8 – Subsection 6(6)**

Subsection 6(6) of the Ombudsman Act includes references to the Australian Broadcasting Authority. Item 8 would omit references in subsection 6(6) to ‘Australian Broadcasting Authority’ and substitute references to ‘Australian Communications and Media Authority’. Item 8 would commence at the same time that the ACMA is established (item 8 of the table in clause 2 of the Bill).

#### **Item 9 – Subsection 19ZE(7)**

#### **Item 10 – Subsection 19ZE(8)**

#### **Item 11 – Subsection 19ZE(9)**

Section 19ZE of the Ombudsman Act (as proposed to be amended by item 11 of Schedule 1 to the Postal Industry Ombudsman Bill 2004) relates to fees that may be charged by the Postal Industry Ombudsman. Proposed subsections 19ZE(7) and (9) would include references to ‘ACA’. Items 9 and 11 would omit references to the ‘ACA’ in those proposed subsections and would replace them with references to the ‘ACMA’. Proposed subsection 19ZE(8) would require the ACA to bank any amount that it receives under proposed subsection 19ZE(7) in an official account within the meaning of the FMA Act. As the members and staff of the ACMA, as well as any person whose services have been made available to the ACMA under clause 55, would constitute a prescribed agency for the purposes of the FMA Act, subsection 19ZE(8) would be unnecessary. Item 10 would therefore repeal subsection 19ZE(8).

The effect of item 9 of the table in clause 2 would be that items 9, 10 and 11 would commence on the later of the time that the ACMA is established or the commencement of item 11 to Schedule 1 to the Postal Industry Ombudsman Bill. However, if item 11 of Schedule 1 to the Postal Industry Ombudsman Bill does not commence, items 9, 10 and 11 would not commence at all.

### **Schedule 4 – Transitional provisions**

Schedule 4 to the Bill contains transitional provisions, including provisions dealing with the transfer of assets and liabilities of the ACA and the ABA to the Commonwealth, and provisions for the continuing operation of ACA and ABA instruments after the commencement of the Bill.

#### **Part 1 – Preliminary**

##### **Item 1 – Definitions**

Item 1 sets out the definitions of key terms used in Schedule 4 to the Bill. In particular, item 1 provides a definition of ‘transition time’ for the purposes of Schedule 4 to mean the commencement of clause 6 of the ACMA Bill (which would establish the ACMA).

Clause 6 of the ACMA Bill would commence on proclamation or 1 July 2005 if it has not commenced by that date (item 2 of the table in clause 2 of the ACMA Bill).

Item 1 also provides definitions of ‘asset’ and ‘liability’ for the purposes of Schedule 4. These terms are referred to in items 2, 3 and 5. The definition of ‘assets’ is broad in scope and would cover any estate or interest in real or personal property, whether actual, contingent or prospective. It would also cover any right, power, privilege or immunity, whether actual, contingent or prospective. However, ‘asset’ is defined to exclude any right, power, privilege or immunity conferred by an Act or by regulations or other subordinate legislation made under an Act. Similarly, ‘liability’ is defined to mean any liability, duty or obligation, whether actual, contingent or prospective but would not include a liability, duty or obligation imposed by an Act or by regulations or other subordinate legislation made under an Act. The exclusions in the definitions of ‘asset’ and ‘liability’ are intended to ensure that statutory rights, powers, privileges and immunities, liabilities, duties and obligations of the ACA and ABA would become those of the ACMA as a result of the consequential amendments made by Schedules 1, 2 and 3 and item 10 of Schedule 4 to the Bill, and would not be dealt with by items 2 and 3.

## **Part 2 – Assets, liabilities and legal proceedings**

### **Item 2 – Vesting of assets of the ABA and the ACA**

The effect of item 2 is that on the day on which clause 6 of the ACMA Bill commences, the assets of the ABA and ACA (as are covered by the definition of ‘asset’ in item 1), will automatically become the Commonwealth’s assets without the need for any conveyance, transfer or assignment. The Commonwealth will become the ACA’s and the ABA’s successor in law in relation to those assets. The assets of the ACA and ABA would vest in the Commonwealth because the ACMA could not hold the assets covered by item 2 (see clause 12 of the ACMA Bill). However, the operation of item 2 would not affect any statutory rights of the ACA and ABA vesting in the ACMA (see the definition of ‘asset’ in item 1).

### **Item 3 – Vesting of liabilities of the ABA and ACA**

The effect of item 3 is that on the day on which clause 6 of the ACMA Bill commences, the liabilities of the ABA and ACA (as are covered by the definition of ‘liability’ in item A1), will automatically become the Commonwealth’s liabilities without the need for any conveyance, transfer or assignment. The Commonwealth will become the ACA’s and the ABA’s successor in law in relation to those liabilities.

### **Item 4 – Certificates relating to vesting of land**

Item 4 provides for a simplified procedure in connection with the registration of land vested in the Commonwealth as a consequence of the vesting of the ACA’s or the ABA’s assets in the Commonwealth under Schedule 4 to the Bill.

This procedure is as follows:

- The Minister signs a certificate identifying the land and stating that a right, title or interest in the land (see the definition of ‘land’ in item 1) has become vested in the Commonwealth under Schedule 4 to the Bill.
- The certificate is lodged with a relevant State or Territory land registration official (such as the Registrar of Titles).
- The land registration official may register the matter in the same way as, or in a way similar to the way that, other dealings in land of that kind are registered and may deal with and give effect to the Minister’s certificate.

### **Item 5 – Certificates relating to vesting of assets other than land**

Item 5 provides for a simplified procedure in connection with the registration of assets other than land vested in the Commonwealth as a consequence of the vesting of the ACA’s or the ABA’s assets in the Commonwealth under Schedule 4 to the Bill.

This procedure is as follows:

- The Minister signs a certificate identifying the asset and stating that a right or interest in the asset (see the definition of ‘asset’ in item 1) has become vested in the Commonwealth under Schedule 4 to the Bill.
- The certificate is lodged with a relevant State or Territory official responsible for the registration of the asset (the ‘asset official’ as defined in item 1).
- The asset official may deal with the certificate in the same way as, or in a way similar to the way that, other dealings in relevant assets are dealt with and make such entries in a register as are necessary having regard to the effect of Schedule 4 to the Bill.

### **Item 6 – Substitution of the ACMA or the Commonwealth as a party to pending proceedings**

Subitem 6(1) provides for the substitution from the day on which clause 6 of the ACMA Bill commences (see the definition of ‘transition time’ in item 1) of the ACMA for the ABA and the ACA as a party to proceedings relating to the ABA and the ACA that were pending in any court or tribunal before that day. However, if the proceedings were related to proceedings taken by the ABA or the ACA in the exercise of a right that is vested on the Commonwealth by item 2 (for example, a right in relation to property), or proceedings taken against the ABA or the ACA in respect of a liability that is vested in the Commonwealth by item 3, the Commonwealth will be substituted for the ABA or the ACA from the transition time as a party to the proceedings (subitem 6(2)).

Subitem 6(3) would allow regulations to determine that either subitem 6(1) or (2) applies in relation to a particular proceeding or class of proceeding rather than the other. This would enable a situation to be addressed where it is more appropriate for the

Commonwealth to be substituted in proceedings for the ABA or the ACA instead of the ACMA, or vice versa.

### **Item 7 – Transfer of custody of ABA and ACA records**

Item 7 provides that any records or documents that were in the custody of the ABA or the ACA immediately before the day on which clause 6 of the ACMA Bill commences (the ‘transition time’ – see item 1) are to be transferred to the custody of the ACMA from that day.

## **Part 3 – References to, and things done by or in relation to, ABA or ACA**

### **Item 8 – References in instruments to ABA or ACA**

Subitems 8(1) and (2) provide for the continuing effect, from the day on which clause 6 of the ACMA Bill commences (the ‘transition time’ – see item 1), of an instrument that is in force before the day on which the ACMA is established and that:

- was made by the ABA or the ACA; or
- was an instrument to which the ABA or the ACA was a party; or
- that was given to, or in favour of, the ABA or the ACA; or
- was an instrument under which any right or liability accrues or may accrue to the ABA or the ACA; or
- in which a reference is made to the ABA or the ACA,

as if a reference in that instrument to the ABA or the ACA (whether in full or in abbreviated form) were a reference to the ACMA. However, if the reference is to the ACA or the ABA as an entity with a particular power or capacity that the ACMA would not have (because of clause 12 of the ACMA Bill), the reference has effect as if it were a reference to the Commonwealth (subitem 8(3)).

Subitem 8(5) provides a non-exhaustive list of instruments. Instruments would include, but not be limited to, regulations, declarations, determinations, directions, licences, applications and standards, but would not include an Act or instruments made under an ‘Imposition Act’ as defined in item 1). An instrument would also include a contract or other legal document that refers to the ABA or the ACA. Subitem 8(3) would apply to references to the ABA or the ACA in a contract because the ACMA will not have the power to enter into a contract.

Instruments made under Imposition Acts are covered by transitional provisions in the Datacasting Charge (Imposition) Amendment Bill 2004, the Radiocommunications (Receiver Licence Tax) Amendment Bill 2004, the Radiocommunications (Spectrum Licence Tax) Amendment Bill 2004, the Radiocommunications (Transmitter Licence Tax) Amendment Bill 2004, the Radio Licence Fees Amendment Bill 2004, the Telecommunications (Carrier Licence Charges) Amendment Bill 2004, the

Telecommunications (Numbering Charges) Amendment Bill 2004 and the Television Licence Fees Amendment Bill 2004.

Subitem 8(4) would allow regulations to determine that either subitem 8(2) or (3) applies in relation to a particular reference or class of references rather than the other subitem. This would enable a situation to be addressed where it is more appropriate for an instrument to have effect as if a reference to the ACA or the ABA in that instrument is a reference to the Commonwealth instead of the ACMA, or vice versa.

### **Item 9 – Transfer of appropriated money**

Item 9 provides for references to the ABA and the ACA in an Appropriation Act (as defined in subitem 9(2)) to be read as references to the ACMA. This would enable money appropriated to the ACA and the ABA in an Appropriation Act to be appropriated to the ACMA. This provision is required because item 8 does not apply to references to the ACA and the ABA in Acts.

### **Item 10 – Things done by, or in relation to, the ABA or ACA etc.**

Item 10 provides for things done by, or in relation to, the ACA or the ABA, to be taken to have been done by, or in relation to, the ACMA. For example, if immediately before the transition time a person had made an application to the ACA for a carrier licence and the ACA had not yet decided whether to grant a carrier licence, at the transition time, the application will be taken to have been given to the ACMA and the ACMA will be able to decide whether to grant the carrier licence. The time limits for making a decision on an application in section 59 of the Telecom Act would remain unchanged and the ACMA would need to make a decision on the application by the same deadline day by which the ACA would have been required to make a decision before a deemed refusal to grant a licence would arise. Similarly, a carrier licence granted by the ACA, or a broadcasting licence granted by the ABA under the BSA, will be taken to have been granted by the ACMA at the transition time.

However, in the case where the thing done was of a kind that could not be done by or in relation to the ACMA, the thing done will be taken to have been done by the Commonwealth. For example, the entry into an agreement by the ABA or the ACA will be deemed to have been done by the Commonwealth and the property in the contract will be vested in the Commonwealth under item 2.

Subitem 10(4) would allow regulations to determine that either subitem 10(2) or (3) applies in relation to a particular thing done or class of things done rather than the other subitem. The regulations would also be able to clarify how a thing has effect as mentioned in subitem 10(2) or (3).

### **Item 11 – Continuation of inquiries, investigations and hearings**

Item 11 provides for the ACMA to continue an inquiry, investigation or hearing that the ACA or ABA was holding or conducting (and that had not ended or been discontinued) at the time that the ACMA is established. The ACMA is to continue the relevant inquiry, investigation or hearing in accordance with the provisions as amended by the Bill that apply to that inquiry, investigation or hearing. Subitem 11(2) provides that the

ACMA is to take whatever action under or for the purposes of the relevant proceedings as is necessary for the continuation of the proceeding. For example, if immediately before the transition time the ACA is holding a hearing under section 491 of the Telecom Act, at the transition time the ACMA would continue the hearing (and anything done for the purposes of the hearing before the transition would be taken to have been done for the purposes of the hearing as continued by the ACMA – subitem 11(3)) and would need to take whatever action is required to enable the hearing to continue (this would include the Chair of the ACMA determining how the ACMA is to be constituted for the purposes of the hearing). However, subitem 11(2) would not affect any power or discretion of the ACMA not to continue with the hearing.

Subitem 11(2) is a transitional provision similar in nature to item 10, except that it deals specifically with particular types of things done by or in relation to the ABA or ACA. Subitem 11(4) therefore provides that item 11 has effect despite item 10 but does not otherwise limit that item.

### **Item 12 – Continued effect of certain instruments made under the repealed provisions**

Item 12 provides for the continued effect of instruments made or given under a provision in the ACA Act (which will be repealed by item 5 in Schedule 1 to the Bill) as though that instrument had been made or given under the provision in the ACMA Bill that will be equivalent to the repealed provision. For example, a determination made by the ACA under subsection 53(1) would have effect as though it had been made by the ACMA under subclause 60(1) of the ACMA Bill. Item 12 also provides for the continued effect of a determination that was made by the ABA under clause 61 of Schedule 4 to the BSA (which will be repealed by item 54 in Schedule 1 to the Bill) as if it had been made by the ACMA under subclause 60(1) of the ACMA Bill.

As current subsection 31(1) of the Radcoms Act will be repealed by item 75 in Schedule 1 to the Bill, subitem 12(3) provides that a designation made under that subsection will have effect from the transition time as though it had been made under new proposed subsection 31(1). Similarly, an agreement in force under subsection 31(2) of the Radcoms Act, which will be repealed by item 75 and replaced with a new proposed subsection that allows the ACMA to make a determination, would have effect as if it were a determination made under proposed subsection 31(2) (subitem 12(4)).

As current subsection 128C(2) of the Radcoms Act would be repealed by item 92 in Schedule 1 to the Bill, subitem 12(5) would provide for the continued effect of a suspension in force under that subsection to have effect from the transition time as if it were a suspension under new proposed subsection 128C(1).

### **Item 13 – Saving advisory committees etc.**

Item 13 provides that any advisory committee established by the ACA under s. 51 of the ACA Act that is in existence immediately before the date on which the ACMA is established will continue in existence from that time as if it were established under the ACMA Bill. (Clause 58 of the ACMA Bill would allow the ACMA to establish advisory committees to assist it in performing any of its functions.)

Each appointment to an existing committee and each direction relating to the way in which the committee is to carry out its functions and conduct its meetings that was in force immediately before the date on which the ACMA is established will be taken to have been made or given by the ACMA on that date under clause 58 of the ACMA Bill.

#### **Part 4 – Reporting obligations**

##### **Item 14 – First annual report for ACMA**

The effect of item 14 is that if the ACMA is established in April, May or June of a financial year (referred to as the ‘first year’ in item 14), the ACMA would not need to prepare and provide to the Minister as soon as practicable after 30 June of that financial year, an annual report for the first year under clause 57 of the ACMA Bill. However, when the ACMA prepares its first annual report, the report would need to cover the period commencing on the ACMA’s establishment and ending at the end of the next financial year. For example, if the ACMA were established on 1 April 2005 (as a result of clauses 3 to 68 of the ACMA Bill having been proclaimed to commence on that day), ACMA’s first annual report would need to relate to the period 1 April 2005 to 30 June 2006.

However, if the ACMA were established on 1 March 2005, it would need to prepare a report on its operations for the period commencing on 1 March 2005 and ending on 30 June 2005 as soon as practicable after 30 June 2005, as required by clause 57 of the ACMA Bill.

If the ACMA is established on 1 July 2005, item 14 will have no application and the ACMA’s first annual report would relate to the period 1 July 2005 to 30 June 2006.

##### **Item 15 – Final annual report for the ABA and the ACA**

The members of the ABA and the ACA are currently required under section 9 of the CAC Act to prepare an annual report in relation to the operations of the ABA or the ACA. In the case of the ACA, the annual report must also deal with the matters specified in section 50 of the ACA Act.

If the ACMA is established on 1 July 2005, the ACMA would need to prepare an annual report for the ACA and the ABA for the 2004-2005 financial year. If the ACMA is established in the financial year that started on 1 July 2004, it would need to prepare an annual report for the ACA and the ABA for the period starting on 1 July 2004 and ending immediately before the transition time (the day on which the ACMA is established).

## **Part 5 – Miscellaneous**

### **Item 16 – Protecting ACA’s names and symbols**

Item 16 provides for the protection given to the ACA name, acronym and symbol under section 55 of the ACA Act to continue to apply for 12 months after the date on which the ACMA is established or such longer period (if any) as is specified in the regulations.

The effect of the continued operation of section 55 of the ACA Act is as follows:

- Unless the ACMA agrees in writing, a person will not be permitted to use the name ‘Australian Communications Authority’ or the acronym ‘ACA’ or a closely similar name or acronym in trade or commerce or as part of the name of any firm, body, premises, vehicle, ship or craft, including aircraft. A similar prohibition will apply to the use of the official symbol of the ACA (ACA Act, subsections 55(1), (2A) and (7)).
- An individual who intentionally contravenes this prohibition will be guilty of an offence punishable on conviction by a fine not exceeding 30 penalty units or, in the case of a body corporate, by a fine not exceeding 150 penalty units (ACA Act, subsection 55(2) and subsection 4B(3) of the *Crimes Act 1914*).
- Nothing in subsection 55(1) will limit anything else in that subsection (s. 55(3)).
- The prohibition in s. 55(1) will not affect rights in relation to the ACA’s name, acronym or symbol conferred by a trade mark or design registered immediately before 16 August 1996 (s. 55(4)).
- Nothing in s. 55 will affect a person’s legal rights to use the ACA name, acronym or symbol in a particular manner if immediately before 16 August 1996 the person:
  - was using the name, acronym or the symbol in good faith in that manner; or
  - would have been entitled to take action to prevent another person from passing off goods or services as the goods or services of the first-mentioned person (s. 55(5)).
- The prohibition in s. 55 will not apply to a person who uses or applies the ACA name, acronym or symbol for the purpose of labelling customer equipment in accordance with s. 407 of the Telecom Act or s. 182 of the Radcom Act (s. 55(6)).

### **Item 17 – Exemption from stamp duty and other State or Territory taxes**

Item 17 provides that stamp duty and other State or Territory taxes would not be payable in respect of the vesting of an asset or liability of the ACA or the ABA in the Commonwealth under Schedule 4 to the Bill, or the operation of that Schedule in any other respect (an ‘exempt matter’) or anything connected with such a matter.



The Minister would be able to certify in writing that a specified matter is an exempt matter or that a specified thing was connected with a specified exempt matter. In all courts, and for all purposes (other than for the purposes of criminal proceedings), the Minister's certificate would be prima facie evidence of the matters stated in it.

### **Item 18 – Constitutional safety net**

Item 18 provides that if the operation of Schedule 4 to the Bill would result in the acquisition of property from a person otherwise than on just terms in contravention of paragraph 51(xxxi) of the Constitution, the Commonwealth would be liable to pay reasonable compensation to the person in respect of the acquisition.

If the Commonwealth and the person cannot agree on the amount of the compensation, the person would be able to institute proceedings in a court of competent jurisdiction for the recovery from the Commonwealth of such reasonable amount of compensation as the Court determines.

### **Item 19 – Certificates taken to be authentic**

Items 4 and 5 refer to certificates that may be signed by the Minister and given to a land registration or an assets official. Item 17 refers to a certificate that may be made by the Minister to the effect that a specified matter is an exempt matter for the purposes of that item. Item 19 provides that a document that appears to be a certificate issued under Schedule 4 is taken to be such and taken to have been properly given unless the contrary is established. This is to ensure that effect is given to documents that appear to be certificates given by the Minister unless it is shown that a document is not a certificate or was not properly given by the Minister.

### **Item 20 – Delegation by Minister**

Item 20 provides for the Minister to be able to delegate, in writing, all or any of his or her powers under Schedule 4 to the Bill to the Secretary, or an SES officer, in the Department (currently the Department of Communications, Information Technology and the Arts – see *Acts Interpretation Act 1901*, s. 19A). The delegate will exercise these powers subject to the Minister's directions.

### **Item 21 – Regulations**

Item 21 provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

In particular, to deal with unforeseen circumstances, regulations will be able to be made prescribing matters of a transitional nature (including prescribing any saving or application provisions) relating to the amendments or repeals made by the Bill or the enactment of the Bill or the ACMA Bill.

# DATACASTING CHARGE (IMPOSITION) AMENDMENT BILL 2004

## NOTES ON CLAUSES

### Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Datacasting Charge (Imposition) Amendment Act 2004*.

### Clause 2 – Commencement

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Datacasting Charge (Imposition) Act 1998*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Datacasting Charge (Imposition) Act 1998* to replace references to the ACA with references to the ACMA. It also amends a note consequential upon the ACMA Bill.

Schedule 2 to the Bill gives continuing effect to any existing determination made by the ACA providing for the amount of charge imposed on a transmitter licence in respect of a financial year, as if it had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Datacasting Charge (Imposition) Act 1998***

#### **Items 1 and 2 – Amendments to section 3**

Items 1 and 2 repeal the definition of ‘ACA’ in section 3 of the Datacasting Charge (Imposition) Act and insert a definition of ‘ACMA’ in that section.

#### **Items 3 and 4 – Amendments to subsection 7(1)**

Subsection 7(1) of the Datacasting Charge (Imposition) Act provides that the amount of charge imposed on a transmitter licence in respect of a financial year is the amount ascertained in accordance with a written determination made by the ACA.

Item 3 amends subsection 7(1) to replace the reference to the ACA with a reference to the ACMA.

A note under subsection 7(1) provides that under section 12 of the ACA Act, the Minister may give the ACA directions in relation to the performance of its functions and the exercise of its powers.

Item 4 amends this note to refer to the power of the Minister to give directions to the ACMA under the corresponding provision of the ACMA Bill (see clause 14 of that Bill).

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of item 2. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of amount determinations**

Subsection 7(1) of the Datacasting Charge (Imposition) Act provides that the amount of charge imposed on a transmitter licence in respect of a financial year is the amount ascertained in accordance with a written determination made by the ACA. Item 2 gives continuing effect to any existing determination made by the ACA providing for the amount of charge imposed on a transmitter licence in respect of a financial year, as if it had been made by the ACMA.

## **RADIOCOMMUNICATIONS (RECEIVER LICENCE TAX) AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Radiocommunications (Receiver Licence Tax) Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Radiocommunications (Receiver Licence) Act 1983*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Radiocommunications (Receiver Licence Tax) Act 1983* to replace references to the ACA with references to the ACMA.

Schedule 2 to the Bill gives continuing effect to any existing notice given to the ACA by the holder of a receiver licence electing to pay tax under the Radiocommunications (Receiver Licence Tax) Act on each anniversary of the day the licence came into force. In addition, it gives continuing effect to any existing determination made by the ACA for the amount of tax in respect of the issue of a receiver licence, the anniversary of a receiver licence coming into force or the holding of a receiver licence, as if it had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Radiocommunications (Receiver Licence Tax) Act 1983***

#### **Items 1, 2 and 3 – Amendments to paragraph 6(5)(b), 7(1) and 7(3)**

Items 1, 2 and 3 replace references to ‘ACA’ in paragraph 6(5)(b), 7(1) and 7(3) of the Radiocommunications (Receiver Licence Tax) Act with references to ‘ACMA’.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of items 2 and 3. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of election notices**

Under paragraph 6(5)(b) of the Radiocommunications (Receiver Licence Tax) Act, the holder of a receiver licence may notify the ACA of the licensee’s election to pay tax on each anniversary of the day the licence came into force. Item 2 gives continuing effect to any such existing notice.

### **Item 3 – Continued effect of amount determinations**

Subsection 7(1) of the Radiocommunications (Receiver Licence) Act provides that the amount of tax in respect of the issue of a receiver licence, the anniversary of a receiver licence coming into force or the holding of a receiver licence is the amount determined by the ACA. Item 3 gives continuing effect to any such existing determination made by the ACA, as if it had been made by the ACMA.

## **RADIOCOMMUNICATIONS (SPECTRUM LICENCE TAX) AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Radiocommunications (Spectrum Licence Tax) Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Radiocommunications (Spectrum Licence) Act 1997*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Radiocommunications (Spectrum Licence Tax) Act 1997* to replace references to the ACA with references to the ACMA. It also amends notes consequential upon the ACMA Bill.

Schedule 2 to the Bill gives continuing effect to any existing determination made by the ACA providing for an initial holding date for spectrum licences included in a specified class of spectrum licences and for the amount of tax imposed in relation to a spectrum licence, as if they had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Radiocommunications (Spectrum Licence Tax) Act 1997***

#### **Items 1 and 2 – Amendments to section 3**

Items 1 and 2 repeal the definition of ‘ACA’ in section 3 of the Radiocommunications (Spectrum Licence Tax) Act and insert a definition of ‘ACMA’ in that section.

#### **Items 3 and 4 – Amendments of subsection 4(1)**

Subsection 4(1) of the Radiocommunications (Spectrum Licence Tax) Act provides that for the purposes of the Act the ACA may, by writing, determine that a specified day is the initial holding date for spectrum licences included in a specified class of spectrum licences.

Item 3 amends subsection 4(1) to replace the reference to the ACA with a reference to the ACMA.

A note under subsection 4(1) provides that under section 12 of the ACA Act, the Minister may give the ACA directions in relation to the performance of its functions and the exercise of its powers.

Item 4 amends this note to refer to the power of the Minister to give directions to the ACMA under the corresponding provision of the ACMA Bill (see clause 14 of that Bill).

#### **Items 5 and 6 – Amendments to subsection 7(1)**

Subsection 7(1) of the Radiocommunications (Spectrum Licence Tax) Act provides that the amount of tax in relation to a spectrum licence is the amount ascertained in accordance with a written determination made by the ACA.

Item 5 amends subsection 7(1) to replace the reference to the ACA with a reference to the ACMA.

A note under subsection 7(1) provides that under section 12 of the ACA Act, the Minister may give the ACA directions in relation to the performance of its functions and the exercise of its powers.

Item 6 amends this note to refer to the power of the Minister to give directions to the ACMA under the corresponding provision of the ACMA Bill (see clause 14 of that Bill).

#### **Item 7 – Amendment to subsection 7(2)**

Subsection 7(2) of the Radiocommunications (Spectrum Licence Tax) Act provides that in making a determination under subsection 7(1), the ACA is to take into account such matters as are specified in the regulations.

Item 7 amends subsection 7(2) to replace the reference to the ACA with a reference to the ACMA.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of item 2. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of amount etc. determinations**

Subsection 4(1) of the Radiocommunications (Spectrum Licence Tax) Act provides that for the purposes of the Act the ACA may, by writing, determine that a specified day is the initial holding date for spectrum licences included in a specified class of spectrum licences.

Subsection 7(1) of the Radiocommunications (Spectrum Licence Tax) Act provides that the amount of tax in relation to a spectrum licence is the amount ascertained in accordance with a written determination made by the ACA.

Item 2 gives continuing effect to any such existing determinations made by the ACA, as if they had been made by the ACMA.



## **RADIOCOMMUNICATIONS (TRANSMITTER LICENCE TAX) AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Radiocommunications (Transmitter Licence Tax) Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Radiocommunications (Transmitter Licence) Act 1983*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Radiocommunications (Transmitter Licence Tax) Act 1983* to replace references to the ACA with references to the ACMA.

Schedule 2 to the Bill gives continuing effect to any existing notice given to the ACA by the holder of a transmitter licence electing to pay tax under the Radiocommunications (Transmitter Licence Tax) Act on each anniversary of the day the licence came into force. In addition, it gives continuing effect to any existing approved forms of the ACA and any existing determination made by the ACA for the amount of tax in respect of the issue of a transmitter licence, the anniversary of a transmitter licence coming into force or the holding of a transmitter licence, as if they had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Radiocommunications (Transmitter Licence Tax) Act 1983***

#### **Items 1 to 5 – Amendments to paragraph 6(5)(b), subsection 6(9), paragraph 6(11)(b) and subsections 7(1) and 7(3)**

Items 1 to 5 replace references to ‘ACA’ in paragraph 6(5)(b), subsection 6(9), paragraph 6(11)(b) and subsections 7(1) and 7(3) of the Radiocommunications (Transmitter Licence Tax) Act with references to ‘ACMA’.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of items 2, 3 and 4. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of election notices**

Under paragraphs 6(5)(b) and 6(11)(b) of the Radiocommunications (Transmitter Licence Tax) Act, the holder of a transmitter licence may notify the ACA of the licensee’s election to pay tax on each anniversary of the day the licence came into force. Item 2 gives continuing effect to any such existing notice.

### **Item 3 – Continued effect of form approvals**

Subsection 6(9) of the Radiocommunications (Transmitter Licence Tax) Act provides that before a person is issued a transmitter licence for a transmitter that is for use for transmitting a national broadcasting service to the public or providing a commercial television or radio service or a community broadcasting service under section 100B, 102 or 102A of the *Radiocommunications Act 1992* for a period exceeding 12 months, the person must elect, in the form approved in writing by the ACA, that either subsection 6(7) or 6(8) of the Radiocommunications (Transmitter Licence Tax) Act is to apply in respect of the transmitter licence. (These subsections deal with the time at which tax is imposed.) Item 3 gives continuing effect to any such existing approved form.

### **Item 4 – Continued effect of amount determinations**

Subsection 7(1) of the Radiocommunications (Transmitter Licence) Act provides that the amount of tax in respect of the issue of a transmitter licence, the anniversary of a transmitter licence coming into force or the holding of a transmitter licence is the amount determined by the ACA. Item 4 gives continuing effect to any such existing determination made by the ACA, as if it had been made by the ACMA.

## **RADIO LICENCE FEES AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Radio Licence Fees Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Radio Licence Fees Act 1964*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Radio Licence Fees Act 1964* to replace references to the ABA with references to the ACMA.

Schedule 2 to the Bill gives continuing effect to any direction made by the ABA about the gross earnings of a commercial radio broadcasting licensee, which is relevant in calculating the licence fees payable under the Radio Licence Fees Act, as if it had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Radio Licence Fees Act 1964***

#### **Items 1 and 2 – Amendments to subsection 4(1)**

Items 1 and 2 repeal the definition of ‘ABA’ in subsection 4(1) of the Radio Licence Fees Act and insert a definition of ‘ACMA’ in that subsection.

#### **Item 3 – Amendments to section 7**

Section 7 of the Radio Licence Fees Act allows the ABA to direct that an amount earned during any period by an associate of a licensee, or part of such an amount, is to be treated as part of the gross earnings of the licensee in respect of that period for the purposes of that Act. The gross earnings of a licensee are taken into account in calculating the licence fees payable under the Act.

Item 3 amends section 7 to replace references to the ABA with references to the ACMA.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of item 2. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of directions about gross earnings**

Section 7 of the Radio Licence Fees Act allows the ABA to direct that an amount earned during any period by an associate of a licensee, or part of such an amount, is to be treated as part of the gross earnings of the licensee in respect of that period for the purposes of that Act. The gross earnings of a licensee are taken into account in calculating the licence fees payable under the Act.

Item 2 gives continuing effect to any such existing direction as if it had been made by the ACMA.

## **TELECOMMUNICATIONS (CARRIER LICENCE CHARGES) AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Telecommunications (Carrier Licence Charges) Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Telecommunications (Carrier Licence Charges) Act 1997*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Telecommunications (Carrier Licence Charges) Act 1997* to replace references to the ACA with references to the ACMA and makes other minor consequential amendments. In addition, it repeals Part 4 of the *Telecommunications (Carrier Licence Charges) Act*, which relates to the exercise of powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

Schedule 2 to the Bill gives continuing effect to any existing determinations made by the ACA for the amount of application charge payable by an applicant for a carrier licence, the amount of annual charge payable by a carrier, the proportion of the ACA's costs for the immediately preceding financial year that is attributable to the ACA's telecommunications functions and powers and the proportion of the Commonwealth's annual contribution to the budget of the International Telecommunication Union, as if they had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Telecommunications (Carrier Licence Charges) Act 1997***

#### **Items 1 and 2 – Amendments to section 5**

Items 1 and 2 repeal the definition of ‘ACA’ in section 3 of the Telecommunications (Carrier Licence Charges Tax) Act and insert a definition of ‘ACMA’ in that section.

#### **Items 3 and 4 – Amendments of subsection 9(1) and 14(1)**

Subsection 9(1) of the Telecommunications (Carrier Licence Charges) Act provides that for the amount of charge imposed on an application for a carrier licence is the amount ascertained in accordance with a written determination made by the ACA. Subsection 14(1) of that Act provides that the amount of charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACA.

Items 3 and 4 amend subsections 9(1) and 14(1) to replace references to the ACA with references to the ACMA.

#### **Items 5 to 12 – Amendments to section 15**

Section 15 of the Telecommunications (Carrier Licence Charges) Act provides for a limit on the total of the charges that are imposed on carrier licences in force at the beginning of a financial year. Paragraph 15(1)(a) provides that one of the components of this limit is the amount determined, by written instrument made by the ACA, to be the proportion of the ACA’s costs for the immediately preceding financial year that is attributable to the ACA’s telecommunications functions and powers. The terms ‘ACA’s telecommunications functions’ and ‘ACA’s telecommunications powers’ are defined in subsection 15(4) to have the same meaning as in the *Telecommunications Act 1997*. The term ‘costs’, in relation to the ACA, is defined in subsection 15(4) to mean an amount that, in accordance with accrual-based accounting principles, is treated as a cost of the ACA. Paragraph 15(1)(c) provides that another of the components of this limit is the amount determined, by a written instrument made by the ACA, to be the proportion of the Commonwealth’s contribution to the budget of the International Telecommunication Union for the calendar year in which the beginning of the financial year occurs that is to be recovered from carriers.

Items 5 and 7 amend paragraphs 15(1)(a) and 15(1)(c) to replace references to the ACA with references to the ACMA.

Item 6 amends paragraph 15(1)(a) to replace references to ‘ACA’s’ with references to ‘ACMA’s’.

Items 8 to 11 repeal the definitions of ‘ACA’s telecommunications functions’ and ‘ACA’s telecommunications powers’ in subsection 15(4) and replace these with definitions of ‘ACMA’s telecommunications functions’ and ‘ACMA’s telecommunications powers’.

Item 12 replaces references to the ACA in paragraph (a) of the definition of ‘cost’ in subsection 15(4) with references to ‘ACMA’.

### **Item 13 – Repeal of Part 4**

Item 13 repeals Part 4 of the Telecommunications (Carrier Licence Charges) Act, which relates to the exercise of powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of items 2 and 3. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of amount determinations**

Subsection 9(1) of the Telecommunications (Carrier Licence Charges) Act provides that the amount of charge imposed on an application for a carrier licence is the amount ascertained in accordance with a written determination made by the ACA. Subsection 14(1) of that Act provides that the amount of charge imposed on a carrier licence is the amount ascertained in accordance with a written determination made by the ACA.

Section 15 of the Telecommunications (Carrier Licence Charges) Act provides for a limit on the total of the charges that are imposed on carrier licences in force at the beginning of a financial year. Paragraph 15(1)(a) provides that one of the components of this limit is the amount determined, by written instrument made by the ACA, to be the proportion of the ACA’s costs for the immediately preceding financial year that is attributable to the ACA’s telecommunications functions and powers. Paragraph 15(1)(c) provides that another of the components of this limit is the amount determined, by a written instrument made by the ACA, to be the proportion of the Commonwealth’s contribution to the budget of the International Telecommunication Union for the calendar year in which the beginning of the financial year occurs that is to be recovered from carriers.

Item 2 gives continuing effect to any existing determinations made by the ACA under subsection 9(1) or 14(1), or paragraph 15(1)(a) or (c) as if they had been made by the ACMA.

### **Item 3 – ACMA’s costs include ACA’s costs**

To deal with the transition between the ACA and the ACMA during a financial year, subitem 3(1) provides that for the purposes of paragraph 15(1)(a) of the Telecommunications (Carrier Licence Charges) Act as amended by Schedule 2 to the

Bill, a reference to the ACMA's costs for a financial year includes a reference to the ACA's costs for that financial year.

Subitem 3(2) provides that the ACA's costs for a financial year are to be determined as if the amendments made by Schedule 1 to the definition of 'cost' in subsection 15(4) of the Telecommunications (Carrier Licence Charges) Act had not been made. That is, the ACA's costs will be an amount that, in accordance with accrual-based accounting principles, is treated as a cost of the ACA.



## **TELECOMMUNICATIONS (NUMBERING CHARGES) AMENDMENT BILL 2004**

### **NOTES ON CLAUSES**

#### **Clause 1 – Short title**

Clause 1 provides that the Bill, when enacted, may be cited as the *Telecommunications (Numbering Charges) Amendment Act 2004*.

#### **Clause 2 – Commencement**

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Telecommunications (Numbering Charges) Act 1997*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### **Clause 3 – Schedule(s)**

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Telecommunications (Numbering Charges) Act 1997* to replace references to the ACA with references to the ACMA. It also repeals Part 4 of the Telecommunications (Numbering Charges) Act, which relates to the exercise of powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

Schedule 2 to the Bill gives continuing effect to any existing notice given to the ACA about the transfer of a number between two carriage service providers and to any existing determinations made by the ACA for the amount of charge imposed on the allocation of a number, exempting a specified number from charge, specifying the day on which charge is imposed and specifying the amount of charge imposed on a number held at a particular time, as if they had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Telecommunications (Numbering Charges) Act 1997***

#### **Items 1 and 2 – Amendments to section 5**

Items 1 and 2 repeal the definition of ‘ACA’ in section 5 of the Telecommunications (Numbering Charges) Act and insert a definition of ‘ACMA’ in that section.

#### **Items 3 to 9 – Amendments of subsection 5A(2), 13(1), 15(2), 18(2), 18(3), 20(1) and 22(2)**

Items 3 to 9 amend subsections 5A(2), 13(1), 15(2), 18(2), 18(3), 20(1) and 22(2) to replace references to the ACA with references to the ACMA.

#### **Item 10 – Repeal of Part 4**

Item 13 repeals Part 4 of the Telecommunications (Numbering Charges) Act, which relates to the exercise of powers by the former Australian Telecommunications Authority (AUSTEL) before 1 July 1997, as this Part is spent.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of items 2 and 3. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of transfer notices**

Subsection 5A(2) of the Telecommunications (Numbering Charges) Act provides that two carriage service providers may enter into a binding written agreement that provides that a number is transferred from one of them to the other. The carriage service providers must jointly give the ACA written notice of the transfer.

Item 2 provides for the continued effect of any such existing notice.

### **Item 3 – Continued effect of amount etc. determinations**

Subsection 13(1) of the Telecommunications (Numbering Charges) Act provides that the amount of charge imposed on the allocation of a number is the amount ascertained in accordance with a written determination made by the ACA. Subsection 15(2) of that Act allows the ACA, by written determination, to exempt a specified number from allocation charge. For the purposes of Part 3 of that Act, dealing with annual charge, subsection 20(1) provides that the amount of charge imposed on a number held at a particular time is the amount ascertained in accordance with a written determination

made by the ACA. Subsection 22(1) allows the ACA, by written determination, to exempt a specified number from annual charge.

Item 3 gives continuing effect to any existing determinations made by the ACA under subsection 13(1), 15(2), 20(1) or 22(2) as if they had been made by the ACMA.

## TELEVISION LICENCE FEES AMENDMENT BILL 2004

### NOTES ON CLAUSES

#### Clause 1 – Short title

Clause 1 provides that the Bill, when enacted, may be cited as the *Television Licence Fees Amendment Act 2004*.

#### Clause 2 – Commencement

Clause 2 provides that each provision of the Bill 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.

Item 1 of the table provides that clauses 1 to 3 of the Bill (containing the short title, the commencement provision and explaining the operation of the Schedules to the Bill) will commence on the day on which the Bill receives the Royal Assent.

Item 2 of the table provides that Schedules 1 and 2 to the Bill, containing various consequential amendments and transitional provisions in relation to the *Television Licence Fees Act 1964*, will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

#### Clause 3 – Schedule(s)

Clause 3 provides that each Act that is specified in a Schedule to the Bill is amended or repealed as set out in that Schedule and any other item in a Schedule has effect according to its terms.

Schedule 1 to the Bill amends the *Television Licence Fees Act 1964* to replace references to the ABA with references to the ACMA.

Schedule 2 to the Bill gives continuing effect to any direction made by the ABA about the gross earnings of a commercial television broadcasting licensee, which is relevant in calculating the licence fees payable under the Television Licence Fees Act, as if it had been made by the ACMA.

## **Schedule 1 – Amendments**

### ***Television Licence Fees Act 1964***

#### **Items 1 and 2 – Amendments to subsection 4(1)**

Items 1 and 2 repeal the definition of ‘ABA’ in subsection 4(1) of the Radio Licence Fees Act and insert a definition of ‘ACMA’ in that subsection.

#### **Item 3 – Amendments to section 7**

Section 7 of the Television Licence Fees Act allows the ABA to direct that an amount earned during any period by an associate of a licensee, or part of such an amount, is to be treated as part of the gross earnings of the licensee in respect of that period for the purposes of that Act. The gross earnings of a licensee are taken into account in calculating the licence fees payable under the Act.

Item 3 amends section 7 to replace references to the ABA with references to the ACMA.

## **Schedule 2 – Transitional provisions**

### **Item 1 – Definitions**

Item 1 contains definitions for the purposes of item 2. In particular, ‘transition time’ is defined to mean the commencement of Schedule 2 to the Bill. Schedule 2 will commence at the same time that clause 6 of the ACMA Bill commences. Clause 6 of the ACMA Bill, which establishes the ACMA, will commence on proclamation or 1 July 2005, if clause 6 has not commenced by that date.

### **Item 2 – Continued effect of directions about gross earnings**

Section 7 of the Television Licence Fees Act allows the ABA to direct that an amount earned during any period by an associate of a licensee, or part of such an amount, is to be treated as part of the gross earnings of the licensee in respect of that period for the purposes of that Act. The gross earnings of a licensee are taken into account in calculating the licence fees payable under the Act.

Item 2 gives continuing effect to any such existing direction as if it had been made by the ACMA.