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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STATUTE STOCKTAKE (REGULATORY AND OTHER LAWS)
BILL 2009**

EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Finance and Deregulation,
the Hon Lindsay Tanner MP)

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Statute Stocktake (Regulatory and Other Laws) Bill 2009

Outline

1. The *Statute Stocktake (Regulatory and Other Laws) Bill 2009* (Stocktake Bill) proposes amendment or repeal of almost 30 Acts to remove regulation which no longer has any function or purpose. The purpose of the Bill is to reduce costs incurred by business in understanding and complying with outdated regulatory requirements, giving effect to the Government's commitment to reduce the level of poorly designed and ineffective regulation on Australian business.
2. The Stocktake Bill addresses regulation that was identified during, and subsequent to, a comprehensive stocktake of Commonwealth regulation completed in 2008. The measure is part of a suite of better regulation initiatives being taken forward by this Government to improve the quality of regulatory stock and ensure new regulation does not impose unnecessary costs and inefficiencies on business.

Financial Impact

3. The Stocktake Bill would have no direct or indirect financial impact for the Commonwealth. However, the Bill would reduce costs to business by removing the need to examine redundant legislation to determine its applicability.

Notes on Clauses

Clause 1—Short title

4. This clause specifies that the Stocktake Bill may be cited as the *Statute Stocktake (Regulatory and Other Laws) Act 2009*.

Clause 2—Commencement

5. This clause provides for the commencement of the Act on the day after it receives the Royal Assent.

Clause 3—Schedules

6. This clause specifies that each Act specified in a Schedule to the Act is amended as set out in the applicable items in the relevant Schedule. There are two Schedules to the Act:
 - Schedule 1 contains amendments to 17 Acts.
 - Schedule 2 repeals eight Acts and makes amendments to three other Acts that are consequential on the repeal of two of the Acts. It also deals with matters relevant to the repeal of the *Income Tax (Franking Deficit) Act 1987*.

Schedule 1 – Amendments

Part 1 – General amendments

Amendments to the *Australian Wine and Brandy Corporation Act 1980*

7. **Item 1** repeals section 52 of the *Australian Wine and Brandy Corporation Act 1980*. Section 52 provides for an appropriation from the Consolidated Revenue Fund to the Australian Wine and Brandy Corporation in relation to monies received by the Commonwealth before the commencing date of the *Australian Wine and Brandy Corporation Act 1980* for relevant charges and levies.

8. The section is redundant as all such amounts have been paid.

Amendments to the *Broadcasting Services Act 1992*

9. Items 2 to 6 amend sections of the *Broadcasting Services Act 1992* (BSA), primarily to repeal sections that are now redundant. These sections are contained in Part 7 of the BSA and relate to licences for the provision of satellite subscription television broadcasting services. Three licences were created by Part 7 of the BSA, namely: licence A (allowing four services, which were subject to strict cross-media control and ownership rules), licence B (allowing four services, which were not limited by cross-media rules) and licence C (allowing two services, which could be allocated only to a subsidiary of the Australian Broadcasting Corporation). These licences, and the methods for their allocation, were defined in section 93 of the BSA, which was repealed in 2005.

10. **Item 2** repeals section 94 of the BSA as that section is redundant. Section 94 of the BSA sets out the procedure for determining the full digital transmission standards to be used by satellite subscription television services, the licences for which, licence A and licence B, no longer exist.

11. **Item 3** omits words from subsection 113(1) of the BSA following the repeal of subsection 113(2) of the BSA, for the reasons described in paragraph 12, below.

12. **Item 4** repeals subsection 113(2) of the BSA as that section is redundant. Section 113 of the BSA permits the transfer of a subscription television broadcasting licence to another person except for licence C. Under subsection 113(2), licensee C must not transfer licence C without the written approval of the Minister. The repeal of subsection 113(2) is appropriate because licence C no longer exists.

13. **Item 5** repeals subsection 116(3) of the BSA as that section is redundant. Section 116 outlines that certain arrangements do not result in persons being associates (a term that is defined in section 6 of the BSA). In particular, the effect of subsection 116(3) is that commercial television broadcasting licensees can participate jointly in licence B without that joint venture making them associates for the purposes of Part 5 of the BSA Act. The repeal of subsection 116(3) is appropriate because licence B no longer exists.

14. **Item 6** repeals section 116C of the BSA as that section is redundant. Section 116C defines the terms “licensee A” and “licensee B” by reference to licence A and licence B respectively. The repeal of this section is appropriate as licence A and licence B, and therefore licensee A and licensee B, no longer exist.

Amendments to the *Civil Aviation (Carriers' Liability) Act 1959* and the *Civil Aviation (Carriers' Liability) Amendment Act 1991*

15. **Item 7** amends subsection 8(3) of the *Civil Aviation (Carriers' Liability) Act 1959* to remove the reference to the Montreal Protocol No 3 (MP3), for the reasons described in paragraph 17 below.

16. **Items 8 to 10** repeal subsection 2(2), section 9 and subsections 11(1) and 13(1) of the *Civil Aviation (Carriers' Liability) Amendment Act 1991*, for the reasons described in paragraph 17 below.

17. The provisions of the *Civil Aviation (Carriers' Liability) Amendment Act 1991* would have, had they been proclaimed, inserted a Part IIIB in the *Civil Aviation (Carriers' Liability) Act 1959* to implement MP3 on air carriers' liability which was negotiated in the 1970s. However, as MP3 has not garnered sufficient international support to bring it into operation, Part IIIB has not come into operation. MP3 has now been superseded by the 1999 Montreal Convention, which came into operation for Australia in January 2009. The 1999 Montreal Convention sets a new benchmark for international carriers' liability arrangements, gaining widespread acceptance amongst leading aviation nations. It is therefore extremely unlikely that the now outdated MP3 would ever enter into force. Accordingly, it is appropriate to "tidy" both Acts by repealing the (unproclaimed) provisions that would bring MP3 into operation from the *Civil Aviation (Carriers' Liability) Amendment Act 1991* and removing an unnecessary reference to the MP3 from the *Civil Aviation (Carriers' Liability) Act 1959*.

Amendments to the *Dairy Adjustment Act 1974*

18. **Item 11** repeals section 22 of the *Dairy Adjustment Act 1974*. Section 22 provides for an appropriation from the Consolidated Revenue Fund in order to make payments to the States of amounts payable under agreements made under the *Dairy Adjustment Act 1974*.

19. This section is redundant as all such payments have been made to the States.

Amendments to the *Dairy Legislation (Transitional Provisions and Consequential Amendments) Act 1986*

20. **Item 12** repeals section 16 of the *Dairy Legislation (Transitional Provisions and Consequential Amendments) Act 1986*. Section 16 provides for an appropriation from the Consolidated Revenue Fund to the Australian Dairy Corporation (ADC) of monies received by the Commonwealth that would have been payable to the ADC under subsection 21(1) of the *Dairy Produce Act 1924*, had it not been repealed in 1986 by the *Dairy Legislation (Transitional Provisions and Consequential Amendments) Act 1986* and replaced by the *Dairy Produce Act 1986*.

21. **Item 13** repeals section 26 of the *Dairy Legislation (Transitional Provisions and Consequential Amendments) Act 1986*. Section 26 provides for an appropriation from the Consolidated Revenue Fund to make payment to the Dairy Produce Sales Promotion Fund (Promotion Fund) of monies received by the Commonwealth that would have been paid to this fund. The Promotion Fund was established by section 89 of the *Dairy Produce Act 1986*. Dairy promotion levies paid by dairy farmers and collected by the Commonwealth were paid into this fund. The Promotion Fund was part of the new dairy industry arrangements set up in 1986 (under the *Dairy Produce Act 1986*) which have since been superseded by the establishment of Dairy Australia in 2003.

22. Both sections are redundant as all required payments have been made to the ADC and the Promotion Fund.

Amendments to the *Hearing Services and AGHS Reform Act 1997*

23. **Items 14 to 15** repeal Schedule 1 and its associated commencement provision in subsection 2(2) in the *Hearing Services and AGHS Reform Act 1997*. The purpose of Schedule 1 is to make amendments to the then *Hearing Services Act 1991* (now the *Australian Hearing Services Act 1991*) in respect of Australian Hearing Services, the hearing services providers and eligibility for hearing services. Schedule 1 also provides transitional arrangements for the eligibility of existing clients for hearing services.

24. All of the transitional arrangements have taken effect and there are no longer any existing clients of the scheme amended by Schedule 1.

25. **Item 16** makes clear that the repeal of Schedule 1 and subsection 2(2) of the *Hearing Services and AGHS Reform Act 1997* does not affect the amendments made to the *Hearing Services Act 1991* by Schedule 1.

Amendments to the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*

26. **Item 17** repeals section 22 of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000*. This Act deals with the transition from the Australian Horticultural Corporation, the Horticultural Research and Development Corporation and the Australian Dried Fruits Board to a new industry services body, Horticulture Australia Limited. This section provides for an appropriation from the Consolidated Revenue Fund to the industry services body of monies not paid to the industry body before the transfer day.

27. The section is redundant as all payments have been made.

Amendments to the *Industrial Chemicals (Notification and Assessment) Act 1989*

28. Items 18 to 22 amend sections of the *Industrial Chemicals (Notification and Assessment) Act 1989* (IC(NA) Act). These amendments relate to the removal of the amnesty for notification and assessment of industrial chemicals eligible for inclusion on the Australian Inventory of Chemical Substances after the commencement of the Principal Act. Consequential amendments are also proposed in relation to definitions, appeal provisions and fees for listing eligible chemicals on the inventory.

29. Transitional arrangements are proposed to ensure that companies that listed chemicals on the inventory through the amnesty remain protected from penalty.

30. **Item 18** removes the definition of “eligible chemical” in subsection 5(1) of the IC(NA) Act. This term is only used in Division 4 of Part 2 and, because of the repeal of that Division, is no longer necessary.

31. **Item 19** repeals Division 4 of Part 2 of the IC(NA) Act. In 1992, Division 4 was introduced to provide an amnesty for persons who introduced chemicals into Australia after the commencement of the IC(NA) Act (in 1990) without an assessment certificate where those chemicals were eligible for inclusion on the Australian Inventory of Chemical Substances in the period between 1 December 1977 and 16 July 1990. This Division provides for an amnesty period of two years, commencing 1 March 1993, where “eligible chemicals” could be notified for assessment and subsequent addition to the Inventory. The amnesty period expired in 1995 and, accordingly, the repeal of Division 4 would have no impact.

32. **Items 20 and 21** amend paragraphs 102(1)(b) and 110(1)(caa) of the IC(NA) Act following the repeal of Division 4 of Part 2. Item 20 amends paragraph 102(1)(b) to remove a reference to a decision made under that Division (under subsection 20E(3)), which provides for review by the Administrative Appeals Tribunal. Item 21 amends paragraph 110(1)(caa) to remove a reference to a form of application under that Division (under section 20C) which provides that regulation may prescribe fees for such an application.

33. **Item 22** provides transitional arrangements resulting from the repeal of Division 4 of Part 2 of the IC(NA) Act. The IC(NA) Act provides a criminal liability for companies that import into, or manufacture in, Australia, chemicals that are not included in the Australian Inventory of Chemical Substances, and there is no time limit in which prosecutions must be commenced. These transitional provisions would provide that any chemicals included in the Inventory pursuant to Division 4 would continue to be included in the Inventory, and therefore protect those companies from penalty.

Amendments to the *Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985*

34. **Item 23** repeals section 7 of the *Rural Industries Research (Transitional Provisions and Consequential Amendments) Act 1985*. This section provides for an appropriation from the Consolidated Revenue Fund to a Research Fund of amounts received by the Commonwealth in connection with a levy that was declared to be a prescribed levy under the *Rural Industries Research Act 1985*.

35. This section is redundant as all such monies have been paid.

Part 2 – Repeal of Part VB of the Trade Practices Act 1974 and related amendments

36. The repeal of Part VB of the Trade Practices Act (TP Act) would require consequential amendments to remove references to Part VB in the *A New Tax System (Goods and Services Tax Transition) Act 1999* and the *Product Grants and Benefits Administration Act 2000*.

Amendments to the *A New Tax System (Goods and Services Tax Transition) Act 1999*

37. **Item 24** repeals the definition of “New Tax System changes” in subsection 15L(3), previously a cross-reference to the definition in Part VB of the TP Act, and inserts that definition in full, following the repeal of Part VB of the TP Act.

Amendments to the *Product Grants and Benefits Administration Act 2000*

38. **Item 25** removes references in subparagraphs 47(3)(c)(ia) and (d)(ia) to Part VB of the TP Act, following the repeal of that Part.

Amendments to the *Trade Practices Act 1974*

39. Items 26 to 50 provide for the repeal of the GST price exploitation provisions in the TP Act in Part VB, Part XI AA, Part 2 of the Schedule and other consequential amendments. These provisions were enacted to specifically prohibit price exploitation following the introduction of the GST, following concerns that price rises unrelated to the GST might be represented to be caused by the GST. To promote national consistency, the

provisions were applied in the States and Territories. These provisions applied during the New Tax System transition period which ended on 30 June 2002.

40. Given that the GST has been in place for around 10 years, it is unlikely that a price rise could now be attributed to the introduction of the GST. Other provisions of the TP Act continue to prohibit misleading and deceptive conduct and false or misleading representations, and can apply to price exploitation generally.

41. **Item 26** repeals paragraph 2B(1)(aa) of the TP Act as it relates only to Part VB of the TP Act which is to be repealed.

42. **Items 27** repeals paragraph 5(1)(d) of the TP Act to remove reference to Part VB of the TP Act. The heading to section 5 is also amended to remove the reference to Part VB.

43. **Item 28** amends paragraph 5(1)(f) of the TP Act to remove the reference to paragraph 5(1)(d) which is to be repealed.

44. **Item 29** amends paragraph 6(2)(b) of the TP Act to omit references to sections 75AU, 75AV, 75AW, 75AX, 75AY and 75AYA as they are located in Part VB of the TP Act which is to be repealed. The heading to section 6 is also amended to remove the reference to Part VB.

45. **Item 30** amends paragraph 6(2)(b) of the TP Act to omit the reference to section 75AYA, as section 75AYA is located in Part VB of the TP Act which is to be repealed.

46. **Item 31** repeals subsection 6(2B) of the TP Act as it relates to Part VB of the TP Act which is to be repealed.

47. **Item 32** repeals Part VB of the TP Act, as the GST price exploitation provisions it contains are redundant, given that the New Tax System transition period in which they applied ended on 30 June 2002.

48. **Item 33** amends subsection 75B(1) of the TP Act to omit references to sections 75AU and 75AYA, as sections 75AU and 75AYA are located in Part VB of the TP Act which is to be repealed.

49. **Item 34** repeals subparagraph 76(1)(a)(ii) of the TP Act as it relates only to Part VB of the TP Act which is to be repealed.

50. **Item 35** amends subsection 76A(2) of the TP Act to omit the reference to section 75AYA, as section 75AYA is located in Part VB of the TP Act which is to be repealed. The heading to section 76A is also amended to remove the reference to section 75AYA.

51. **Item 36** amends subsection 76B(2),(3),(4) and (5) to omit reference to “75AYA or” as section 75AYA is located in Part VB of the TP Act which is to be repealed. The heading to section 76B is also amended to remove the reference to section 75AYA.

52. **Item 37** repeals subparagraph 78(a)(ii) of the TP Act as it relates to Part VB of the TP Act. The heading to section 78 is also amended to remove the references to 75AU and 75AYA.

53. **Item 38** repeals paragraph 80(1)(a) as subparagraph (ii) relates only to Part VB which is to be repealed – the paragraph is replaced with the equivalent of the existing 80(1)(a)(i).

54. **Item 39** amends subsection 80(1A) of the TP Act to omit references to sections 75AU and 75AYA, as sections 75AU and 75AYA are located in Part VB of the TP Act which is to be repealed.

55. **Item 40** repeals section 80B of the TP Act as it relates only to a provision of Part VB of the TP Act, which is to be repealed.

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56. **Item 41** amends paragraph 84(1)(b) and 84(3)(b) to omit references to Part VB of the TP Act which is to be repealed.
57. **Item 42** amends paragraph (a) of the definition of “contravening conduct” in subsection 86C(4) of the TP Act to omit references to sections 75AU and 75AYA, as sections 75AU and 75AYA are located in Part VB of the TP Act which is to be repealed.
58. **Item 43** repeals Part XI AA of the TP Act, as it provides the legislative framework for the application of Part VB by the States and Territories, and Part VB of the TP Act is to be repealed.
59. **Items 44** and **45** amend subparagraph (a)(ii) and paragraph (b) of the definition of “protected Part VB information” contained in subsection 155AA(3) to ensure that, despite the repeal of Part VB, section 155AA continues to require that previously obtained information relating to Part VB of the TP Act remains protected.
60. **Item 46** repeals subparagraph 163A(1)(a)(ia) of the TP Act as it relates only to a provision of Part VB of the TP Act, which is to be repealed. Note the discussion at paragraph 64, below.
61. **Item 47** amends the heading of the Schedule to remove the reference to Part VB of the TP Act, which is to be repealed.
62. **Item 48** repeals Part 2 of the Schedule, as it provides the Schedule version of Part VB of the TP Act to facilitate the application of the GST price exploitation provisions by the States and Territories. This Part is no longer relevant as Part VB of the TP Act is to be repealed.
63. **Item 49** provides that if the *Trade Practices Amendment (Australian Consumer Law) Act 2009* has commenced prior to this item, the references to the Schedule in items 47 and 48 would be to Schedule 1, as that Act would rename the Schedule as Schedule 1.
64. **Item 50** is a transitional provision to ensure that, despite the repeal of subparagraph 163A(1)(a)(ia) of the TP Act, a person cannot seek a declaration for a breach of a provision of Part VB of the TP Act even if the conduct occurred while Part VB of the TP Act was in effect. A person was previously constrained in this way by subparagraph 163A(1)(a)(ia) of the TP Act when that subparagraph and Part VB were in effect.

Part 3 – Amendments relating to digital data services

Amendments to the *Telecommunications Act 1997*

65. Items 51 to 54 amend sections of the *Telecommunications Act 1997* (Telco Act) insofar as the Telco Act relates to digital data services.
66. **Item 51** repeals paragraph 3(2)(b) of the Telco Act, which identifies the establishment of a regulatory framework supportive of a digital data capability of 64 kilobits per second as an object of the Act. The obligations are redundant following the repeal of the declaration of Telstra as the digital data service provider. The obligations are no longer required as the market now provides these services at digital data capabilities far greater than the 64 kilobits per second provided for in the Telco Act.
67. **Item 52** removes the definition of “digital data service provider” from section 7 of the Telco Act. Section 7 provides that the term “digital data service provider” has the same meaning in the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). This definition under the Telco Act is no longer required as a result of the repeal of the declaration of Telstra as a digital data service provider and the

consequential repeal of the definition “digital data service provider” in the TCPSS Act – refer item 65 below.

68. **Item 53** repeals subsection 105(5) of the Telco Act which requires the Australian Media and Communications Authority (ACMA) to report on the progress made by carriers and carriage service providers towards providing digital data capability services comparable to an ISDN channel. This provision is no longer required as the digital data services and related obligations in the TCPSS Act are being repealed – refer items 60 to 107 below.

69. **Item 54** removes references to subsection 105(5) from subsections 105(6) and (7) of the Telco Act, which is a consequential amendment appropriate due to the repeal of subsection 105(5) of the Telco Act.

Amendments to the *Telecommunications (Consumer Protection and Service Standards) Act 1999*

70. Items 55 to 102 amend sections of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) to remove all references to digital data services and related obligations. The obligations are redundant following the repeal of the declaration of Telstra as the digital data service provider. The digital data services regulatory regime is no longer required as the market now provides these services at digital data capabilities far greater than the 64 kilobits per second provided for under the TCPSS Act.

71. **Item 55** removes from the simplified outline of the TCPSS Act, the statement at paragraph (d) pertaining to the universal service regime’s objective to ensure access to digital data services. For the completeness of the sentence in the simplified outline, both paragraphs (c) and (d) are replaced with a new paragraph (c).

72. **Item 56** removes the definition of “approved digital data service plan” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

73. **Item 57** removes the definition of “digital data service” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

74. **Item 58** removes the definition of “digital data service charge” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

75. **Item 59** removes the definition of “digital data service obligation” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

76. **Item 60** removes the definition of “digital data service provider” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

77. **Item 61** removes the definition of “draft digital data service plan” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

78. **Item 62** removes the definition of “general digital data service” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

79. **Item 63** removes the definition of “general digital data service area” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

80. **Item 64** removes the definition of “general digital data service obligation” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

81. **Item 65** removes the definition of “general digital data service provider” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.

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82. **Item 66** removes the definition of “special digital data service” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.
83. **Item 67** removes the definition of “special digital data service area” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.
84. **Item 68** removes the definition of “special digital data service obligation” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.
85. **Item 69** removes the definition of “special digital data service provider” from subsection 5(2) of the TCPSS Act, for the reasons outlined in paragraph 70, above.
86. **Item 70** amends the simplified outline of Part 2 of the TCPSS Act by removing at section 8, the first paragraph (b), being a reference to the “digital data service obligation” and “digital data cost”.
87. **Item 71** amends the simplified outline of Part 2 of the TCPSS Act by removing at section 8, the second paragraph (d), being a reference to the objects of the universal service regime in respect of digital data services. For the completeness of the sentence in the simplified outline, both the second paragraphs (c) and (d) are replaced with a new paragraph (c).
88. **Item 72** amends the simplified outline of Part 2 of the TCPSS Act by removing from the third paragraph (a) at section 8, the reference to the “and digital data service obligation”.
89. **Item 73** amends the simplified outline of Part 2 of the TCPSS Act by removing from the third paragraph (b) at section 8, the reference to “and digital data service areas”.
90. **Item 74** amends the simplified outline of Part 2 of the TCPSS Act by removing from the third paragraph (d) at section 8, the reference to “and digital data service providers”.
91. **Item 75** amends the simplified outline of Part 2 of the TCPSS Act by repealing the third paragraph (g) at section 8 which refers to “requirements for the approval of, and compliance with, digital data service plans of digital data service providers”.
92. **Item 76** amends the simplified outline of Part 2 of the TCPSS Act by repealing the third paragraph (i) at section 8, which refers to the “the determination of the digital data cost for supplying services in fulfilment of the digital data service obligation”.
93. **Item 77** amends the simplified outline of Part 2 of the TCPSS Act by removing at the third paragraph (j) at section 8, the reference to “and digital data service charges”.
94. **Item 78** omits the word “and” from subparagraph 8A(a)(iii) of the TCPSS Act. This is required as a result of the repeal of subparagraph 8A(a)(iv) at item 79.
95. **Item 79** repeals subparagraph 8A(a)(iv) of the TCPSS Act which refers to “digital data services”.
96. **Item 80** omits “and the digital service obligation described in section 10” from paragraph 8A(b) of the TCPSS Act.
97. **Item 81** omits “, and the digital data service obligation described in section 10,” from paragraph 8A(c) of the TCPSS Act.
98. **Item 82** omits “and digital data service obligation” from paragraph 8A(e) of the TCPSS Act.
99. **Item 83** repeals subsection 8D(2) of the TCPSS Act which relates to the circumstances where the Minister may vary the applicable “claim period”, which includes claim periods in respect of the digital data cost of one or more digital data service

providers. Item 88 inserts a new subsection 8D(2) which removes all reference to digital data costs and digital data service providers.

100. **Item 84** repeals Divisions 3, 8, 10 and 12 of Part 2 of the TCPSS Act which relate to digital data services and related obligations.

101. **Item 85** repeals subsection 20B(3) of the TCPSS Act. This is required as a result of the repeal of section 17 under Division 10 of the TCPSS Act – refer to item 89 above.

102. **Item 86** repeals subsections 20J(1) to (3) of the TCPSS Act and substitutes three new replacement subsections which do not contain references to levy credits payable to digital data service providers.

103. **Item 87** repeals section 20M of the TCPSS Act, which grants the Australian Communications and Media Authority (ACMA) the right to make necessary enquiries to determine the eligibility of universal service providers and digital data service providers to receive levy credits. Item 92 substitutes a new section 20M providing for the ACMA to make whatever inquiries it thinks necessary or desirable for the purposes of determining the correctness of a universal service provider’s claim for a levy credit.

104. **Item 88** repeals subsection 20N(2) of the TCPSS Act and substitutes a new subsection 20N(2). This is necessary to remove redundant references to “digital data service provider” and “digital data cost”.

105. **Item 89** removes from subsection 20U(1) of the TCPSS Act reference to subsection 20U(4) which is repealed by item 90.

106. **Item 90** repeals subsection 20U(4) of the TCPSS Act which deals with levy credits payable to digital data service providers.

107. **Item 91** removes from paragraph 20V(b) of the TCPSS Act reference to subsection 20U(4) which is repealed by item 90.

108. **Item 92** removes from paragraph 22(1)(b) of the TCPSS Act reference to subsection 20U(4), which is repealed by item 90.

109. **Item 93** omits from subparagraph 22(3)(a)(i) of the TCPSS Act reference to “, or a digital data service provider”.

110. **Item 94** repeals paragraph 22A(1)(b) of the TCPSS Act which provides that a digital data service provider is an “eligible person” for the purposes of section 22A.

111. **Item 95** amends the punctuation of paragraph 23(1)(e) of the TCPSS Act, necessitated by the repeal of paragraph 23(1)(f) at item 96.

112. **Item 96** repeals paragraph 23(1)(f) of the TCPSS Act which requires the ACMA to maintain a Register of approved digital data service plans.

113. **Item 97** repeals sections 159A and 159B of the TCPSS Act, which deal with the review of amendments introduced by the *Telecommunications (Consumer Protection and Service Standards) Amendment Act (No.2) 2000* and the intention to launch the Connect Australia programme respectively, as these provisions are now spent.

114. **Item 98** is a transitional measure to ensure that the record-keeping rules under paragraph 529(4)(b) of the TCPSS Act continue to require the retention of records relating to the provisions of Part 2 of the TCPSS Act even after those provisions have been repealed.

115. **Item 99** provides clarification regarding the transitional measures that are to apply in respect of levy credit determinations made under subsections 20J(1), (2) and (3) of the TCPSS Act which are repealed by item 91. These transition measures are necessary to

provide certainty around the status of claims made under section 30J of the TCPSS Act before the commencement of item 90.

116. **Item 100** is a transitional measure applying in respect of levy credit determinations made under subsections 20J(1), (2) and (3) of the TCPSS Act, which are to be repealed and substituted with new provisions by item 91. These transition measures provide certainty to providers regarding the status of their claims for a levy credit claim made by a provider under section 30J before the commencement of item 91. In effect, where a digital data service provider had made an application for a levy credit prior to the amendment of subsection 20J(1) of the TCPSS Act, any determination made under subsection 20J(1) - prior to the commencement of item 91 - will remain in full force and effect. Also, any levy credit claim form which had been approved by the ACMA under subsection 20J(3), will be treated as having been under subsection 20J(3) of the TCPSS Act, which will have the effect of enabling existing levy credit claims to be assessed and processed under the previous rules and arrangements.

117. **Item 101** is a transitional measure which clarifies that despite the amendment of subsection 22(3) of the TCPSS Act by item 98, the ACMA's obligations under subsection 22(3) of the TCPSS Act in relation to the non-disclosure of information obtained from a digital data service provider relating to a claim period continue to apply.

118. **Item 102** is a transitional measure which provides that, despite the repeal of paragraph 22A(1)(b) of the TCPSS Act by item 99, former digital data service providers would continue to have the ability to request certain information from the ACMA relating to a claim period ending before 1 July 2009, as if paragraph 22(A)(1)(b) of the TCPSS Act had not been repealed. Section 8 of the *Acts Interpretation Act 1901* would operate to preserve an existing request made (but not yet finalised) under subsection 22A(2) before its repeal.

Amendments to the *Telecommunications (Universal Service Levy) Act 1997*

119. **Item 103** removes from the title of the *Telecommunications (Universal Service Levy) Act 1997* (Telco (USL) Act) the reference to "and digital data services".

Amendments to the *Telstra Corporation Act 1991*

120. **Item 104** repeals the heading of Part 2C of the *Telstra Corporation Act 1991* and substitutes a new heading to remove reference to Telstra's "digital data service obligation".

121. **Item 105** omits reference to "and digital data services" at paragraph 8CM(1)(a) of the *Telstra Corporation Act 1991*.

122. **Item 106** repeals and substitutes a new paragraph 8CM(1)(b) of the *Telstra Corporation Act 1991* to remove reference to the digital data service obligation.

Amendments to the *Trade Practices Act 1974*

123. **Item 107** amends the punctuation of paragraph 151CM(1)(c) of the TP Act, necessitated by the repeal of paragraph 151CM(1)(d) of the TP Act at item 108.

124. **Item 108** repeals paragraph 151CM(1)(d) of the TP Act which provides for the Australian Competition and Consumer Commission to monitor digital data service provider compliance with any regulation of digital data service charges under Division 12 Part 2 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999*. As Division 12 Part 2 is being repealed, this provision is no longer necessary.

125. **Item 109** removes the definition of “digital data service provider” from subsection 151CM(5) of the TP Act.

Schedule 2 – Repeal of Acts

Part 1 – Repeals

Repeal of the *APEC Public Holiday Act 2007*

126. **Item 1** repeals the *APEC Public Holiday Act 2007*. The purpose of the *APEC Public Holiday Act 2007* was to provide for 7 September 2007 as a public holiday for the purposes of federal industrial instruments but only in respect of employment in metropolitan Sydney, which was where the public holiday was observed. The purpose of the public holiday was to facilitate the holding of the APEC meeting in Sydney on that day.

127. The APEC meeting now being over, this Act no longer has any function to perform.

Repeal of the *Delivered Meals Subsidy Act 1970*

128. **Item 2** repeals the *Delivered Meals Subsidy Act 1970*. The payment of subsidies for delivered meals is now provided for by the *Home and Community Care Act 1985*. The *Delivered Meals Subsidy Act 1970* no longer has any effect and its repeal would have no impact on the payment of subsidies for delivered meals.

Repeal of the *Home Nursing Subsidy Act 1956*

129. **Item 3** repeals the *Home Nursing Subsidy Act 1956*. Home nursing subsidy is now amalgamated with funding for other care and services provided in the person’s own home. This funding is provided for under the *Home and Community Care Act 1985*. The *Home Nursing Subsidy Act 1956* no longer has any effect and its repeal would have no impact on the provision of home nursing.

Repeal of the *Income Tax (Franking Deficit) Act 1987*

130. **Item 4** repeals the *Income Tax (Franking Deficit) Act 1987*. That Act imposes the franking deficit tax that was payable under section 160AQJ of the *Income Tax Assessment Act 1936*. Franking deficit tax ceased to be payable under section 160AQJ after June 2002, so that provision was repealed as an inoperative provision in 2006 by the *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*.

131. It follows that the *Income Tax (Franking Deficit) Act 1987* is now redundant and can be repealed.

Repeal of the *Nursing Homes Assistance Act 1974*

132. **Item 5** repeals the *Nursing Homes Assistance Act 1974*. The majority of the provisions in this Act, dealing with the provision of funding of nursing home beds for frail and aged persons, were subsumed by the *National Health Act 1953*. The remaining provisions, relating to the funding of nursing home beds for people with disabilities, were made inoperative with the signing of disability Agreements with the States. The repeal of this Act would therefore have no impact on funding but would streamline legislation in this area.

Repeal of the *States Grants (Home Care) Act 1969*

133. **Item 6** repeals the *States Grants (Home Care) Act 1969*. Provision for grants to States for home care is now provided for by the *Home and Community Care Act 1985*. The *States Grants (Home Care) Act 1969* no longer has any effect and its repeal would have no impact on the provision of home care by the States.

Repeal of the *States Grants (Nurse Education Transfer Assistance) Act 1985*

134. **Item 7** repeals the *States Grants (Nurse Education Transfer Assistance) Act 1985*. This Act is no longer in operation. Nursing education was funded from 1984 to 1993 as transition from hospital-based to tertiary-based education and the provisions of the Act were subsumed by higher education legislation in 1993. The repeal of this Act would therefore have no impact on the support provided to nursing education.

Repeal of the *States Grants (Paramedical Services) Act 1969*

135. **Item 8** repeals the *States Grants (Paramedical Services) Act 1969*. Provision for grants to States for paramedical services is now provided for by the *Home and Community Care Act 1985*. The *States Grants (Paramedical Services) Act 1969* no longer has any effect and its repeal would have no impact on the provision of paramedical services by the States.

Part 2 – Amendments consequential on repeals

Aged or Disabled Persons Care Act 1954

136. Items 9 to 11 remove references to the *Nursing Homes Assistance Act 1974* (NHA Act) from the *Aged or Disabled Persons Care Act 1954* (ADPC Act). This is a consequence of the repeal of the NHA Act (item 5 refers). The definition of “eligible person” and “hostel” under the ADPC Act no longer need to provide for the exclusion of persons and nursing homes approved under the NHA Act. Similarly, there will no longer be any need to exclude nursing homes approved under the NHA Act from receipt of financial assistance under the ADPC Act. Accordingly, removal of these references would have no impact on the operation of the ADPC Act.

137. **Item 9** amends sub-subparagraph (d)(ii)(C) of the definition of “eligible person” contained in subsection 2(1) of the ADPC Act to remove references to the NHA Act.

138. **Item 10** amends paragraph (d) of the definition of “hostel” contained in subsection 2(1) of the ADPC Act to remove references to the NHA Act.

139. **Item 11** amends subsection 10C(3) of the ADPC Act to remove references to the NHA Act.

Higher Education Funding Act 1988

140. **Item 12** repeals subsections 18(3) and (4) of the *Higher Education Funding Act 1988* to remove references to the *States Grants (Nurse Education Transfer Assistance) Act 1985*. This is a consequence of the repeal of the *States Grants (Nurse Education Transfer Assistance) Act 1985* (item 7 refers). The removal of these references would have no impact on the operation of the *Higher Education Funding Act 1988* as there are no determinations in force under subsection 18(3) which deals with money paid to institutions pursuant to the *State Grants (Nurse Education Transfer Assistance) Act 1985*.

National Health Act 1953

141. **Item 13** removes subsection 105AAB(8) from the *National Health Act 1953* as a consequence of the repeal of the NHA Act (item 5 refers). The section no longer needs to provide for the application of the NHA Act so the repeal of this subsection would have no impact on the operation of the *National Health Act 1953*.

Part 3 – Matters relating to the repeal of the Income Tax (Franking Deficit) Act 1987

142. **Item 14** applies the repeal effected by item 4 to assessments for the 2006-07 and later income years and applies it to any other matters after 14 September 2006. This ensures that the repeal of the *Income Tax (Franking Deficit) Act 1987* applies from exactly the same time as the repeal of section 160AQJ of the *Income Tax Assessment Act 1936*.

143. **Items 15 to 17** preserve any residual operation of the *Income Tax (Franking Deficit) Act 1987*, which is repealed by item 4. The *Tax Laws Amendment (Repeal of Inoperative Provisions) Act 2006*, which repealed the provisions that made the franking deficit tax payable, included the same “saving” provisions to preserve their operation.