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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**BROADCASTING SERVICES AMENDMENT (COLLECTION OF
DATACASTING TRANSMITTER LICENCE FEES) BILL 2006**

EXPLANATORY MEMORANDUM

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

BROADCASTING SERVICES AMENDMENT (COLLECTION OF DATACASTING TRANSMITTER LICENCE FEES) BILL 2006

OUTLINE

The Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Bill 2006 (the principal Bill) amends the Broadcasting Services Act 1992 to provide payment machinery and record keeping obligations to support the administration of the proposed Datacasting Transmitter Licence Fees Bill 2006 (the Datacasting Fees Bill).

The Government has decided to reform several aspects of the digital television and commercial television broadcasting regime. Much of that reform is implemented by amendments to the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* (the Radcomms Act) made by the proposed Broadcasting Legislation Amendment (Digital Television) Bill 2006 (the Digital TV Bill). The principal Bill and the proposed Datacasting Fees Bill contain additional measures necessary to implement the Government's decision.

One component of that reform relates to decisions to allocate spectrum for use to provide new digital services. The Digital TV Bill will provide for the allocation of two types of datacasting transmitter licences, a channel A datacasting transmitter licence and a channel B datacasting transmitter licence.

The proposed Datacasting Fees Bill will provide for the imposition of annual licence fees on channel A datacasting transmitter licence holders.

The principal Bill will amend the BSA to ensure compliance by channel A licence holders with licence fee payment obligations and will require appropriate record keeping in relation to these licence fees. These obligations will be similar to those currently imposed on commercial television and commercial radio broadcasting licensees under Part 14A of the Act.

FINANCIAL IMPACT STATEMENT

The principal Bill, together with the proposed Datacasting Transmitter Licence Fees Bill 2006, will enable the imposition of annual licence fees on the gross earnings attributable to the transmission of matter under Channel A datacasting transmitter licences is likely to result in receipt of revenue to the Commonwealth on an annual basis in the future. However, at this stage it is not possible to predict with any accuracy the quantum of revenue likely to be received.

NOTES ON CLAUSES

Clause 1 - Short title

Clause 1 provides for the citation of the *Broadcasting Services Amendment (Collection of Datacasting Transmitter Licence Fees) Act 2006* (the Act).

Clause 2 - Commencement

Clause 2 provides that the Act commences on 1 January 2007. This commencement date coincides with the commencement of the proposed Datacasting Transmitter Licence Fees Bill 2006 (the Datacasting Fees Bill), and with the commencement of Schedule 2 of the proposed Broadcasting Legislation Amendment (Digital Television) Bill 2006 (the Digital TV Bill).

Clause 3 - Schedule(s)

By virtue of this clause, provisions of the *Australian Communications and Media Authority Act 2005* (ACMA Act), the *Broadcasting Services Act 1992* (BSA) and the *Radiocommunications Act 1992* (Radcomms Act) are amended as set out in the Schedules to the Bill.

SCHEDULE 1—AMENDMENTS

Amendment to the Australian Communications and Media Authority Act 2005

Item 1 of Schedule 1 to the Bill amends the ACMA Act, as a consequence of the proposed Datacasting Fees Bill.

Item 1: At the end of paragraph 10(1)(o)

Item 1 adds a new subparagraph (viii) to paragraph 10(1)(o) of the ACMA Act. Subsection 10(1) of that Act sets out the ACMA's broadcasting, content and datacasting functions. Paragraph 10(1)(o) provides that those functions include such other functions as are conferred on the ACMA by or under the following Acts:

- (i) the *Australian Broadcasting Corporation Act 198* ; or
- (ii) the *Broadcasting Services Act 1992*; or
- (iii) the *Interactive Gambling Act 2001*; or
- (iv) the *Radio Licence Fees Act 1964*; or
- (v) the *Special Broadcasting Service Act 1991*; or
- (vi) subsection 158F(1) of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*; or
- (vii) the *Television Licence Fees Act 1964*;

New subparagraph 10(1)(o)(viii) provides that the ACMA's broadcasting, content and datacasting functions include such other functions as are conferred on the ACMA by or under the (proposed) *Datacasting Transmitter Licence Fees Act 2006* (the Datacasting Fees Act).

Amendments to the Broadcasting Services Act 1992

Amendments 2-9 amend Part 14A of the BSA as a consequence of the proposed Datacasting Fees Bill. Part 14A relates to accounts and payment of licence fees, and provides requirements for commercial television and commercial radio broadcasting licensees to keep accounts and to notify ACMA of the way in which licence fees are calculated. It also provides for penalties to be imposed on commercial television and commercial radio broadcasting licensees for non-payment of licence fees. The amendments to that Part have the effect of applying these provisions to holders of channel A datacasting transmitter licences.

Item 2: Section 205A

Item 2 amends section 205A of the BSA to include the meaning of "channel A datacasting transmitter licence". The amendment provides that, in Part 14A, that term has the same meaning as in the Radcomms Act.

Section 98A of the Radcomms Act (to be inserted into that Act by the Digital TV Bill) provides that the ACMA may declare in writing that a specified datacasting transmitter licence proposed to be issued is a "channel A datacasting transmitter licence" for the purposes of this Act, and that any such transmitter licence issued is a "channel A datacasting transmitter licence".

Item 3: Section 205A (at the end of the definition of *gross earnings*)

Item 3 amends the definition of the term “gross earnings” in section 205A of the BSA. Currently, in relation to a commercial radio broadcasting licensee, that term has the same meaning as in the *Radio Licence Fees Act 1964*, and in relation to a commercial television broadcasting licensee, it has the same meaning as in the *Television Licence Fees Act 1964*.

The amendment to section 205A provides that, in relation to a channel A datacasting transmitter licence, the term “gross earnings” has the same meaning as in the proposed Datacasting Fees Act.

Section 3 of that proposed Act would provide that the term “gross earnings”, in respect of a licence in relation to a period, means so much of the gross earnings of the licensee during that period as are attributable to the transmission of matter by radiocommunications transmitters operating under the licence. That section also provides that, to avoid doubt, clause 46 of Schedule 6 to the BSA (which relates to the effect of a nominated datacaster declaration) does not apply to this definition.

Item 4: Section 205A (at the end of the definition of *licence fee*)

Item 4 amends the definition of “licence fee” in section 205A of the BSA. That section provides that “licence fee” means a fee imposed under section 5 of the *Radio Licence Fees Act 1964* or section 5 of the *Television Licence Fees Act 1964*. The amendment will provide that the term “licence fee” also means a fee imposed under section 7 of the proposed Datacasting Fees Act.

Item 5: Section 205A

Item 5 adds a definition of the term “radiocommunications transmitter” to section 205A of the BSA, and provides that this term has the same meaning as in the Radcomms Act.

Subsection 7(2) of the Radcomms Act provides that a “radiocommunications transmitter” is:

- (a) a transmitter designed or intended for use for the purpose of radiocommunication; or
- (b) anything (other than a line within the meaning of the *Telecommunications Act 1997*) designed or intended to be ancillary to, or associated with, such a transmitter for the purposes of that use; or
- (c) anything (whether artificial or natural) that is designed or intended for use for the purpose of radiocommunication by means of the reflection of radio emissions and that the ACMA determines in writing to be a radiocommunications transmitter for the purposes of that Act.

Item 6: After section 205B

Item 6 inserts new section 205BA after section 205B in Part 14A of the BSA. Section 205B provides a requirement for commercial television and commercial radio broadcasting licensees to keep accounts and records, and provide them to the ACMA

annually and as required. This is to enable the ACMA to assess the amount of fee payable by each licensee. New section 205BA replicates section 205B in relation to channel A datacasting transmitter licensees.

Item 6 also makes a minor amendment to the heading of section 205B to make it clear that that section relates to broadcasting licensees.

Item 7: Subsection 205C(1)

Item 8: Paragraph 205C(2)(a)

Section 205C of the BSA provides that, where a commercial television or commercial radio broadcasting licensee pays an amount that the licensee believes is the licence fee in relation to the licence, the licensee must notify the ACMA of the way in which the licensee has calculated the amount it believes to be the licence fee. The ACMA then assesses the amount of licence fee payable.

Items 7 and 8 amend section 205C of the BSA to provide that this requirement also applies to channel A datacasting licensees.

Item 9: Subsection 205D(9) (definition of *due date*)

Section 205D of the BSA provides for penalties to be imposed on licensees if an amount of a licence fee remains unpaid after the due date. Subsection 205D(9) provides that, for the purposes of that section, “due date”, in relation to a licence fee, means the day on which the licence fee becomes due under the *Radio Licence Fees 1964* or the *Television Licence Fees Act 1964*.

Item 9 amends the definition of “due date” in subsection 205D(9) to provide that, in relation to a licence fee, that term means the day on which a licence fee becomes due under the *Radio Licence Fees 1964*, the *Television Licence Fees Act 1964* or the proposed Datacasting Fees Act.

Amendments to the Radiocommunications Act 1992

Items 10 and 11 amend the Radcomms Act as a result of the proposed Datacasting Fees Bill.

Item 10: Section 5

Item 10 adds a definition of the term “datacasting transmitter licence fee” to section 5 of the Radcomms Act. The definition of that term inserted by item 10 provides that the term means a fee imposed under the proposed Datacasting Fees Act.

Item 11: After paragraph 109A(1)(b)

Subsection 109A(1) sets out the conditions of a datacasting transmitter licence. Item 11 adds new paragraphs (ba) and (bb) to the list of conditions in that subsection.

New paragraph 109A(1)(ba) provides that it is a condition of a channel A datacasting transmitter licence that the licensee will meet all its obligations to pay amounts of datacasting transmitter licence fee.

New paragraph 109A(1)(bb) provides that it is a condition of a channel A datacasting transmitter licence that the licensee will comply with the requirements of new section 205BA of the BSA. That new section (inserted by item 6, above) provides that it is a requirement for channel A datacasting licensees to keep accounts. By virtue of this new paragraph, a channel A datacasting licensee who does not comply with the requirements of new section 205BA of the BSA will be in breach of a condition of licence, and will be liable to sanction.