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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

OMNIBUS REPEAL DAY (AUTUMN 2014) BILL 2014

EXPLANATORY MEMORANDUM

(Circulated with the authority of the Parliamentary Secretary to the Prime Minister, the Hon Josh Frydenberg MP)

OMNIBUS REPEAL DAY (AUTUMN 2014) BILL 2014

Outline

The Omnibus Repeal Day (Autumn 2014) Bill 2014 (the Bill) is a whole of government initiative to amend or repeal legislation across ten portfolios. The Bill brings forward measures to reduce regulatory burden for business, individuals and the community sector that are not the subject of individual stand-alone bills. For example:

- Streamlining reporting and information provision requirements for telecommunications providers under the *Competition and Consumer Act 2010*.
- Removing the certification requirement under the *Aged Care Act 1997* that replicates state, territory and local government building regulations.
- Exempting low volume importers from the licensing requirements of the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

The Bill also includes measures that repeal redundant and spent Acts and provisions in Commonwealth Acts and complements the measures included in the Statute Law Revision Bill (No. 1) 2014 and the Amending Acts 1901 to 1969 Repeal Bill 2014. For example, the Bill repeals the following Acts:

- The *Construction Industry Reform and Development Act 1992* which established two bodies to promote and facilitate reform of the construction industry. One of these bodies was abolished in 1995 and there are no current members on the other.
- The *Commonwealth and State Housing Agreement (Service Personnel) Act 1990* that provided for the transfer of property between the Commonwealth and individual States following the creation of the Defence Housing Authority in 1988. This Act was fully spent after five years.

In total this Bill, the Statute Law Revision Bill (No. 1) 2014 and the Amending Acts 1901 to 1969 Repeal Bill 2014 will repeal over 1,000 Commonwealth Acts.

Repealing spent and redundant legislation and provisions is important to ensure regulation is easily accessible, continues to deliver the policy outcomes for which it was created and only remains in force for as long as it is needed. It also reduces the time it takes for business, individuals and the community to find and access the regulation that affects them.

The Bill is structured by portfolio and this structure is mirrored in the explanatory notes that follow. A brief outline is provided for each Schedule that is followed by the explanatory notes for relevant items in the Bill.

Financial Impact Statement

The Bill repeals the *Coordinator-General for Remote Indigenous Services Act 2009*. The Government announced in the 2013-14 Mid-Year Economic and Fiscal Outlook (MYEFO) that the role and function of the Coordinator-General for Remote Indigenous Services would conclude on the expiration of the appointment of the then incumbent Coordinator-General on 31 January 2014. The cessation of the Coordinator-General for Remote Indigenous Services is forecast to save $7.1m over three years from 2014-15 to 2016-17.

The Bill also repeals spent, exhausted and lapsed annual appropriations Acts and special appropriations Acts. The exact amount repealed by this Bill will not be known until the later of 1 July 2014, or the commencement date for this Bill if that is later than 1 July 2014. Of this amount, some appropriations may be considered for re-appropriation by the Finance Minister in

relation to the relevant Budget period. The amounts to be considered for re-appropriation by the Finance Minister would be dependent on the final amounts repealed at the date of commencement and requests received, in the future, for re-appropriation. This process is consistent with the process used in relation to the *Statute Stocktake (Appropriations) Act 2013*.

Four redundant tax measures are proposed for repeal in this Bill. There are no revenue implications expected from the repeal of these measures.

Regulation Impact Statement

A Regulation Impact Statement was not required for the measures included in this Bill.

Statement of Compatibility with Human Rights

See Statement of Compatibility with Human Rights at the end of this explanatory memorandum.

List of Abbreviations

In these notes on clauses, the following abbreviations and terms are used:

AAT	Administrative Appeals Tribunal
ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Corporation
ABC Act	*Australian Broadcasting Corporation Act 1983*
ABC T&C Act	*Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983*
ACA	Australian Communications Authority
ACMA	Australian Communications and Media Authority
AC Act	*Aged Care Act 1997*
ACMA C&T Act	*Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005*
AIA	*Acts Interpretation Act 1901*
AMPS	Advanced Mobile Phone System
ATS	Alternative telecommunications services
Australia Post Act	*Australian Postal Corporation Act 1989*
ACIS	Automotive Competitiveness and Investment Scheme
ACIS Act	*ACIS Administration Act 1999*
Basin Plan	Murray-Darling Basin Plan
Bill	*Omnibus Repeal Day (Autumn 2014) Bill 2014*
Broadcasting T&C Act	*Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992*
BSA	*Broadcasting Services Act 1992*
CCA	*Competition and Consumer Act 2010*
CDMA	Code Division Multiple Access

CFCs	chlorofluorocarbons
CIRD Act	*Construction Industry Reform and Development Act 1992*
CSP	carriage service provider
EPBC Act	*Environment Protection and Biodiversity Conservation Act 1999*
FIP	facilities installation permit
FOI Act	*Freedom of Information Act 1982*
GBRMP Act	*Great Barrier Reef Marine Park Act 1975*
GBRMP Regulations	*Great Barrier Reef Marine Park Regulations 1983*
HCFCs	hydrochlorofluorocarbons
Heritage Council Act	*Australian Heritage Council Act 2003*
Housing Agreement and Assistance Acts	*Commonwealth and State Housing Agreement Act 1945*, *Housing Agreement Acts* of 1956, 1961, 1966, 1973 and 1974 and *Housing Assistance Acts* of 1973, 1978, 1981, 1984, 1989 and 1996
ICESCR	International Covenant on Economic, Social and Cultural Rights
IGA	*Interactive Gambling Act 2001*
IMF	International Monetary Fund
ITAA 1997	*Income Tax Assessment Act 1997*
LIA	*Legislative Instruments Act 2003*
Minister	As defined by section 19A of the *Acts Interpretation Act 1901* in relation to the specified provision(s) of the Act.
Montreal Protocol	Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987
NES	national environmental significance
NBN	National Broadband Network
NBN RFP	National Broadband Network Request for Proposals

NRS	National Relay Service
ODP	ozone depleting potential
ODS	ozone depleting substances
OPSGGM Act	*Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*
OPSGGM Regulations	*Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995*
Radiocommunications Act 1983	*Radiocommunications Act 1983*
Radiocommunications Act 1992	*Radiocommunications Act 1992*
Radiocommunications T&C Act 1983	*Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1983*
Radiocommunications T&C Act 1992	*Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992*
RNE	Register of the National Estate under the *Australian Heritage Council Act 2003*
SBS	Special Broadcasting Service Corporation
SBS Act	*Special Broadcasting Service Act 1991*
Secretary	The Secretary of the Department administered by the Minister responsible for administering the relevant Act or part of the Act
SGG	synthetic greenhouse gas
SI Act	*Sea Installations Levy Act 1987*
States (Works and Housing) Assistance Acts	*States (Works and Housing) Assistance Acts* of 1982, 1983, 1984, 1985 and 1988
Tel Act	*Telecommunications Act 1997*
TCP Code	Telecommunications Consumer Protections Code
TCPSS Act	*Telecommunications (Consumer Protection and Service*

	Standards) Act 1999
Tel and Post T&C Act	*Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989*
Tel Industry Levy Act	*Telecommunications (Industry Levy) Act 2012*
TUSMA Act	*Telecommunications Universal Service Management Agency Act 2012*
Telstra Act	*Telstra Corporation Act 1991*
USO	universal service obligation
VAST	Viewer Access Satellite Television
Water Act	*Water Act 2007*

Clause 1: Short Title

This specifies the short title of the Act as the *Omnibus Repeal Day (Autumn 2014) Act 2014*.

Clause 2: Commencement

The table in this clause sets out when the Bill's provisions will commence. The table provides that clauses 1 to 3 (and anything else not covered in the table), as well as Schedules 1 to 5, 7, 9 (Part 1) and 10 would commence on the day on which the Bill receives the Royal Assent.

Table items 3 and 5 provide that Schedules 6 and 9 respectively will commence on the later of 1 July 2014 and the day after this Bill receives the Royal Assent.

Table item 7 provides that Schedule 9 (Part 2) commences on the later of the start of the day after this Bill receives the Royal Assent and immediately after the commencement of Part 2 of Schedule 5 to the *Aged Care (Living Longer Living Better) Act 2013*.

Clause 3: Schedules

This clause provides that an Act that is specified in a Schedule is amended or repealed as set out in that Schedule and any other item in a Schedule operates according to its terms.

Schedule 1—Agriculture

Outline

This Schedule makes minor amendments to Acts administered in the Agriculture portfolio to update and remove obsolete references.

Notes on Clauses

Dairy Produce Act 1986

Items 1 and 2: Subsection 3(1)

Items 1 and 2 insert definitions for the 'Infrastructure Department' and 'Infrastructure Minister' in subsection 3(1) of the *Dairy Produce Act 1986.* The amendment will avoid the need to update the Act when Administrative Arrangement Orders are changed in the future and reflects current drafting practice.

Item 3: Subclause 86(2) of Schedule 2

Item 3 amends subclause 86(2) of the *Dairy Produce Act 1986* to replace an obsolete reference to the Department of Employment, Workplace Relations and Small Business with a reference to the 'Infrastructure Department'.

As a result of an Administrative Arrangements Order that was issued on 18 September 2013, administrative responsibility for the Dairy Regional Assistance Programme was transferred from the former Department of Education, Employment and Workplace Relations to the Department of Infrastructure and Regional Development.

Regional Forest Agreements Act 2002

Item 4: Paragraph 3(b)
Item 5: Section 4 (definition of *Forest and Wood Products Action Agenda*)
Item 6: Subparagraph 11(2)(a)(ii)
Item 7: Subparagraph 11(2)(a)(iii)
Item 8: Paragraphs 11(3)(c) and (d)
Item 9: Subsections 11(7) to (10)

Items 4 to 9 remove obsolete references in the *Regional Forestry Agreements Act 2002.*

References to a review that was to be conducted by the Forest and Wood Products Council by the end of 2004 will be removed. This review was completed and the review report was tabled in both Houses of Parliament on 14 June 2005.

References to the Forest and Wood Products Action Agenda will be removed. This Agenda has been completed and references to it are no longer required.

Schedule 2—Communications

Outline

This Schedule amends legislation in the Communications portfolio to repeal spent and redundant Acts and provisions and to streamline regulatory requirements and administration in the telecommunications industry.

Notes on Clauses

Part 1—Repeal of Act

This Part repeals the *NRS Levy Imposition Act 1998* in its entirety.

Item 1: The whole of the Act

Item 1 repeals the *NRS Levy Imposition Act 1998*. This Act is redundant as the National Relay Service (NRS) levy has been replaced by the levy imposed under the *Telecommunications (Industry Levy) Act 2012*.

Part 2—Amendments relating to access agreements

Outline

This Part repeals sections 152BEA and 152BEB of the *Competition and Consumer Act 2010* (CCA) and replaces these with two new sections that provide a more streamlined information reporting and information provisioning requirement in respect of access agreements and variations to those agreements by telecommunications providers to the Australian Competition and Consumer Commission (ACCC).

By operation of existing sections 152BEA and 152BEB, since 1 January 2011 carriers and Carriage Service Providers (CSPs) have been required to lodge access agreements, variation agreements and notifications of termination of access agreements with the ACCC. Access agreements must be lodged with the ACCC within 28 days after the day on which the agreement was entered into, or the service was declared, as relevant.

'Access agreements' are defined under existing subsection 152BE(1) in a broad way and include an agreement that (among other things) is between an access seeker and a carrier or CSPs that relates to access to a declared service. A 'variation agreement' is defined under subsection 152BE(3) simply as an agreement to vary an access agreement as defined in subsection 152BE(1).

Given the broad ambit of existing sections 152BEA and 152BEB, in practice this has meant that carriers and CSPs have been required to lodge voluminous amounts of contract documentation and notices with the ACCC in respect of the large number of declared services they supply. This has been very costly and administratively burdensome for industry.

The rationale for the original requirement was that access agreements prevail, to the extent of any inconsistency, over terms and conditions specified in any Access Determination, Special Access Undertaking or Binding Rules of Conduct. Consequently, Parliament considered that

> "[i]t is therefore important that the ACCC be aware of access agreements and of the terms and conditions they contain, as this will assist the ACCC in carrying out its regulatory functions under Parts XIB and XIC of the CCA."[1]

[1] Telecommunications Legislation Amendment (Competition and Consumer Safeguards) Bill 2010 (Cth), Explanatory Memorandum, p.200.

Whilst it still remains important for the ACCC to be aware of access agreements, in order to reduce the regulatory burden on carriers and CSPs, the provisions are being streamlined to require carriers and CSPs to submit a quarterly report to the ACCC which lists all contracts for the supply of declared services that were 'in-force' during the quarterly reporting period.

Notes on Clauses

Item 2: Section 152AC

Item 2 inserts the definition of 'quarter' under section 152AC of the CCA. This new definition is relevant to the reporting timeframe set out under the new section 152BEA (see item 3).

The term 'quarter' is defined as a period of three months ending on 31 March, 30 June, 30 September or 31 December for any particular year. The definition is the same as the definition under Part IVB of the CCA (in relation to industry codes).

Item 3: Sections 152BEA and 152BEB

Item 3 repeals sections 152BEA and 152BEB of the CCA and replaces them with two new sections that provide a more streamlined information reporting and information provisioning requirement.

New subsection 152BEA

The new subsection 152BEA(1) would require a carrier or CSP to give the ACCC a written statement setting out details of any access agreement in relation to the declared services it supplies or proposed to supply. The written statement would be required to be provided within 30 calendar days after the end of each quarter. Item 2 of this Schedule inserts a definition for the term 'quarter'.

The information required to be contained in the quarterly statement is specified in proposed subsection 152BEA(2), namely:

- the names of the parties to the access agreement;
- the declared services to which the agreement relates;
- agreement execution date;
- term of the agreement;
- (if applicable) variations entered into;
- (if applicable) the date the agreement was terminated, rescinded or cancelled (this ensures that the ACCC is made aware when access agreements cease to operate in advance of their anticipated expiry date); and
- any other information about the contract as set out in an ACCC instrument (in force) under proposed subsection 152BEA (3).

The new subsection 152BEA(3) would enable the ACCC to specify, by writing, information for the purposes of new paragraph 152BEA(2)(g). Any instrument made by the ACCC from time to time under this subsection is stated, by operation of subsection 152BEA(6), not to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (LIA). As the instrument could have application to all agreements or a specific class of agreements or class of access providers, the instrument is legislative in character. Proposed subsection 152BEA(6) represents a substantive exemption from the LIA.

The reason for exempting this type of instrument from the LIA is that the ACCC, as the independent expert regulator responsible for administering and enforcing compliance with Part XIC of the CCA, is best placed to decide what additional information should, from time to time, be included in the quarterly reports that the access providers will need to give to the ACCC about their contracts and variations to these contracts. The ACCC has the relevant technical and industry expertise to determine what additional information would assist it in performing its role.

Subjecting these decisions of the ACCC to disallowance would not be consistent with the operation of the ACCC as an independent regulator and would cause some uncertainty for the regulated companies. The proposed exemption from the LIA is consistent with other substantive exemptions in respect of the written statements made by the ACCC under existing paragraphs 152BEA(4),(5), (6) and (7) for the purposes of existing paragraphs 152BEA(1)(d), (2)(d) and (3)(b).

The new subsection 152BEA(4) would provide that any written instrument made by the ACCC under new subsection 152BEA(3) ceases to be in force five years after the day it is made (unless revoked at an earlier time). The provision would clarify that the five year duration applies to any instrument as amended. It is anticipated that in practice, the ACCC would over time, in reliance on section 33 of the *Acts Interpretation Act 1901* (AIA), make, amend, revoke or remake instruments under the new subsection 152BEA(3). This new subsection would make clear that any such instrument in force from time to time is to have five years duration unless revoked sooner. This would be a more rigorous mechanism for review of the instruments than the ten years provided for under the sunsetting provisions of the LIA.

The new subsection 152BEA(5) would require the ACCC to publish the instrument made under the new subsection 152BEA(3), which sets out the additional information required from time to time, on its website. This will ensure that the requirements are transparent to all access providers.

New subsection 152BEA(7) would clarify that the ACCC may, by writing, require carriers or CSPs to verify the information they provide in quarterly reports by way of a statutory declaration. A statutory declaration is a written statement made in accordance with the law that allows a person to declare something to be true.

If a carrier or CSP intentionally made a false statement in a declaration given to the ACCC they could be charged with an offence. The penalty for making a false statement in a statutory declaration (under Commonwealth law) is a maximum of four years imprisonment.

The inclusion of new subsection 152BEA(7) is to provide the ACCC with a safeguard against false or incorrect information being provided, if it so chooses to impose such a requirement.

By operation of item 3 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004*, the specification under new subsection 152BEA(7) is not a legislative instrument.

The new subsection 152BEA(8) would clarify that proposed section 152BEA is not intended to limit the operation of section 155 of the CCA. Section 155 confers wide powers on the ACCC to obtain information, documents and evidence when investigating possible contraventions of the CCA (enforcement) and in connection with some of its adjudicative and telecommunications functions (regulatory).

New subsection 152BEB

The new subsection 152BEB(1) would confer a statutory power upon the ACCC to request copies of any contract (for example, full unredacted copies of the contract and any contract

variations). If such a request is made in writing, the relevant carrier or CSP would be required to provide the documentation to the ACCC within ten days after the day the request was made (new subsection 152BEB(2)). The ACCC's powers to request a copy of a variation agreement is not limited to particular variations. Over time, it is common for access agreements to be varied. The power to request copies of access agreements is not bounded by any time reference nor is it contained to any particular quarterly reporting timeframe.

For example, if an access agreement was entered into on 1 October 2014 and varied three times between November and December 2014, it would be possible for the ACCC to make a single request to the specific access provider to provide copies of: (i) only one of the variations; or (ii) two of the variations; or (iii) all three variation agreements, as the ACCC sees fit.

A note is inserted at the end of subsection 152BEB(1) to remind readers that the ACCC could issue procedural rules providing for the practice and procedure to be followed by the ACCC in making a request under the subsection. The issuance of such procedural rules is within its existing discretionary powers under section 152ELA.

To give carriers and CSPs some degree of certainty, it is expected that the ACCC's general approach to when it is likely to seek or not seek copies of access agreements or variations to agreements would be specified in a procedural rule.

The new subsection 152BEB(3) is a declaratory statement and has been included for the avoidance of doubt. The written request by the ACCC to a carrier or CSP is not a legislative instrument within the meaning of section 5 of the LIA.

Inherent within the ACCC's discretionary administrative powers, it would be open for the ACCC to grant an extension to a particular access provider (that is, on an individual basis only) in respect of any of the lodgement timeframes under new subsections 152BEA(1) and 152BEB(1).

The new subsection 152BEB (4) is similar to proposed subsection 152BEA(8).

Item 4: Application of this Part

Item 4 is an application provision that clarifies which agreements are to be subject to the new streamlined reporting obligation under the new subsections 152BEA(1) and 152BEB(1). The new streamlined arrangements would apply to all access agreements in force at any time during the quarter in which this Part commences and all later quarters.

For example, if Part 2 were hypothetically to come into operation on 26 March 2014, access providers would be required to lodge their first quarterly statement with the ACCC in accordance with proposed subsection 152BEA(1) for all of its relevant access agreements in force at any time between 1 January and 31 March 2014.

It is noted that compliance with new sections 152BEA and 152BEB is a carrier licence condition for access providers who are also 'carriers' under the Telecommunications Act 1997 (Telecommunications Act) (see section 152BEC). Similarly, compliance with new sections 152BEA and 152BEB is a service provider rule for access providers who are 'CSPs' under the Telecommunications Act.

Part 3—Amendments relating to investigations

Outline

This Part amends legislation in the Communications portfolio to replace the Australian Communications and Media Authority's (ACMA) duty to investigate particular complaints

with a general discretion to investigate. The statutory duty to notify the complainant of the results of the investigation would also be repealed.

The ACMA will continue to be under a duty to investigate complaints received before the commencement date (unless one of the specified exceptions to the duty applies).

Notes on Clauses

Australian Communications and Media Authority Act 2005

Item 5: Subsections 4(3) to (7)

Item 5 repeals and replaces subsections 4(3) and (4) of the *Australian Communications and Media Authority Act 2005* (ACMA Act). Section 4 of the ACMA Act determines the completion date for a range of investigations that the ACMA conducts under the *Broadcasting Services Act 1992* (BSA). The completion date for a particular complaint investigation has depended on whether the ACMA has been under a duty to notify complainants or has decided to prepare a report of the investigation.

The effect of the amendment to subsections 4(3) and (4) is to simplify and consolidate the completion date provisions.

As amended, subsection 4(3) of the ACMA Act would provide that, unless subsection 4(4) applies, an investigation ends on the day the ACMA completes it.

Subsection 4(4) would provide that where the ACMA decides to prepare a report of the investigation, the completion date is the day the ACMA completes the report.

Broadcasting Services Act 1992

Item 6: Section 149
Item 7: Section 151
Item 8: Subsection 152(3)
Item 9: Clause 26 of Schedule 5
Item 10: Clause 27 of Schedule 5 (Heading)
Item 11: Clause 27 of Schedule 5
Item 12: Clause 1 of Schedule 6
Item 13: Clause 38 of Schedule 6
Item 14: Clause 43 of Schedule 7
Item 15: Clause 44 of Schedule 7
Item 16: Clause 44 of Schedule 7

Items 6 to 16 amend or repeal sections of the BSA that impose a duty on the ACMA to investigate every complaint that is correctly referred to it, subject currently to a narrow range of exclusions. The objective is to replace the duty to investigate with a general discretion to investigate.

Currently the ACMA must investigate complaints about whether:

- a broadcasting licensee or datacasting licensee has breached a licence condition, committed an offence against the BSA, or contravened a civil penalty provision (section 147 and clause 38 of Schedule 6 refers)
- a broadcasting licensee has broadcast objectionable program content, or failed to comply with a code of practice – provided the complainant has attempted to resolve the complaint with the broadcaster concerned in accordance with the applicable code of practice (section 148 refers)

- the ABC or the SBS has provided a broadcasting service or datacasting service contrary to a code of practice – provided the complainant has attempted to resolve the complaint with the national broadcaster in accordance with the applicable code of practice (subsection 150(1) refers)
- the ABC or the SBS has provided a captioning service contrary to Part 9D of the BSA (subsection 150(2) refers)
- an internet service provider has acted contrary to an applicable online provider rule, including registered codes of practice (see clauses 23 and 26 of Schedule 5 to the BSA, and section 17 of the *Interactive Gambling Act 2001*)
- a content service provider has committed an offence against the BSA, contravened a civil penalty provision, or breached an applicable designated content/hosting service provider rule (clauses 38 and 42 of Schedule 7 refer); and/or
- a content service provider has provided access to (potential) prohibited content to end-users in Australia, or acted contrary to an applicable code of practice (clauses 37 and 42 of Schedule 7 refer).

The ACMA is currently not required to investigate complaints where they are considered frivolous, vexatious or not made in good faith.

The effect of the amendments are to remove the ACMA's statutory duty to investigate complaints that do not fall in the limited categories for exemption. Instead the ACMA would have discretion to investigate the complaint if the ACMA considered it is desirable to do so.

Given the number of services and amount of annual scheduled programming, the level of complaints received and investigations undertaken by the ACMA suggests that the broadcasting industry is generally compliant with its legal and code of practice obligations under the BSA.

In 2012–13 the ACMA completed investigations into 3,793 items of online content and 212 investigations into broadcasting and datacasting services provided by commercial, subscription, national and community broadcasters.

In relation to the 212 broadcasting and datacasting investigations, the ACMA found 67 breaches, 135 non-breaches and concluded ten investigations (where, for example, a complaint is withdrawn or potential jurisdictional issues are identified). Forty of these investigations were also instigated by the ACMA on its 'own motion'.

Consumer complaints play an important role in effective regulatory and co-regulatory schemes. However, the broadening of the ACMA's discretion to not investigate a complaint allows the ACMA to take no further action for complaints that are misconceived, trivial, stale, or would inappropriately divert the resources of the ACMA, the service provider or broadcaster concerned, or the complainant. This will allow the ACMA to focus its resources on complaints of a more serious nature, including those that might indicate systemic problems or would be in the public interest to pursue. It is anticipated that the ACMA will inform the public about its general approach to investigating complaints in its discretion.

The ACMA's discretionary decisions about whether to investigate a complaint are not subject to external merits review by the Administrative Appeals Tribunal (the AAT).

It is also important to note that this approach is consistent with current provisions relating to investigations carried out by the ACMA on its own motion or where it has a current duty to investigate.

This approach does not impact on the powers of the Commonwealth Ombudsman to review the ACMA's administrative actions in performing its investigative function or for the decision to be subject to judicial review under the *Administrative Decisions (Judicial Review) Act 1977*.

In addition to repealing the ACMA's duty to investigate particular complaints, various duties on the ACMA to notify complainants about the outcome of complaint investigations will also be repealed. It is anticipated that the ACMA will continue to inform complainants about the result of an investigation as a matter of best practice. The duties to be repealed pertain to notifications regarding investigations into complaints in relation to broadcasting, datacasting, online and content services.

Interactive Gambling Act 2001

Items 17 to 23 amend the *Interactive Gambling Act 2001* (IGA) to replace the ACMA's duty to investigate with a general discretion.

Currently the ACMA must investigate complaints about whether:

- a person has provided access to prohibited internet gambling content to end-users in Australia (section 16 of the IGA refers); and/or
- an internet service provider has acted contrary to an applicable online provider rule, including registered codes of practice (section 17 of the IGA refers).

The amendments are substantially similar to those proposed to the BSA, noted above. The ACMA's duty to notify complainants about the result of investigations is also repealed, except where the complaint has been referred by the ACMA to an Australian police force (see item 21).

Item 17: Section 20

Item 17 repeals section 20 of the IGA. This section requires the ACMA to investigate complaints about prohibited internet gambling content. Where the complaint relates to internet content that is hosted in Australia, the section requires that the ACMA must not investigate the complaint, and if the ACMA considers that the complaint should be referred to an Australian police force, the ACMA must refer it to a member of an Australian police force.

Item 18: Section 21 (heading)
Item 19: Section 21
Item 20: Section 21

Items 18, 19 and 20 amend the heading and text of section 21, and maintain a degree of consistency for the investigation power conferred on the ACMA with those conferred by clause 27 of Schedule 5, and clause 44 of Schedule 7, of the BSA. The commentary above in relation to the proposed changed requirements for the ACMA to investigate BSA matters also applies to these provisions.

Item 21: At the end of section 21

Item 21 appends four new subsections at the end of section 21. The text of the subsections is drawn from the repealed subsections (3), (7), (8) and (9) of section 20. These subsections require certain complaints about internet interactive gambling content to be referred to an Australian police force for investigation, and are particular to the IGA.

Item 22: Subsection 24(1) (note 1)
Item 23: Subsection 24(1) (note 2)

Items 22 and 23 are minor technical amendments consequential to the amendments above.

Item 24: Application of this Part

Item 24 is an application provision. The amendments regarding the investigation of complaints apply to those complaints received by the ACMA on or after the commencement date of Part 3 – being the day after this Bill receives Royal Assent.

Part 4—Amendments relating to the Advanced Mobile Phone System

Outline

This Part repeals Part 19 of the Telecommunications Act, which regulated the phasing out of the Advanced Mobile Phone System (AMPS) by 1 January 2000. AMPS is a first generation cellular technology for mobile phones; it is a standard system for analog signal. Part 19 provided for:

- the phasing out of AMPS networks (section 361);
- an ongoing prohibition on installing and operating new AMPS networks (section 360); and
- limited exemptions from the phase-out prohibition (section 362).

The phase out of AMPS was completed in 2000, as required by Part 19. Telstra's AMPS mobile network was replaced by a Code Division Multiple Access (CDMA) technology network, and in turn, that CDMA network was shutdown in 2008.

Given the current state of mobile telecommunications network technology, the AMPS technology is outmoded technology and there is no practical likelihood that any mobile carrier in Australia would realistically operate an AMPS mobile network. Currently, there are no public AMPS networks in operation nor are there any exemptions under section 362 in force. Accordingly, the prohibition against the installation and operation of an AMPS network under section 360, and relevant exemptions under section 362, are no longer necessary.

Notes on Clauses

Telecommunications Act 1997

Item 25: Section 5
Item 26: Section 6 (table item 1)

Item 25 omits from the outline of the Telecommunications Act under section 5 the point pertaining to the Advanced Mobile Phone System being phased out by 1 January 2000.

Item 26 repeals item 1 from the main index to the Act at section 6 of the Telecommunications Act which covered the topic "AMPS (Advanced Mobile Phone System)".

Items 25 and 26 are consequential amendments as a result of the repeal of Part 19.

Item 27: Part 19

Item 27 repeals Part 19 of the Telecommunications Act in its entirety as all of the provisions are redundant.

Part 5—Amendments relating to standard agreements

Outline

This Part repeals redundant provisions in Part 23 of the Telecommunications Act that have been superseded by the Telecommunications Consumer Protections (TCP) Code.

Part 23 of the Telecommunications Act provides for the development of standard forms of agreement for consumers. This Part enables carriers and CSPs to rely on their standard forms of agreement as the terms and conditions for the supply of a service rather than have to enter into separate agreements with each consumer.

Section 480 requires providers to ensure the standard form of agreement is publicly available.

Section 480A enables the ACMA to determine other information which the providers must make publicly available.

Section 481 requires the provider to give to the ACMA a copy of the standard form of agreement.

Notes on Clauses

Item 28: Sections 480, 480A and 481

Item 28 repeals sections 480, 480A and 481 in Part 23 of the Telecommunications Act. These provisions are now superseded by the TCP Code (C628:2012), which requires the standard form of agreement to be available on the supplier's website and also requires the agreement to be in plain language, and to be clear and consistent. The TCP Code is registered by the ACMA, which also has appropriate powers of enforcement in relation to the Code.

Part 6—Amendments relating to protected carrier information

Outline

Part 6 repeals Part 27A of the Telecommunications Act, which enables the Communications Minister to require telecommunications carriers to give information to the Commonwealth about their telecommunications networks between 12 February 2008 and 26 May 2009. This information could be provided to participants in the National Broadband Network Request for Proposals (known as the 'NBN RFP'). Part 27A was enacted in 2008 to support the then Government's NBN RFP.

Part 6 of Schedule 2 to this Bill:

- repeals Part 27A of the Telecommunications Act;
- repeals nine definitions at section 7 of the Telecommunications Act;
- makes transitional provisions for preserving the confidentiality obligations applying to entrusted public officials (and restricted dealing arrangements and associated provisions) who received protected carrier information under the Part 27A regime;
- makes transitional provisions for preserving the confidentiality undertakings given by, and associated offence provisions and compensation liability applying to, companies and their personnel who were provided protected carrier information in accordance with sections 531H(4) and 531N(1) of Part 27A; and
- makes transitional provisions for the continued operation of the specific storage, handling and destruction rules (applying to companies that obtained protected carrier information), as set out in *Telecommunications (National Broadband Network—*

Restricted Recipients and Storage, Handling and Destruction of Protected Carrier Information) Rules 2008 (No. 1) despite the repeal of sections 531N and 531P.

Telecommunications Act 1997

Item 29: Section 7 (definition of *ACCC official*)
Item 30: Section 7 (definition of *ACMA official*)
Item 31: Section 7 (definition of *authorised information officer*)
Item 32: Section 7 (definition of *designated information*)
Item 33: Section 7 (definition of *designated request for proposal notice*)
Item 34: Section 7 (definition of *entrusted company officer)*
Item 35: Section 7 (definition of *entrusted public official*)
Item 36: Section 7 (definition of *protected carrier information*)
Item 37: Section 7 (definition of *restricted recipients rules*)

Items 29 to 37 (inclusive) repeal definitions of key terms used in Part 27A of the Telecommunications Act. These definitions are no longer required as a consequence of the repeal of Part 27A.

Item 38: Part 27A

Item 38 repeals Part 27A of the Telecommunications Act in its entirety. This Part was inserted into the Telecommunications Act by the *Telecommunications Legislation Amendment (National Broadband Network) Act 2008* to enable the Commonwealth to obtain protected carrier information from relevant carriers about their telecommunications networks and for such information to be provided to companies that were considering making or intending to make a submission in response to the 11 April 2008 NBN RFP.

The substantive obligations on carriers to disclose this information lapsed on 26 May 2009. Consequently, the purpose for which Part 27A was introduced has been expended with no further operation.

Items 39, 40 and 41 provide limited transitional provisions to ensure sufficient protections continue to apply to information that has been disclosed by telecommunications carriers to the Commonwealth in compliance with the obligations under Part 27A.

Item 39: Transitional – repeal of Part 27A of the *Telecommunications Act 1997*

Item 39 modifies Part 27A to maintain protections for carrier information that would otherwise be repealed by item 38. The transitional measures provide that despite the repeal of Part 27A, the definitions of ***ACCC official*** and ***ACMA official*** in section 7 of the Telecommunications Act and select provisions of Part 27A altered by the modifications set out in the table at item 39 are taken to continue to remain in force despite the repeal of Part 27A by item 38.

In practical terms, the effect of the modifications to Part 27A in the table at item 39 is that the following operative provisions under Part 27A would be taken to continue to have effect despite the repeal of Part 27A:

- the definitions at section 531B (authorised information officer, entrusted company officer, entrusted public official and protected carrier information (in a modified manner). The term 'protected carrier information' includes any information that was given to an authorised information officer voluntarily or under the proposed 'repealed' sections specified in subparagraphs (a) and (b) of item 39. Maintaining these definitions (albeit with some modifications) gives meaning to any references to 'protected carrier information' in the transitional provisions in items 39, 40 and 41

which seek to enable ongoing obligations and protections for this sensitive information.

- Subsection 531G(1) (which prohibits disclosure or use of protected carrier information by entrusted public officials), paragraphs 531G(2)((i)-(k) and 531G(3A)(h)-(j) (which provide limited exceptions to the prohibition: namely, where the carrier who gave the information consents to the disclosure or makes the information publicly known or authorises another person to make it publicly known; or where disclosure is in compliance with a legal requirement under the law of the Commonwealth, a State or Territory) and subsection 531G(4) and (4A).
- Subsection 531G(5) (specification that section 70 of the *Crimes Act 1914* has effect in relation to information obtained by a person in their capacity as an 'entrusted public officer'.
- Subsection 531K(1) (which prohibits disclosure or use of protected carrier information by an entrusted company officer), paragraphs 531K(2)(c)-(e) and 531K(2A)(b)-(d) (which provide limited exceptions to the prohibition, namely:
    i. Where the carrier who gave the information consents to the disclosure or makes the information publicly known or authorises another person to make it publicly known; or
    ii. Where disclosure by the company officer is in compliance with a legal requirement under the law of the Commonwealth, a State or Territory).
- Subsections 531K(3) (offence provision) and (4) (specification of subsections 531K(1) and (3) being civil penalty provisions).
- Section 531L provides the Federal Court with a power to make an order for compensation against a company for contravention of subsection 531K(1) or (3) by an authorised information officer or entrusted company officer. An application to the Federal Court may be made within six years of the contravention. As a contravention of section 531K could potentially occur any time until 2015, section 531L will need to continue in force for a limited period beyond the Part 27A repeal.
- Section 531M (modification that the Minister must not appoint a member of the Australian Public Service Senior Executive under the section after the commencement of Item 39).
- Section 531P (storage, handling and destruction rules made under subsection 531P(1) and continuation of the obligation to comply with such rules. Subsection 531P(3) provides a civil penalty provision for the contravention of the rules set out in the instrument made under sections 531N and 531P and subsection 531P(4) provides ancillary contravention provisions).

Although transitional provisions provide ongoing obligations and protections regarding the use and confidentiality of the protected carrier information obtained under Part 27A (as noted above), numerous provisions listed in the table at Item 39 (which relate largely to the original disclosure of information) are not transitioned because they are fully spent.

Item 40: Transitional - determination

Item 40 provides a transitional provision to maintain the rigorous obligations for the storage, handling and destruction by companies of protected carrier information and further restrictions upon persons to whom an entrusted company officer could disclose the

information despite the repeal of Part 27A. These obligations and restrictions were established under the *Telecommunications (National Broadband Network – Restricted Recipients and Storage, Handling and Destruction of Protected Carrier Information) Rules 2008 (No. 1)* (the Rules), which are made under subsections 531N(1) and 531P(1) in Part 27A. The Rules are subject to three minor alterations to recognise the repeal of section 531H and paragraph 531K(2)(a).

Item 40 represents a further safeguard for carriers and the respective protected carrier information divulged in accordance with the Part 27A requirements. Holders of protected carrier information were obliged under the Rules to dispose of the sensitive information once the NBN RFP processes were terminated in April 2009. They were required, among other things, to give a statutory declaration certifying the disposal of protected carrier information occurred in accordance with the disposal processes under the Rules. Despite all the entrusted company officers having certified that the information has been destroyed in accordance with the Rules, it is important for the Rules (and the associated binding undertakings given under such Rules) to continue in force as a further safeguard.

Importantly, the Rules provide for, among other things, the ability for the Commonwealth to audit the company's premises to verify compliance and the requirement for binding undertakings to have been given.

The Commonwealth's storage, handling and destruction of protected carrier information is subject to general Commonwealth law, including the *Archives Act 1983*.

Item 41: Transitional - undertakings

Item 41 proposes two further transitional provisions to retain certain undertakings beyond the repeal of Part 27A as if the repeal to subsections 531H(4) and 531N(1) had not occurred and the determination/rules made under those provisions had continued in force. These undertakings were given by entrusted company officers before they received protected carrier information under subsections 531H(4) and 531N(1).

Specifically, sub-item 41(1) of this Bill would preserve the undertaking that was given before commencement of Item 41, for the purposes of the determination made under subsection 531H(4), namely the *Telecommunications (National Broadband Network) Determination under subsection 531H(4) 2008 (No.1)*. The undertaking (set out in Schedule 1 to the Determination, as per paragraph 4(1)(b)) required the person to irrevocably and unconditionally undertake to not use or disclose any protected carrier information that is in their possession or control, except as permitted by the Act; not copy or duplicate any protected carrier information that is in their possession or control, except as permitted by the Rules; and duly and punctually comply with the Act and perform any obligation imposed on them by the Rules.

Sub-item 41(2) preserves the undertaking that was given before commencement of Item 41, for the purposes of the Rules (made under subsection 531N(1)). The form of the undertaking which was given in accordance with paragraph 4(2)(b) and Schedule 1 of the Rules was the same as the undertaking specified in Schedule 1 to the *Telecommunications (National Broadband Network) Determination under subsection 531H(4) 2008 (No.1)*. The undertaking given for the purposes of the restricted recipients rules (made under section 531N) was required to be signed by an entrusted company officer before a receiving officer or another entrusted company officer was able to disclose protected carrier information to that officer (see subclause 4(2) of the Rules).

Part 7—Amendments relating to protection schemes for residential customers

Outline

This Part repeals Part 7 of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act). Part 7 of the TCPSS Act was intended to protect residential customers from losing prepaid monies in the event a new CSP failed to supply standard carriage services through circumstances such as insolvency. The Part enables the ACMA to determine certain payments received by a CSP from residential customers as being protected payments and to formulate schemes aimed at ensuring the customer is protected.

The provisions in Part 7 have never been utilised and the provisions are considered redundant.

Notes on Clauses

Telecommunications Act 1997

Telecommunications (Consumer Protection and Service Standards) Act 1999

Item 42: Paragraph 1(m) of Schedule 4

Items 42 and 43 make consequential amendments to the Telecommunications Act and TCPSS Act resulting from the repeal of Part 7 of the TCPSS Act.

Item 44: Part 7

Item 44 repeals Part 7 of the TCPSS Act.

Part 8—Amendments relating to the Universal Service Regime

Outline

Part 8 of this Bill repeals the standard contestability arrangements for the universal service regime in the TCPSS Act and also removes the requirement for the primary universal service provider to have an approved policy statement and standard marketing plan.

Part 2 of the TCPSS Act establishes the universal service regime. The main object of the regime is to ensure that all people in Australia, wherever they reside or carry on business, should have reasonable access, on an equitable basis, to standard telephone services and payphones (the 'universal service obligations' (USO)). The default arrangements for the regime are that the primary universal service provider for a universal service area must fulfil the service obligations. To date Telstra has been the sole primary universal service provider.

Standard contestability arrangements

Division 6 of Part 2 of the TCPSS Act sets out the standard contestability arrangements. It enables a carrier or CSP to apply to the ACMA for approval as a competing service provider for a universal service area in respect of a contestable service obligation. These provisions were introduced in 2001 as part of a 'USO' reform process designed to encourage contestability. However, no person has ever applied to be a competing service provider.

In 2011, the Commonwealth entered into a 20 year contract with Telstra for the delivery of the USO (this contract took effect from 1 July 2012). This was part of a reform process (aligned with the development of the NBN) that was designed to phase out the regulatory universal service regime and replace it with alternative contractual arrangements for ensuring that certain public interest telecommunications services are supplied. The USO contracts are

managed in accordance with the *Telecommunications Universal Service Management Agency Act 2012* (TUSMA Act), which ensures that contracts are contestable. In view of these contractual arrangements for the delivery of the USO, the contestability arrangements in the TCPSS Act are now redundant.

Policy Statement and Standard Marketing Plans

Under section 12C of the TCPSS Act, the primary universal service provider is required to comply with its policy statement and standard marketing plan, both of which must be approved by the ACMA. The policy statement is a general statement of the policy the provider will apply in supplying equipment, goods or services as a primary universal service provider. It has traditionally included a statement of the circumstances in which the primary universal service provider will not supply standard telephone services. The standard marketing plan sets out the equipment, goods or services the provider will supply to fulfil the service obligations and the arrangements for supplying and marketing that equipment, goods or services, including timeframes for connecting and repairing services.

The standard marketing plan and policy statement have both been rendered redundant by subsequent legislative instruments. In 2010 new statutory provisions were enacted in Part 2 of the TCPSS Act which enabled the Minister to set performance standards and benchmarks to be complied with by the primary universal service provider in relation to both payphones and standard telephone services, as well as rules regarding payphones. As a result, eight legislative instruments were made during 2011 and 2012 under Part 2 of the TCPSS Act, clarifying the circumstances in which the provider does not need to supply a standard telephone service and setting payphone rules, standards and benchmarks.

For example, the policy statement has been overtaken by the obligations set out in:

- the *Telecommunications Universal Service Obligation (Standard Telephone Service – Requirements and Circumstances) Determination (No. 1) 2011*, which details the primary universal service provider's requirements for a request for the supply of a standard telephone service, and the circumstances in which the obligation to supply standard telephone services on request does not apply;
- various determinations made in relation to payphones; and
- the *Telecommunications (Customer Service Guarantee) Standard 2011* (which sets out timeframes for connecting and repairing standard telephone services), made under Part 5 of the TCPSS Act.

Notes on Clauses

Telecommunications (Consumer Protection and Service Standards) Act 1999

Item 45: Subsection 5(2) (definition of *approved ATS marketing plan*)
Item 46: Subsection 5(2) (definition of *approved policy statement*)
Item 47: Subsection 5(2) (definition of *approved standard marketing plan*)
Item 48: Subsection 5(2) (definition of *competing universal service provider*)
Item 49: Subsection 5(2) (definition of *contestable service obligation*)
Item 50: Subsection 5(2) (definition of *draft ATS marketing plan*)
Item 51: Subsection 5(2) (definition of *draft policy statement*)
Item 52: Subsection 5(2) (definition of *draft standard marketing plan*)
Item 53: Subsection 5(2) (definition of *standard contestability arrangements*)

Items 46 to 53 amend the TCPSS Act to repeal from subsection 5(2) each of the following definitions:

- approved alternative telecommunications services (ATS) marketing plan
- approved policy statement
- approved standard marketing plan
- competing universal service provider
- contestable service obligation
- draft ATS marketing plan
- draft policy statement
- draft standard marketing plan
- standard contestability arrangements.

These amendments are consequential to the repeal of the standard contestability arrangements and the removal of the requirements for the primary universal service provider to have a policy statement and standard marketing plan.

Item 54: Section 8
Item 55: Section 8

Items 54 and 55 amend the simplified outline in section 8 of the TCPSS Act to remove references to the key elements of the universal service regime that no longer apply. This includes:

- paragraph 8(e) regarding contestable service obligations (which relates to standard contestability arrangements);
- paragraph 8(f) regarding the requirements for approval and compliance with policy statements and marketing plans; and
- the reference in paragraph 8(m) to maintenance by the ACMA of Registers.

Item 56: Subsection 11(3)
Item 57: Subsection 11(4)
Item 58: Subsection 11A(1)
Item 59: Subsection 11A(3)
Item 60: Paragraph 11B(1)(a)
Item 61: Paragraph 11B(2)(a)
Item 62: Subparagraph 11B(2(b)(i)
Item 63: Subparagraph 11B(2)(b)(ii)
Item 64: Subsection 11B(2A)
Item 65: Subparagraph 44B(3)(a)(ii)
Item 66: Subsection 11B(4) (note 1)

Items 56 to 66 make consequential amendments to the TCPSS Act required by the repeal of the standard contestability arrangements.

Item 67: Sections 11C, 11D, 11E and 11F

Item 67 repeals sections 11C, 11D, 11E and 11F of the TCPSS Act. These amendments are consequential to the proposed repeal of the standard contestability arrangements.

Section 11C enables the Minister to determine for a universal service area that a service obligation is a contestable service obligation. The making of such a determination means that

the standard contestability arrangements will apply to that service area in respect of the contestable service obligation.

In view of the repeal of the contestability arrangements, the concept of contestable service obligations is no longer necessary.

Item 68: Section 12C

Items 66 and 68 are consequential amendments to the removal of the requirement for the primary universal provider to have a policy statement and standard marketing plan.

Item 69: Subsection 12EA(1)

Item 69 is a consequential amendment to subsection 12EA(1) of the TCPSS Act required by the repeal of the standard contestability arrangements.

Item 70: Subsection 12EB(5)
Item 71: Subsection 12EC(4)
Item 72: Subsection 12ED(5)
Item 73: Subsection 12EE(4)
Item 74: Subsection 12EF(4)
Item 75: Subsection 12EG(4)
Item 78: Subsection 12EH(3)

Items 70 to 76 make consequential amendments to the TCPSS Act resulting from the repeal of the requirement for the primary universal provider to have a policy statement and standard marketing plan.

Item 77: Subdivisions C, D and E of Division 5 of Part 2

Item 77 repeals subdivisions C, D and E from Division 5 of Part 2 of the TCPSS Act.

Subdivision C sets out the requirements for the primary universal service provider in relation to its policy statement and standard marketing plan.

Subdivision D specifies similar requirements but in relation to the provider's alternative telecommunications services (ATS) marketing plan. This marketing plan sets out the alternative telecommunication services the provider will supply in fulfilment of a service obligation for a universal service area.

Subdivision E would provide for the replacement, variation and revocation of policy statements, approved standard marketing plans and ATS marketing plans.

There have been no approved alternative telecommunications services since 1997 and subsequent legislative instruments have rendered the need for a policy statement and marketing plans redundant.

Item 78: Division 6 of Part 2

Item 78 repeals Division 6 of Part 2, which sets out the standard contestability arrangements that enable a carrier or CSP to be approved as a competing universal service provider for a universal service area in respect of a contestable service obligation. The introduction of contestable contractual arrangements for the delivery of the USO means there is no further need for the standard contestability arrangements.

Item 79: Subsection 14(1)
Item 80: Subsection 16(4)
Item 81: Subsection 16(5)

Items 79 to 81 make consequential amendments to the repeal of the contestability arrangements.

Item 82: Section 23

Item 82 repeals section 23 of the TCPSS Act. This section requires the ACMA to maintain a register that includes copies of the following documents:

- determinations made in relation to contestable service obligations;
- determinations made in relation to alternate arrangements for fulfilling the USO;
- approved policy statements, approved standard marketing plans and approved ATS marketing plans.

Part 8 of Schedule 2 to this Bill renders each of these documents obsolete and the need for the ACMA to maintain the Register redundant.

Part 9—Amendments relating to consultation requirements and variation of instruments

Outline

Part 9 of Schedule 2 to this Bill makes a series of amendments to Communications Portfolio legislation. The measures relate to express statutory requirements on a rule-maker to consult prior to making a legislative requirement, or express power to vary or revoke a legislative instrument.

The consultation measures represent unnecessary duplication with section 17 of the LIA, whereby a rule-maker must, subject to limited exceptions in the LIA, consult prior to making a legislative instrument. The variation and revocation measures similarly represent unnecessary duplication with subsection 33(3) of the AIA, which provides that where an Act confers a power on a rule-maker to make a legislative instrument, the power is construed as including a power exercisable in the like manner and subject to any like conditions to vary or revoke such an instrument.

Notes on Clauses

Broadcasting Services Act 1992

Item 83: Subsection 120(3)

Item 83 repeals subsection 120(3) of the BSA, which provides detailed requirements for the ACMA to publicise a notice of intention to vary a licence condition; how a person can obtain information on the proposal; information on how a person can make a representation on the proposal; and a requirement for the ACMA to have regard to the representation. This requirement is considered unnecessary in light of the consultation requirements in section 17 of the LIA.

Section 117 of the BSA enables the ACMA to issue certain class licences. Sections 118 and 119 enable the ACMA to impose conditions on class licences, subject to specified constraints. Subsection 120(1) enables the ACMA, by notice published in the *Gazette* to vary or revoke conditions, or specify additional conditions, subject to specified constraints within subsection 120(2). As sections 118 and 119 provide that the power to make class licence

conditions is subject to detailed conditions, the express power to vary or revoke such conditions in subsections 120(1) and (2) will be retained for an abundance of caution. Retaining these provisions, rather than relying on subsection 33(3) of the AIA ensures that there is no doubt of the ACMA's powers to vary or revoke class licence conditions.

Item 84: Section 130Z

Item 84 repeals section 130Z of the BSA. This section specifies detailed consultation requirements that the ACMA must adhere to prior to determining or varying an industry standard. This requirement is considered unnecessary in light of the consultation requirements in section 17 of the LIA and best practice undertaken by the ACMA.

Section 130Z is in Division 5 of Part 9B of the BSA, which deals with the ACMA's reserve power to make industry standards for specified matters, in specified circumstances. The ACMA may make an industry standard under sections 130R, 130S, 130T or 130U, subject to detailed conditions being met. Sections 130X and 130Y expressly enable the ACMA to vary or revoke, respectively, an industry standard, subject to detailed conditions being met. Consistent with the approach taken in subsection 120(3), these provisions are to be retained, rather than relying on subsection 33(3) of the AIA for an abundance of caution.

Item 85: Clause 76 of Schedule 5

Item 85 repeals clause 76 of Schedule 5 of the BSA. This clause specifies detailed consultation requirements that the ACMA must adhere to prior to determining or varying an industry standard. This requirement is considered unnecessary in light of the consultation requirements in section 17 of the LIA and best practice undertaken by the ACMA.

Clause 76 is in Division 5, Part 5 of Schedule 5 of the BSA, which deals with the ACMA's reserve power to make industry standards for specified matters, in specified circumstances. The ACMA may make an industry standard under clauses 68, 69, 70 or 71, subject to detailed conditions being met. Clauses 74 and 75 expressly enable the ACMA to vary or revoke, respectively, an industry standard, subject to detailed conditions being met. Consistent with the approach taken in subsection 120(3), these provisions are to be retained, rather than relying on subsection 33(3) of the AIA for an abundance of caution.

Interactive Gambling Act 2001

Item 86: Subsection 44(3) (note)
Item 87: Subsection 45(2) (note)
Item 88: Subsection 46(4) (note)
Item 89: Subsection 47(4) (note)
Item 90: Subsection 50(1) (note)

Items 86 to 90 make consequential amendments to the IGA to remove notes in Division 5 of Part 4 that cross-reference section 52.

Item 91: Section 52

Item 91 repeals section 52 of the IGA. This section specifies detailed consultation requirements that the ACMA must adhere to prior to determining or varying an industry standard. This requirement is considered unnecessary in light of the consultation requirements in section 17 of the LIA and best practice undertaken by the ACMA.

Division 5 of Part 4 of the IGA deals with the ACMA's reserve power to make industry standards for specified matters, in specified circumstances. The ACMA may make an industry standard under sections 44, 45, 46 or 47, subject to detailed conditions being met.

Sections 50 and 51 expressly enable the ACMA to vary or revoke, respectively, an industry standard, subject to detailed conditions being met. Consistent with the approach taken in subsection 120(3) of the BSA (see item 83 above), these provisions are to be retained, rather than relying on subsection 33(3) of the AIA for an abundance of caution.

Radiocommunications Act 1992

Item 92: At the end of subsection 30(1)
Item 93: At the end of subsection 32(1)

Items 92 and 93 inserts a note at the end of subsections 30(1) and 32(1) of the *Radiocommunications Act 1992* (Radiocommunications Act 1992) respectively to make it clear that the ordinary rules of variation and revocation of legislative instruments under the AIA apply to spectrum plans and frequency band plans made by the ACMA under these subsections.

Item 94: Section 34

Item 94 repeals section 34 of the Radiocommunications Act 1992. This section provides express variation and revocation powers to the ACMA that are not required in light of the amendments made by items 92 and 93.

Item 95: Section 35
Item 96: Section 37

Items 95 and 96 make consequential amendments to sections 35 and 37 of the Radiocommunications Act 1992 respectively to reflect the repeal of section 24 and its replacement by variation and revocation rules under subsection 33(3) of the AIA.

Item 97: Subsections 38(1), 39(1) and 39A(2)
Item 99: Subsection 42(1)

Items 97 and 99 amend subsections 38(1), 39(1) and 39A(2) and subsection 42(1), respectively, to make it clear that the nature of the "written instrument" required to enable the ACMA to prepare a conversion plan or a marketing plan, or to vary those plans, is a "legislative instrument". These amendments provide clarity and enhance consistency with the use of the term "legislative instruments" in identifying the nature of instruments referred to throughout the Radiocommunications Act 1992.

For clarity, section 42 of the Radiocommunications Act 1992 has been retained rather than relying on subsection 33(3) of the AIA for an abundance of caution.

Item 98: Section 40

Item 98 repeals section 40 of the Radiocommunications Act 1992. This section details what consultation methods the ACMA may adopt when undertaking consultation about draft plans, prior to preparing a conversion plan or a marketing plan. This requirement overlaps with the requirements of section 17 of the LIA and best practice undertaken by the ACMA.

Item 100: At the end of subsection 132(1)

Item 100 amends subsection 132(1) to make it clear that the ordinary rules of variation and revocation to legislative instruments under subsection 33(3) of the AIA apply to class licences (including conditions attached to such licences) issued by the ACMA under the subsection.

Item 101: Section 134
Item 102: Section 135

Items 101 and 102 repeals sections 134 and 135 of the Radiocommunications Act 1992 respectively. These sections provide express variation and revocation powers to the ACMA that are not required as a result of the amendment made in item 100.

For clarity, rather than relying on subsection 33(3) of the AIA, section 134 is replaced and would expressly provide that subsection 33(3) of the AIA will apply to class licence variations, to remove any doubt about its application for an abundance of caution.

Item 103: Paragraph 150(a)
Item 104: Paragraph 150(b)

Items 103 and 104 make consequential amendments to subsections 150(a) and 150(b) of the Radiocommunications Act 1992, which relate to the Register of Radiocommunications Licences, to reflect the repeal of sections 134 and 135, respectively.

Telecommunications Act 1997

Item 105

Item 105 repeals section 451 of the Telecommunications Act. This section details what consultation methods the ACMA may adopt when undertaking consultation about proposed declarations, prior to preparing a written instrument that declares a prohibition in relation to the operation or supply of specified customer equipment and specified customer cabling. This requirement is considered unnecessary in light of the consultation requirements in section 17 of the LIA and best practice undertaken by the ACMA.

Part 10—Amendments relating to completed reviews

Outline

Part 10 of Schedule 2 to the Bill repeals a number of provisions related to statutory reviews that have been completed.

Notes on Clauses

Broadcasting Services Act 1992

Item 106: Subsections 43C(4), (4A), (4B) and (4C)

Item 106 repeals subsections 43C(4), (4A), (4B) and (4C) of the BSA. Subsection 43C(4) required the Minister to cause a review to be conducted before 30 June 2007 into the appropriate number of hours of material of local significance required to be broadcast by regional commercial broadcasting licenses. The Minister tabled the report in both houses of Parliament on 13 September 2007 and therefore subsection 43C(4) is spent. Subsections 43C(4A), (4B) and (4C) provide for the process of preparing the report for review under subsection 43C(4) and are therefore redundant.

Item 107: Section 103ZJ

Item 107 repeals section 103ZJ of the BSA. This section required the Minister to cause a review to be conducted before 31 March 2003 of Australian and New Zealand content on subscription television broadcasting services. The review was substantially informed by investigations conducted by the Australian Broadcasting Authority pursuant to directions from the Minister dated 26 August 2002. The report of the review was tabled in both houses of Parliament on 16 March 2005 and therefore section 103ZJ is spent.

Item 108: Section 115A

Item 108 repeals section 115A of the BSA. This section required the Minister to cause a review to be conducted before 31 December 2009 of anti-siphoning provisions. The Minister caused the review to be conducted by the then Department of Broadband, Communications and the Digital Economy in 2009. The report of the review was tabled in both houses of Parliament on 9 February 2011 and section 115A is therefore spent.

Item 109: Division 4 of Part 10A

Item 109 repeals Division 4 of Part 10A of the BSA. Section 146S is the only section in this Division and required the Minister to cause a review to be conducted of anti-hoarding provisions in Part 10A within two years after its commencement on 23 December 1999. Since the deadline for this review has passed, Part 10A can be repealed.

Item 110: Clause 95 of Schedule 5

Item 110 repeals clause 95 of Schedule 5 of the BSA. This clause required the Minister to cause a review to be conducted of the operation of Schedule 5 before 1 January 2003. This review was completed and clause 95 is therefore spent.

Item 111: Clause 118 of Schedule 7

Item 111 repeals clause 118 of Schedule 7 of the BSA. This clause required the Minister to cause a review to be conducted of the operation of Schedule 7 within three years of its commencement. The Schedule commenced on 20 January 2008. The review was completed and therefore clause 118 is spent.

Competition and Consumer Act 2010

Item 112: Division 13 of Part XIB

Item 112 repeals Division 13 of Part XIB of the CCA. This division required the Minister to cause a review to be conducted before 1 July 2000 of the operation of anti-competitive conduct and record-keeping rules in the telecommunications industry. The deadline for this review has passed and the Division can be repealed.

Item 113: Sections 151DC and 151DD

Item 113 repeals sections 151DC and 151DD of the CCA.

Section 151DC required the Minister to cause an independent review to be conducted of the policies and procedures relating to the identification of listed points of interconnection. This is specified to occur before 30 June 2013.

Section 151DD required the Minister to cause an independent review to be conducted of the operation of NBN corporations. This was required to occur at the end of the two year period that began with the commencement of Division 16 on 13 April 2011.

As the reviews have been conducted and the reports of the review tabled in Parliament the sections can be repealed.

Interactive Gambling Act 2001

Item 114: Section 68

Item 114 repeals section 68 of the IGA. This section required the Minister to cause a review to be conducted of the Act before 1 July 2003. The review was completed and the section is therefore spent.

National Broadband Network Companies Act 2011

Item 115: Section 100A

Item 115 repeals section 100A of the *National Broadband Network Companies Act 2011*. This section required the Minister administering the *Freedom of Information Act 1982* (FOI Act) to cause a review to be conducted of the operation of the FOI Act so far as that Act relates to documents of NBN Co Ltd (ACN 136 533 741). This was required to occur before the first anniversary of the commencement of the section on 13 April 2011. As the review has been conducted and the report of the review tabled in Parliament, this section can be repealed.

Part 11—Amendments relating to publication requirements

Outline

Part 11 of Schedule 2 to this bill makes a series of amendments to Communications portfolio legislation to modernise publication requirements.

Various provisions in Communications portfolio legislation require specific persons to publish information or provide written notices to third parties via a particular medium – the purpose of these provisions being to ensure that the relevant information or notice reaches its intended audience.

Over time, new methods of publication have become widely available that enable the dissemination of information in an efficient and inexpensive manner. Existing provisions that require a person to publish information or provide written notices to third parties via a particular medium (for example newspapers) can impose additional costs and may no longer represent the best way to convey information to the intended audience. Accordingly, the publication requirements are amended to provide that the rule-maker must publish information on their website and one or more forms that are readily accessible to the public or, in some cases, to replace obligations to publish a notice in the *Gazette* (and a physical address where a document can be obtained) with a requirement to publish on the rule-maker's website.

Notes on Clauses

Division 1—Amendments

Australian Broadcasting Corporation Act 1983

Item 116: Paragraphs 24B(3)(a) and (b)

Item 116 repeals and substitutes paragraphs 24B(3)(a) and (b) of the *Australian Broadcasting Corporation Act 1983* (ABC Act) to remove the requirement to publish advertisements in newspapers.

Section 24B of the ABC Act sets out the functions of the Nomination Panel that conducts the merit-based selection process for the appointment of the Chairperson and other non-executive directors to the ABC Board. As part of the merit-based selection process, vacancies are required to be widely advertised. This includes requiring the Nomination Panel to publish advertisements in newspapers that circulate generally (either throughout Australia or in a state or territory), in addition to on the Department of Communications website.

The new paragraphs 24B(3)(a) and (b) requires the Nomination Panel to publish advertisements on the Department of Communications website and in one or more other forms that are readily accessible by potential applicants.

Item 117: At the end of subsection 24B(3)

Item 117 adds an example of how the requirement in the new paragraph 24B(3)(b) to publish in one or more other forms that are readily accessible by potential applicants could be satisfied. The example provided notes that the requirement could be satisfied by publishing on a website other than the Department's website.

Radiocommunications Act 1992

Item 118: Subsection 33(1)
Item 119: Paragraph 33(1)(b)
Item 120: Paragraph 33(1)(c)
Item 121: Paragraph 33(1)(d)

Items 118 to 121 make various amendments to subsection 33(1) of the Radiocommunications Act 1992 to update the publishing requirement.

In part, section 33 of the Radiocommunications Act 1992 sets out notice requirements for the ACMA in relation to seeking public comment on a draft spectrum plan or a draft frequency band plan. Subsection 33(1) requires the ACMA to publish a notice in the Gazette that provides information about how interested parties may obtain, and make representations about, a draft plan.

The amended subsection 33(1) requires the ACMA to publish the notice, including the draft plan, on its website.

Item 122: Section 43

Item 122 repeals section 43 of the Radiocommunications Act 1992 as it is no longer required. This section requires the ACMA, as soon as practicable after preparing or varying a conversion plan or marketing plan, to publish a notice in the *Gazette* that sets out details of how interested parties may obtain a copy of the plan. It is noted that the ACMA routinely publish conversion and marketing plans on the Federal Register of Legislative Instruments.

Item 123: Section 78

Item 123 amends section 78 of the Radiocommunications Act 1992 to update the publishing requirement. This section requires the ACMA to publish a notice in the *Gazette* from time to time that provides information about expiring spectrum licenses. The amended section 78 requires the ACMA to publish that information on its website.

Item 124: Subsection 136(1)
Item 125: Paragraph 136(1)(c)
Item 126: Paragraph 136(1)(d)
Item 127: Paragraph 136(1)(e)
Item 128: Paragraph 136(2)
Item 129: Paragraph 136(2)(b)
Item 130: Paragraph 136(2)(c)
Item 131: Paragraph 136(2)(d)

Items 124 to 131 make various amendments to subsections 136(1) and (2) of the Radiocommunications Act 1992 to update the publishing requirement.

In part, section 136 of the Radiocommunications Act 1992 sets out notice requirements for the ACMA in relation to seeking public comment on proposed variations or revocations of class licences. Subsection 136(1) requires the ACMA to publish a notice in the *Gazette* that provides information about how interested parties may obtain, and make representations

about, a proposed variation. Subsection 136(2) imposes the same requirements in relation to a proposed revocation.

The amendments to subsections 136(1) and (2) require the ACMA to publish the notice in accordance with proposed new subsection 136(2A), inserted by item 132.

Item 132: After subsection 136(2)

Item 132 inserts a new subsection 136(2A) that requires a notice under amended subsections 136(1) or (2) to be published by the ACMA on its website and in one or more other forms that are readily accessible by the public. Item 132 also inserts an example of how the requirement in new subsection 136(2A) to publish in one or more other forms that are readily accessible by the public could be satisfied. The example provided notes that the requirement could be satisfied by publishing on a website other than the ACMA's website.

Item 133: Subsection 136(5)

Item 133 makes a consequential amendment to subsection 136(5) of the Radiocommunications Act 1992 to include a reference to the new subsection 136(2A) inserted by item 132.

Item 134: Paragraph 153C(2)(a)
Item 135: Subparagraph 153C(2)(b)(ii)
Item 136: Paragraph 153C(2)(c)

Items 134 to 136 make various amendments to subsection 153C(2) of the Radiocommunications Act 1992 to update the publishing requirement.

Section 153C of the Radiocommunications Act 1992 sets out notice requirements for the ACMA in relation to a spectrum re-allocation declaration made by the Minister. In part, subsection 153C(2) requires the ACMA to publish a notice in certain kinds of newspapers that states the declaration has been made and how a copy of the declaration may be obtained.

The amended subsection 153C(2) requires the ACMA to publish the notice on its website, rather than in newspapers.

Item 137: Subsection 153C(4)

Item 137 repeals subsection 153C(4) as a consequence of removing the requirement to publish in newspapers.

Item 138: Subparagraph 153G(1)(b)(ii)

Item 138 would repeal and substitute subparagraph 153G(1)(b)(ii) of the Radiocommunications Act 1992 to remove the requirement to publish in newspapers.

Section 153G of the Radiocommunications Act 1992 sets out notice requirements for the ACMA in relation to seeking comments from potentially-affected apparatus licensees on a draft recommendation to the Minister to make a spectrum reallocation declaration under section 153F of the Radiocommunications Act 1992. In part, subsection 153G(1) requires the ACMA to publish a notice in certain kinds of newspapers that states the ACMA has prepared a draft recommendation, sets out the terms of the draft recommendation, and invites potentially-affected apparatus licensees to provide written comments on the draft recommendation.

The new subparagraph 153G(1)(b)(ii) would require the ACMA to publish the notice on its website.

Item 139: Subsection 153G(5)

Item 139 repeals subsection 153G(5). This subsection is a spent provision that provides transitional arrangements for consultation processes begun by the ACMA before the commencement of section 153G.

Item 140: Subsection 153G96) (definition of *State*)

Item 140 repeals the definition of 'State' in subsection 153G(6) as a consequence of removing the requirement to publish in newspapers effected by item 138.

Item 141: Subsection 191(1)
Item 142: Paragraph 191(1)(c)
Item 143: Paragraph 191(1)(d)

Items 141 to 143 make various amendments to subsection 191(1) of the Radiocommunications Act 1992 to update the publishing requirement.

Section 191 of the Radiocommunications Act 1992 sets out notice requirements for the ACMA in relation to seeking public comment about a declaration it proposes to make under section 190 (declaration of prohibited devices). Subsection 191(1) requires the ACMA to publish such a notice in the *Gazette*.

The amended subsection 191(1) would require the ACMA to publish the notice on its website.

Special Broadcasting Service Act 1991

Item 144: Paragraphs 43(3)(a) and (b)

Item 144 repeals and substitutes paragraphs 43(3)(a) and (b) of the *Special Broadcasting Service Act 1991* (SBS Act) to remove the requirement to publish in newspapers.

Section 43 of the SBS Act sets out the functions of the Nomination Panel that conducts the merit-based selection process for the appointment of non-executive directors to the SBS Board. As part of the merit-based selection process, vacancies are required to be widely advertised. This includes requiring the Nomination Panel to publish advertisements in newspapers that circulate generally (either throughout Australia or in a state or territory), in addition to on the Department of Communications website.

The substituted paragraphs 43(3)(a) and (b) requires the Nomination Panel to publish advertisements on the Department of Communications website and in one or more other forms that are readily accessible by potential applicants.

Item 145: At the end of subsection 43(3)

Item 45 adds an example of how the requirement in the new paragraph 43(3)(b) to publish in one or more other forms that are readily accessible by potential applicants could be satisfied. The example provided notes that the requirement could be satisfied by publishing on a website other than the Department of Communications website.

Telecommunications Act 1997

Item 146: Subsection 450(3)

Item 146 amends subsection 450(3) of the Telecommunications Act to update the publishing requirements. In part, section 450 of the Telecommunications Act sets out publication requirements for the ACMA in relation to it making a written instrument under subsection 450(1) (declaration of prohibited customer equipment or prohibited customer cabling).

Subsection 450(3) requires the ACMA to publish such an instrument in newspapers that circulate generally in the capital city of each State or Territory.

The amended subsection 450(3) requires the ACMA to publish the instrument on its website.

Item 147: Subsection 450(5) (definition of *State*)

Item 147 repeals the definition of 'State' in subsection 450(5) as a consequence of removing the requirement to publish in newspapers effected by item 146.

Item 148: Subsection 460(1)
Item 149: Subsection 460(3)

Items 148 and 149 repeals and substitutes subsections 460(1) and (3) of the Telecommunications Act respectively to update the publishing requirements. In part, section 460 of the Telecommunications Act sets out notice requirements for the ACMA in relation to seeking public comment about a draft numbering plan or a draft variation of a numbering plan. Subsections 460(1) and (3) require the ACMA to publish such notices in newspapers circulating in each state or territory.

The substituted subsections require the ACMA to publish the notice on its website, including the draft plan or draft variation.

Item 150: Subsection 460(5)

Item 150 repeals subsection 460(5) as a consequence of removing the requirement to publish in newspapers effected by items 148 and 149.

Item 151: Subsection 463(1)

Item 151 amends subsection 463(1) of the Telecommunications Act. Section 463 of the Telecommunications Act enables the ACMA to determine an allocation system for allocating specified numbers to carriage service providers. The amended subsection 463(1) clarifies that the written instrument by which ACMA may determine such an allocation system is a legislative instrument under the LIA.

Item 152: Subsection 464(1)

Item 152 repeals and substitutes subsection 464(1) of the Telecommunications Act to update the publishing requirements. Section 464 of the Telecommunications Act sets out notice requirements for the ACMA in relation to seeking public comment about a draft plan, or a draft variation of a plan, for an allocation system for numbers determined in accordance with section 463 of the Telecommunications Act. Subsection 464(1) requires the ACMA to publish such a notice in newspapers circulating in each State.

The substituted subsection 464(1) requires the ACMA to publish the notice, including the draft plan or draft variation, on its website.

Item 153: Subsection 464(4)

Item 153 repeals subsection 464(4) as a consequence of removing the requirement to publish in newspapers effected by item 152.

Division 2—Application and transitional provisions

Item 154: Application of amendments – subsection 24B(3) of the *Australian Broadcasting Corporation Act 1983*

Item 154 clarifies that the amendments to publication requirements in subsection 24B(3) of the ABC Act made by this Part of Schedule 2 to this Bill will only apply in relation to an invitation made after the commencement date of this item.

Item 155: Application of amendments – subsection 33(1) of the *Radiocommunications Act 1992*
Item 156: Application of amendments – subsection 136(1) of the *Radiocommunications Act 1992*
Item 157: Application of amendments – subsection 136(2) of the *Radiocommunications Act 1992*

Items 155 to 157 clarify that the amendments to publication requirements in subsections 33(1), 136(1) and 136(2) of the Radiocommunications Act 1992 made by this Part will not apply in relation to a plan, or a variation or revocation of a class licence, if a notice relating to a draft of the plan, the variation or the revocation was published under the respective subsection before the commencement of these items.

Item 158: Application of amendments – section 153C of the *Radiocommunications Act 1992 1992*

Item 158 clarifies that the amendments to publication requirements in section 153C of the Radiocommunications Act made by this Part will only apply in relation to a declaration, if a copy of the declaration was given to the ACMA under that section after the commencement of this item.

Item 159: Application of amendments – subsections 153G(1) and (6) of the *Radiocommunications Act 1992*

Item 159 clarifies that the amendments to publication requirements in subsections 153G(1) and (6) of the Radiocommunications Act 1992 made by this Part will not apply in relation to the giving of a recommendation if, before the commencement of this item, the ACMA complied with paragraphs 153G(1)(a) and (b) of the Radiocommunications Act 1992 in relation to the recommendation.

Item 160: Application of amendments – subsection 191(1) of the *Radiocommunications Act 1992*

Item 160 clarifies that the amendments to publication requirements in subsection 191(1) of the Radiocommunications Act 1992 made by this Part will not apply in relation to the making of a declaration if, before the commencement of this item, the ACMA published a notice under that subsection in relation to the declaration.

Item 161: Application of amendments – subsection 43(3) of the *Special Broadcasting Service Act 1991*

Item 161 clarifies that the amendments to publications requirements in subsection 43(3) of the SBS Act made by this Part will only apply in relation to an invitation made after the commencement of this item.

Item 162: Application of amendments – section 450 of the *Telecommunications Act 1997*

Item 162 clarifies that the amendments to publication requirements in section 450 of the Telecommunications Act made by this Part will only apply in relation to an instrument made

under subsection 450(1) of the Telecommunications Act after the commencement of this item.

Item 163: Application of amendments – section 460 of the *Telecommunications Act 1997*

Item 163 clarifies that the amendments to publication requirements in section 460 of the Telecommunications Act made by this Part will not apply in relation to the making or variation of a numbering plan if, before the commencement of this item, the ACMA complied with paragraph 460(1)(a) of the Telecommunications Act in relation to the making of the plan, or paragraph 460(3)(c) of the Telecommunications Act in relation to the variation.

Item 164: Transitional – declaration under subparagraph 460(3)(a)(ii) of the *Telecommunications Act 1997*

Item 164 is a transitional provision that provides for the continued effect of a declaration made under subparagraph 460(3)(a)(ii) of the Telecommunications Act that was in force immediately before the commencement of this item. After the commencement of this item, such a declaration will have effect as if it had been made under subparagraph 460(3)(a)(ii) of the Telecommunications Act as amended by this Part.

Item 165: Application of amendments – section 464 of the *Telecommunications Act 1997*

Item 165 is an application provision that specifies the amendments to publication requirements in section 464 of the Telecommunications Act made by this Part will not apply in relation to a determination or variation of an allocation system if, before the commencement of this item, the ACMA complied with paragraph 464(1)(a) of the Telecommunications Act in relation to the determination or variation.

Part 12—Amendments relating to consequential and transitional provisions

Outline

Part 12 of Schedule 2 to this Bill makes a series of repeals and amendments to Communications Portfolio legislation. The measures relate to consequential and transitional provisions that have taken effect, or are otherwise no longer required.

Notes on Clauses

Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983

Item 166: Subsection 2(1)
Item 167: Subsection 2(1)

Items 166 and 167 make technical amendments to subsection 2(1) of the *Australian Broadcasting Corporation (Transitional Provisions and Consequential Amendments) Act 1983* (ABC T&C Act) to remove obsolete cross-references.

Item 168: Section 9
Item 169: Subsection 11(1)
Item 170: Subsections 11(2) to (5)
Item 171: Sections 12 to 14 and 16 to 59

Items 168 to 171 repeal spent transitional provisions and make consequential technical amendments to renumber provisions or update cross references. The spent transitional provisions are contained in Part II of the ABC T&C Act, and pertain to:

- the saving of proceedings on foot at the time the Australian Broadcasting Commission was corporatised in 1983.
- the transfer of staff and officers from the former Commission to the new corporation in 1983. Continuity of service provisions are not being repealed since the ABC still has employees entitled to the benefit of those provisions.
- transitional financial accounting and annual reporting requirements that are now obsolete due to the passage of time.

Item 171 also repeals specified sections in Part III of the ABC T&C Act that make consequential amendments to other Acts. Sections 20 to 59 of the ABC T&C Act have taken effect and are obsolete.

Item 172: Subsection 60(1)

Item 172 amends section 60 of the ABC T&C Act to repeal subsection 60(1) which is a consequential amendment to the *Copyright Act 1968*. Subsection 60(1) has taken effect and is obsolete.

Item 173: Subsection 60(2)

Item 173 makes a technical amendment to subsection 60(2). Subsection 60(2) is an ongoing transitional provision that establishes the ABC as successor to the copyright subsisting in broadcasts previously made by the Australian Broadcasting Commission. The amendment clarifies that the Commission no longer exists.

Item 174: Sections 61 to 71

Item 174 repeals sections 61 to 71 of the ABC T&C Act. These sections make consequential amendments to other Acts that have taken effect and are obsolete.

Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005

The *Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005* (ACMA C&T Act) provides consequential and transitional measures following the establishment of the ACMA, from the former Australian Broadcasting Authority and the former Australian Communications Authority in 2005.

Item 175: Subsection 2(1) (table items 2 to 9)

Item 175 repeals a number of items from the table in section 2 of the ACMA C&T Act due to the repeals effected in items 176 to 181. This table provides for the commencement of measures in the Act.

Item 176: Schedules 1 to 3

Item 176 repeals Schedules 1 to 3 to the ACMA C&T Act. These Schedules made a series of amendments to various Acts following the establishment of the ACMA in 2005. These amendments have all taken effect and the Schedules are spent.

Item 177: Subitem 1(1) of Schedule 4

Item 177 makes a series of consequential amendments as a result of the repeals and amendments in items 178 to 181. These consequential amendments repeal redundant definitions.

Item 178: Part 2 of Schedule 4

Item 178 repeals Part 2 of Schedule 4 to the ACMA C&T Act. This Part provides transitional measures relating to assets, liabilities and legal proceedings for the transition from the former ABA and ACA to the existing ACMA in 2005. Items 2, 3, 4, 5 and 7 within Part 2 of Schedule 4 to the ACMA C&T Act have taken effect. Item 6 within this Part provides for substitution of the ACMA or the Commonwealth to pending proceedings of the former ABA or ACA, from the transition time in 2005. The ACMA has advised that there are no active proceedings from this period. The Part 2 of Schedule 4 to the ACMA C&T Act is therefore spent.

Item 179: Items 9 and 11 of Schedule 4

Item 179 repeals items 9 and 11 of Schedule 4 to the ACMA C&T Act. Item 9 of Schedule 4 to the ACMA C&T Act provides transitional measures for transfer of appropriated money from the former ABA and ACA to the existing ACMA. Acts appropriating money for expenditure out of the Consolidated Revenue Fund no longer refer to the former ABA or ACA. Item 11 of Schedule 4 provides transitional measures of inquiries, investigations and hearings from the former ABA or ACA to the existing ACMA. The ACMA has advised that there are no active inquiries, investigations or hearings from this transition period in 2005. Items 9 and 11 of Schedule 4 to the ACMA C&T Act are therefore spent.

Item 180: Subitems 12(3) to (5) of Schedule 4

Item 180 makes a series of minor, technical amendments to subitems 12(3) to (5) of Schedule 4 to the ACMA C&T Act. Item 12 of Schedule 4 provides for the continued effect of certain instruments made under repealed legislation. The technical amendments reflect that Schedule 1 to the ACMA C&T Act is repealed by item 176 of this Bill. For clarity, item 180 does not alter the continued operation of any such instrument made.

Item 181: items 13 to 21 of Schedule 4

Item 181 repeals items 13 to 21 of Schedule 4 to the ACMA C&T Act. Item 13 of Schedule 4 provides for savings of certain advisory committees for the transition time in 2005. The ACMA has advised that there are no relevant advisory committees requiring ongoing continuation. Part 4 of Schedule 4 (items 14 to 15) provided for transitional reporting obligations for the former ACA and ABA and the existing ACMA. These provisions ceased to have practical effect in 2005-2006. Part 5 of Schedule 4 (items 16 to 21) provides for various miscellaneous measures. The ACMA has advised that none of these provisions need to continue. For completeness, there are no regulations made under item 21 of Schedule 4. Items 13 to 21 of Schedule 4 to the ACMA C&T Act are therefore spent.

Broadcasting Services Act 1992

Item 182: Subsection 6(1) (note 1 at the end of the definition of *licence area*)

Item 182 updates the numbering to notes under subsection 6(1) of the BSA. This amendment is consequential to the repeal of the note in item 183.

Item 183: Subsection 6(1) (note 2 at the end of the definition of *licence area*)

Item 183 repeals legislative note 2 in subsection 6(1) of the BSA.

The amendments in items 182 and 183 are consequential to the repeal of a spent transitional provision in the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* in item 184.

Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992

Items 184 to 186 would repeal spent transitional provisions and transitional defined terms. The spent provisions pertain to transitional broadcast and radiocommunications licensing arrangements that operated when the *Broadcasting Act 1942* was repealed and replaced by the BSA. The transitional arrangements are now obsolete having been superseded by actions taken under the BSA and the Radiocommunications Act 1992.

Item 184: Section 4

Item 184 repeals a number of definitions in section 4 of the *Broadcasing Services (Transitional Provisions and Consequential Amendments) Act 1992* (Broadcasting T&C Act). These repeals are consequential to those effected by items 185 and 186.

Item 185: Sections 5 to 16, 18, 20 to 24 and 26 to 30

Item 185 repeals sections 5 to 16, 18, 20 to 24 and 26 to 30 of the Broadcasting T&C Act as they are spent.

Division 2 of Part 2 of the Broadcasting T&C Act (sections 5 to 16) provides for transitional measures for licences, as at the transition time in 1992. The ACMA has advised that these transitional measures are no longer required.

Division 3 of Part 2 (sections 17 to 20) provides for transitional and consequential measures for directorships and control provisions, as at the transition time in 1992.

Section 17 provides special provision for certain directorships. The special provision is to be retained for an abundance of caution.

Section 18 provides for periods of grace for compliance and control provisions under the existing BSA, as at the transition time in 1992. This grace period is no longer considered necessary or appropriate.

Section 19 provides for grandfathering of existing interests relevant to control, as at the transition time in 1992. This grandfathering provision is to be retained for an abundance of caution.

Section 20 provides protection for persons having interests in former supplementary radio licences. The ACMA has advised that there are no active licences in place.

Section 21 (within Division 4 of Part 2) provides for transitional measures relating to program standards. The provision is spent.

Section 23 (within Division 6 of Part 2) provided for vesting of property, rights and liabilities of the former Australian Broadcasting Tribunal to the former ABA. As noted above in the explanatory notes to the ACMA C&T Act, the vesting of property, rights and liabilities of the former ABA occurred to the ACMA, in 2005.

Section 24 (within Division 6 of Part 2) provided for transitional continuation of directions and orders of the former ABA under Division 4 of Part IIIBA of the former *Broadcasting Act 1942*. The ACMA has advised that these transitional measures are no longer required.

Section 26 (within Division 6 of Part 2) provides that if a person was required to provide information or produce documents to the former ABA under the former *Broadcasting Act 1942*, the obligation continued to produce information under the BSA. The ACMA has advised that these transitional measures are no longer required.

Part 3 (sections 28 to 30) in conjunction with Schedules 1 and 2 (see item 186) provides for repeals and consequential amendments to other Acts. These repeals and amendments have taken effect.

Item 186: Schedules 1 and 2

Item 186 repeals Schedules 1 and 2 of the Broadcasting T&C Act. Schedule 1 repealed two Acts. Schedule 2 made a series of consequential amendments to various Acts to reflect the transition to the BSA in 1992. These repeals and amendments have taken effect and the Schedules are spent.

Competition and Consumer Act 2010

Item 187: Paragraph 19(6)(c) of Schedule 2

Item 187 repeals the cross-reference in paragraph 19(6)(c) of Schedule 2 to the CCA. Item 19 of Schedule 2 to the CCA provides for the application of Part 2-1 of that Schedule to 'information providers'. Paragraph 19(6)(c) provides that an information provider includes a holder of a licence continued in force by subsection 5(1) of the Broadcasting T&C Act. Subsection 5(1) of the Broadcasting T&C Act is to be repealed by item 185 of this Bill. The cross-reference is redundant and can be repealed.

For the sake of clarity, section 5 of the Radiocommunications T&C Act 1983 has been retained so as not to impact on any licence that may still be in force under this section.

Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1983

The *Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1983* (Radiocommunications T&C Act 1983) provides transitional and consequential amendments from former radiocommunications and wireless telegraphy legislation to the former *Radiocommunications Act 1983* (Radiocommunications Act 1983), in 1983.

Item 188: Section 3 and 4
Item 189: Schedule

Items 188 and 189 repeal sections 3 and 4, as well as the Schedule to the Radiocommunications T&C Act 1983. The sections and the schedule repealed or amended various Acts. The repeals and amendments have taken effect. The provisions are spent and can be repealed.

Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992

The *Radiocommunications (Transitional Provisions and Consequential Amendments) Act 1992* (Radiocommunications T&C Act 1992) provided transitional and consequential amendments from the former Radiocommunications Act 1983 to the existing Radiocommunications Act 1992 in 1992.

Item 190: Sections 8 to 10, 12 and 13

Item 190 repeals sections 8 to 10, 12 and 13 in the Radiocommunications T&C Act 1992. Sections 8, 9 and 10 of the Radiocommunications T&C Act 1992 provide for the continuation of consultation processes, evidentiary certificates and forfeiture under the former Radiocommunications Act 1983 to the Radiocommunications Act 1992. The ACMA has advised that these provisions are no longer required.

Section 12 provides that until the determinations are made under section 98 of the existing Radiocommunications Act 1992, the former Spectrum Management Agency may issue determinations for apparatus licences. The *Radiocommunications (Transmitter and Receiver Licences) Determination* was made under section 98 of the Radiocommunications Act 1992 and is currently administered by the ACMA, the successor to the Spectrum Management Agency.

Section 13 provided for the repeal of various radiocommunications legislation. These repeals have taken effect. Sections 8 to 10, 12 and 13 are therefore spent.

Item 191: Subsection 14(1)
Item 192: Schedule

Items 191 and 192 repeal subsection 14(1) and the Schedule to the Radiocommunications T&C Act 1992. Subsection 14(1) of the Radiocommunications T&C Act 1992 provides for consequential amendments to various Acts in the Schedule due to the transition from the former Radiocommunications Act 1983 to the Radiocommunications Act 1992. These amendments have taken effect and the provisions are spent.

Radio Licence Fees Act 1964

Item 193: Subsection 4(1) (definition of *licence*)

Item 193 repeals and substitutes the definition of *licence* in subsection 4(1) of the *Radio Licence Fees Act 1964.*This technical amendment restates the defined term and subsection and is required as a consequence of the amendment in item 184 of this Bill.

Item 194: Subsection 4(1) (definition of *Transitional Provisions Act*)

Item 194 repeals the definition of *Transitional Provisions Act* in subsection 4(1) of the *Radio License Fees Act 1964*. This definition is spent as a result of the amendment in item 184 of this Bill.

Item 195: Subsection 6(3)

Item 195 repeals and substitutes the definition of *Transitional Provisions Act* in subsection 6(3) of the *Radio Licence Fees Act 1964.*This technical amendment restates the defined term and subsection and is required as a consequence of the amendment in item 184 of this Bill.

Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989

The *Telecommunications and Postal Services (Transitional Provisions and Consequential Amendments) Act 1989* (Tel and Post T&C Act) makes a series of transitional and consequential measures from the former regime to the former *Telecommunications Act 1989* (Telecommunications Act 1989), the existing *Australian Postal Corporation Act 1989* (Australia Post Act) and the former *Australian Telecommunications Corporation Act 1989*. These measures related to the establishment of Australia Post and the former Telecom (now Telstra).

Item 196: Subsection 2(3)
Item 197: Subsection 2(4)

Item 196 repeals subsection 2(3) and item 197 amends subsection 2(4) of the Tel and Post T&C Act. Section 2 of the Tel and Post T&C Act provides for the commencement of provisions within that Act. These minor consequential amendments remove references to provisions to be repealed by item 198 in this Bill.

Item 198: Parts 2 to 8

Item 198 repeals Parts 2 to 8 of the Tel and Post T&C Act. These Parts provide for amendments to various Acts as at the transition time in 1989. The amendments have taken effect and the Parts are spent.

Item 199: Sections 70, 71, 74, 74, 78 to 84, 86, 87, 89 and 90

Item 199 repeals sections 70, 71, 74, 75, 78 to 84, 86, 87, 89 and 90 of the Tel and Post T&C Act.

Part 9 of the Tel and Post T&C Act (sections 60 to 75) provide for transitional provisions, amendments and repeals relating to Australia Post. Sections 70 and 71 provide that directors and the Managing Director continue to hold office following the transition in 1989 under the Australia Post Act. Australia Post has advised that there are no active office bearers and so these transitional measures are no longer required. However, as there are current employees of Australia Post who were employed prior to the transition time, the transitional measure for such employees in section 72 has been retained.

Sections 74 and 75, in conjunction with Part 2 of the Schedule (see item 200), provide for amendments and repeals of various Acts. These amendments and repeals have taken effect.

Part 10 of the Tel and Post T&C Act (sections 76 to 90) provide for transitional provisions, amendments and repeals relating to the former Telecom. Division 2 of Part 10 to the Tel and Post (T&C) Act (sections 78 to 84) provide for transitional taxation arrangements for the former Telecom, relating to stamp duty, commencement of income tax liability, value of trading stock, accelerated depreciation and capital gains tax. Telstra has advised that these transitional taxation measures are no longer required.

Sections 86 and 87 provide that directors and the Managing Director continue to hold office following the transition in 1989, under the former Telecommunications Act 1989. Telstra has advised that there are no active office bearers (for the purposes of the existing *Telstra Corporation Act 1991* (Telstra Act)) and so these transitional measures are no longer required. However, as there are current employees of Telstra who were employed prior to the transition time, the transitional measure for such employees in section 88 has been retained.

Sections 89 and 90, in conjunction Part 3 of the Schedule (see item 200), provide for amendments and repeals of various Act. These amendments and repeals have taken effect.

The specified sections within Parts 9 and 10 of the Tel and Post T&C Act are spent.

Item 200: Schedule

Item 200 repeals the Schedule to the Tel and Post T&C Act. The Schedule provided for consequential amendments to various Acts. These amendments have taken effect and the Schedule is spent.

Television Licence Fees Act 1964

Item 201: Subsection 4(1) (definition of *licence*)
Item 203: Subsection 6(3)

Items 201 and 203 repeal and substitute the definition of *licence* in subsection 4(1) and subsection 6(1) respectively of the *Television Licence Fees Act 1964*. This is a technical amendment to restate the defined term and subsection as a consequence of amendments proposed by item 184.

Item 202: Subsection 4(1) (definition of *Transitional Provisions Act*)

Item 202 repeals the definition of *Transitional Provisions Act* in subsection 4(1) of the *Television Licence Fees Act 1964*. The definition is spent as a consequence of the amendments made by item 184.

Part 13—Amendments relating to the National Relay Service

Outline

This Part repeals Part 3 of the TCPSS Act, which provides for the NRS and the imposition of the NRS levy. The NRS provisions in Part 3 of the TCPSS Act have now been transitioned and incorporated into the policy objectives and contractual arrangements in the TUSMA Act. The NRS levy has been also replaced by the levy imposed by the Tel Industry Levy Act.

The NRS contracts entered into under section 95 of the TCPSS Act have expired and new contractual arrangements for the provision of the NRS were entered into on 25 January 2013 under section 13 of the TUSMA Act. In addition, all payments from the NRS Special Account have now been made.

Notes on Clauses

Telecommunications (Consumer Protection and Service Standards) Act 1999

Item 204: Subsection 2(1)
Item 205: Subsection 2(2)
Item 206: Subsection 4

Items 204 to 206 make consequential amendments the TCPSS Act to remove redundant references to the NRS.

Item 207: Part 3

Item 207 repeals Part 3 of the TCPSS Act. With the transition of the NRS from the TCPSS Act to the regulatory arrangements under the TUSMA Act and Tel Industry Levy Act now complete, Part 3 of the TCPSS Act has become redundant.

Part 14—Other amendments

Outline

Part 14 amends a number of Acts to streamline notification and account keeping requirements on commercial broadcasting licensees and to repeal spent and redundant provisions.

Notes on Clauses

Broadcasting Services Act 1992

Section 62 of the BSA requires commercial broadcasting licensees, specified datacasting licensees, and newspaper publishers to notify the ACMA of particular control details within three months after the end of each financial year.

Item 208: Subsection 62(1)
Item 210: Subsection 62(2A)
Item 212: Subsection 62(3)

Items 208, 210, and 212 amend section 62 to narrow the scope of the substantive obligation, by repealing the provisions that require a notification that identifies the controllers as at the end of the financial year. As amended, the control notifications only require the names of the

directors of each licensee company or newspaper publishing company as at the end of the financial year.

This amendment reduces the duplication of control change notifications. The ad hoc control change notification obligations imposed on licensees and publishers by section 63 (as amended by Item 215) is considered sufficient for the due administration of the BSA. These control change notification provisions are also complemented by similar notification obligations imposed directly on individual controllers of commercial broadcasting licences, specified datacasting licences, and newspapers (section 64 of the BSA refers).

Item 209: Subsection 62(2)
Item 211: Subsection 62(2B)
Item 213: Subsection 62(4)

Items 209, 211 and 213 make minor textual amendments to subsections 62(2), 62(2A) and 62(4) of the BSA.

Item 214: Application of amendments – section 62 of the *Broadcasting Services Act 1992*

Item 214 provides that the narrower notification obligation takes effect immediately upon commencement for the purpose of identifying the extent of notification required after the end of the current financial year.

Item 215: Subsections 63(1), (2A) and (3)
Item 217: Subsections 64(1), (2A) and (3)

Items 215 and 217 amend sections 63 and 64 of the BSA to extend the timeframe within which a licensee, controller or newspaper publisher must provide the required notifications of changes in control. The time period for compliance is extended from five days to ten days after that person becomes aware of the change in control.

Items 216: Application of amendments – section 63 of the *Broadcasting Services Act 1992*
Item 218: Application of amendments – section 64 of the *Broadcasting Services Act 1992*

Items 216 and 218 provide that a person is entitled to the new ten day timeframe for complying with sections 63 or 64 if that person becomes aware of the change in control after the commencement date (the day after this Bill receives the Royal Assent).

Item 219: Section 65

Item 219 repeals section 65 of the BSA. This section required particular notifications to be provided to the ACMA in February 2007. Section 65 is spent as the notifications have been made.

Item 220: Section 65A
Item 221: Section 65B

Items 220 and 221 make consequential amendments to sections 65A and 65B of the BSA to remove cross-references to the repealed notification sections.

Item 222: Subparagraph 205B(1)(c)(i)
Item 223: After subsection 205B(4)

Items 222 and 223 amend section 205B of the BSA to empower the ACMA to exempt classes of licensees from the requirement to submit audited balance sheets and audited profit and loss accounts. Section 205B requires commercial broadcasters to keep accounts for the purpose of determining their licence fee liability. One of these account keeping obligations requires broadcasters to submit audited balance sheets and audited profit and loss accounts to the

ACMA. The ACMA may specify the classes that will be granted exemptions from the audit rule under this section by making a legislative instrument. The legislative instrument would be subject to Parliamentary scrutiny and disallowance in accordance with the LIA.

Item 224: Clause 5H of Schedule 4

Item 224 repeals clause 5H of Schedule 4 to the BSA. Clause 5H requires the Minister to table quarterly reports in Parliament about digital television transmission blackspots until 1 September 2014. The reporting obligation was intended to monitor the:

- action taken to identify and rectify transmission infrastructure that would otherwise prevent the transmission of free-to-air television broadcasting services in standard definition television digital mode in any area achieving the same level of coverage and potential reception quality as was achieved by the transmission of those services in analog mode; and
- local market areas and regions where transmission issues have been identified and how many households will be affected.

The latest report was tabled in both houses of Parliament on 11 February 2014. This report covered the period 1 September 2013 to 10 December 2013, during which Australia's switchover to digital-only television was completed. That report indicated that the ACMA is satisfied that the commercial and national broadcasters have met their obligations under the digital television conversion schemes, including that their digital television services achieve the same level of coverage and potential reception quality as their analog television services.

The report also outlines that viewers residing in remote licence areas, and those residing in digital television terrestrial blackspots in metropolitan and regional licence areas, are eligible to apply to access the Viewer Access Satellite Television (VAST) service. The VAST service provides viewers with access to the same range of digital television services as are available in capital cities and the same local news as is provided by commercial broadcasters on their terrestrial services in regional and remote licence areas.

Given these circumstances quarterly reports are no longer considered necessary and clause 5H is redundant.

Interactive Gambling Act 2001

The following provisions of the IGA refer to either events completed before 2003 or provide a temporary defence until July 2003. Therefore, the provisions have been spent.

Item 225: Paragraphs 61EA(1)(c) and (2)(c)

Item 225 repeals paragraphs 61EA(1)(c) and 2(c) of the IGA. These repeals are consequential to the repeal of section 61EC of the IGA by item 226.

Item 226: Section 61EC

Item 226 repeals section 61EC of the IGA, which provides that a person may publish an interactive gambling service advertisement in relation to certain sporting or cultural events completed before 1 October 2003.

Item 227: Application of amendment – pre-1 October 2003 events

Item 227 is an application provision. It provides that, despite the repeal of section 61EC of the IGA, the section continues to apply in relation to an advertisement published in connection with an event completed before 1 October 2003 as if that repeal had not

happened. This application measure is designed to avoid any unintended consequences associated with the repeal of section 61EC.

Item 228: Section 61EG

Item 228 repeals section 61EG of the IGA, which provides a temporary defence to the offences in section 61EA of the IGA relating to publishing (or causing/authorising publication) of an interactive gambling service advertisement in Australia. The defence relates to advertisements published before 1 July 2003 under contracts or arrangements already in existence at the time of commencement of the IGA.

Item 229: Application of amendment – pre-1 July 2003 advertisements

Item 229 is an application provision. It provides that despite the repeal of section 61EG of the IGA, the section continues to apply in relation to an advertisement that was published before 1 July 2003 as if that repeal had not happened. This measure is designed to avoid any unintended consequences associated with the repeal of section 61EG.

Item 230: Section 61EH

Item 230 repeals section 61EH of the IGA. This section provides another temporary defence to the offences in section 61EA of the IGA. The defence applies to the display of an interactive gambling service advertisement displayed before 1 July 2003 under a contract or arrangement in existence at the time of the commencement of the IGA.

Item 231: Application of amendment – pre-1 July 2003 display of signs

Item 231 is an application provision. It provides that despite the repeal of section 61EH of the IGA, the section continues to apply in relation to an advertising sign covered by that section as if that repeal had not happened. Item 231 is designed to avoid any unintended consequences associated with the repeal of section 61EH.

Item 232: Sections 61FB and 61FC

Item 232 repeals sections 61FB and 61FC of the IGA. Section 61FB refers to applications to the Minister for specification of an advertisement under section 61EC. Section 61FC refers to a review of a decision made under subsections 61EC(2) or 61EC(3). These repeals are consequential to the repeal of section 61EC by item 226 of this Bill.

Radiocommunications Act 1992

Item 233: Subsection 132(4)

Item 233 repeals subsection 132(4) of the Radiocommunications Act 1992, which specifies when a class licence comes into force and is redundant. Class licences are legislative instruments (see section 139 of the Radiocommunications Act 1992) and as such will commence on the date specified in the instrument or if not specified, in accordance with the LIA.

Item 234: Application of amendment – class licences

Item 234 is an application provision. It provides that the changes made by item 233 operate prospectively.

Item 235: Section 164

Item 235 repeals section 164 of the Radiocommunications Act 1992. This section specifies when a standard made under section 162 takes effect. Standards made under section 162 are

legislative instruments and as such will commence on the date specified in the instrument or if not specified, in accordance with the LIA. Section 164 is therefore redundant.

Item 236: Application of amendment - standards

Item 236 is an application provision. It provides that the changes made by item 235 operate prospectively.

Special Broadcasting Service Act 1991

Item 237: Sections 78, 79 and 82
Item 238: Subsection 85(1)
Item 239: Subsection 85(2)
Item 240: Section 88
Item 242: Sections 90, 91 and 92

Items 237 to 240 and item 242 repeal spent transitional provisions and make consequential renumbering and cross-referencing amendments.

The spent transitional provisions pertain to:

- The continuity of appointments for corporate office holders notwithstanding the restructuring of the corporation (sections 78 and 79 of the SBS Act). Other continuity of employment provisions in the SBS Act are not being repealed since the SBS still has employees entitled to the benefit of those provisions.
- The deeming of delegations and authorisations made by the old body corporate to have been issued by the restructured corporation (section 82).
- The saving of Ombudsman investigations on foot at the time the Special Broadcasting Service was restructured in 1991 (subsection 85(2)).
- Transitional budget, financial accounting, audit, and annual reporting arrangements that are now obsolete due to the passage of time (sections 88 and 90 to 92).

Item 241: Section 89

Item 241 makes a technical amendment to section 89 of the SBS Act to update an internal cross-reference. This section deems bank accounts opened by the old body corporate to have been opened by the *restructured corporation*.

Telecommunications Act 1997

Item 243: Subparagraph 27(7)(d)(ii) of Schedule 3

Item 243 repeals subparagraph 27(7)(d)(ii) of Schedule 3 to the Telecommunications Act, which requires the ACMA to consider whether facilities are to be installed at or near an area or thing included in the Register of the National Estate (RNE) under the *Australian Heritage Council Act 2003* (Heritage Council Act).

By virtue of the *Environment and Heritage Legislation Amendment Act (No. 1) 2006*, the RNE ceased to have practical effect on 19 February 2012.

Division 6 of Schedule 3 to the Telecommunications Act provides a process for a carrier to apply for a facilities installation permit (FIP) from the ACMA. Before issuing a FIP, the ACMA must consider the impact of the installation, maintenance or operation of the proposed facilities on the environment (paragraph 27(5)(b) and subclause 27(7)).

For clarity, while the RNE is of historical significance only, many of the items included on the register are protected under other Commonwealth, State and Territory law, such as the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act).

Item 244: Clause 55 of Schedule 3

Item 244 repeals clause 55 of Schedule 3 to the Telecommunications Act. Clause 55 of Schedule 3 to the Telecommunications Act enabled the Secretary to give the ACMA recommendations for directions to be given to carriers installing certain facilities, for managing environmental impacts of the proposed installation. Clause 55 ceased to have practical effect on 1 January 2001 (paragraph 55(1)(a)). Item 244 therefore repeals the spent clause 55 of Schedule 3.

Item 245: Paragraph 1(z) of Schedule 4

Item 245 makes a consequential amendment to repeal paragraph 1(z) of Schedule 4 to the Telecommunications Act. Sections 555 and 558 of the Telecommunications Act allow a person to request reconsideration by the ACMA of certain decisions that are specified in Part 1 of Schedule 4. If the ACMA affirms or varies a decision specified under section 555, then a person may seek merits review by the Administrative Appeals Tribunal under section 562. Paragraph 1(z) of Schedule 4 specifies that a decision to give or vary a direction, or refuse to revoke a direction under clause 55 of Schedule 3, is reviewable. Item 245 makes a consequential amendment by repealing paragraph 1(z) of Schedule 4.

For clarity, while clause 55 of Schedule 3 and the associated paragraph 1(z) of Schedule 4 are spent, a carrier proposing to install a telecommunications facility is subject to other Commonwealth laws for the protection of the environment, including the requirements of the EPBC Act.

Telecommunications (Consumer Protection and Service Standards) Act 1999

Item 246: Section 4

Item 246 amends section 4 of the TCPSS Act to remove a reference to the Minister's power to direct Telstra to take action to ensure compliance with the TCPSS Act in the simplified outline of the Act. This amendment is consequential to the repeal of section 159 by item 247 of this Bill.

Item 247

Item 247 repeals section 159 of the TCPSS Act. Section 159 enables the Minister to direct Telstra to take specified action directed towards ensuring that Telstra complies with the TCPSS Act. This direction power was introduced with the commencement of the TCPSS Act and replaced a Ministerial direction power in Part 3 of the Telstra Act which was subsequently repealed. No direction has ever been given pursuant to section 159.

Under clause 1 of Schedule 1 to the Telecommunications Act, compliance with that Act and the TCPSS Act is a standard carrier licence condition. Section 68 of the Telecommunications Act provides that a carrier must not contravene a condition of a carrier licence held by the carrier and that this is a civil penalty provision.

In view of the above, it is no longer necessary to have a Ministerial power specific to Telstra or alternatively, have it apply generically to all carriers, given such persons are compelled to comply with the Act.

Schedule 3—Defence

Outline

This Schedule repeals three spent and redundant Acts administered in the Defence portfolio and makes amendments consequential to the repeal of one of these Acts.

Notes on Clauses

Part 1—Repeals of Acts

Approved Defence Projects Protection Act 1947

Item 1: The whole of the Act

Item 1 repeals the *Approved Defence Projects Protection Act 1947* which is now redundant.

This Act was operative when the Woomera and Nurrungar facilities were considered to be special undertakings. Woomera is now protected under Part VII of the *Defence Force Regulations 1952*. The Nurrungar facility was decommissioned in 1999 and its operations moved to Pine Gap. The *Defence (Special Undertakings) Act 1952* would regulate the activities for these instances for Pine Gap.

Commonwealth and State Housing Agreement (Service Personnel) Act 1990

Item 2: The whole of the Act

Item 2 repeals the *Commonwealth and State Housing Agreement (Service Personnel) Act 1990* which is spent.

The legislation was created to facilitate the transfer of property between the Commonwealth and individual States, following the creation of the Defence Housing Authority in 1988, with a five year timeframe. This Act was a diminishing instrument and after five years was fully spent.

War Service Estates Act 1942

Item 3: The whole of the Act

Item 3 repeals the *War Service Estates Act 1942* which is now redundant. This Act was in response to the significant number of Australian service personnel who lost their lives during World War II and died without making a will. Current practice is that Defence personnel are required to make a will prior to overseas operations. Defence makes all efforts to locate next-of-kin and coverage has been provided in personnel entitlements and medal award policies if a member of the Defence Force dies intestate.

Part 2—Other amendment

Defence (Special Undertakings) Act 1952

Item 4: Section 27

Item 4 makes consequential amendments to the *Defence (Special Undertakings) Act 1952* to remove the reference to the *Approved Defence Projects Protection Act 1947*.

Schedule 4—Employment

Outline

This Schedule repeals a redundant Act administered in the Employment portfolio.

Notes on Clauses

Construction Industry Reform and Development Act 1992

Item 1: The whole of the Act

Item 1 repeals the *Construction Industry Reform and Development Act 1992* (CIRD Act) which is redundant.

The CIRD Act establishes both the Construction Industry Development Council and the Construction Industry Development Agency.

The Council was set up as a national forum for the construction industry in Australia to advise the Commonwealth Government on issues facing the industry and to liaise with State and Territory governments on relevant matters. The Agency was set up to promote and facilitate the development and reform of the construction industry in Australia.

The Agency was abolished in 1995 and there are no current appointments to the Council. The legislation is redundant.

Schedule 5—Environment

Outline

This Schedule repeals redundant provisions in Acts, as well as a redundant Act, administered in the Environment portfolio and makes amendments to streamline regulatory arrangements under the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989*.

Notes on Clauses

Part 1—Repeal of Act

Sea Installations Levy Act 1987

Item 1: Whole of the Act

Item 1 repeals the *Sea Installations Levy Act 1987* which is redundant.

The *Sea Installations Levy Act 1987* relates to the environmental permitting scheme under the *Sea Installations Act 1987* (the SI Act). Following repeal of the permitting scheme under the SI Act, it is unnecessary to impose a levy for such permits.

Item 2: Application of this Part

Item 2 is a transitional provision. Amendments in Part 2 will not apply to the existing permits and exemption certificates. Permits and exemption certificates existing at the time of the amendment will remain in force until they expire.

Part 2—Sea installations amendments

Part 2 repeals the environmental permitting provisions in the SI Act.

The SI Act regulates certain sea installations in Australian territorial waters (between three nautical miles and 200 nautical miles from the territorial sea baseline) or the outer limits of the continental shelf to ensure they are operated safely and in a manner consistent with environmental protection. The SI Act also ensures that appropriate laws are applied on sea installations regulated under the Act.

The environment protection component of the SI Act is achieved through the issuing of permits for the operation of sea installations, which also authorise the installation, use and the carrying out of certain works on the sea installation. Sea installations captured by the legislation include structures such as pontoons, artificial islands and fish aggregating devices. A number of installations are excluded from the legislation, for example, resources industry fixed structures, structures relating to the defence of Australia and navigable vessels (other than prescribed vessels or pontoons).

Since the SI Act was enacted in 1987, environmental protection in Commonwealth marine areas is now predominately covered by the comprehensive regime under the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act) and, in the Great Barrier Reef Marine Park, the *Great Barrier Reef Marine Park Act 1975* (the GBRMP Act).

The EPBC Act commenced on 16 July 2000 and is now the key piece of environmental legislation at the Commonwealth level. The Act defines the Commonwealth's environmental responsibilities and provides a national scheme of environment and heritage protection and biodiversity conservation. The legislation focuses the Commonwealth's interests on the protection of matters of national environmental significance, which in the marine environment includes: listed threatened species; migratory species; world heritage properties;

national heritage places; the Commonwealth marine environment; and the Great Barrier Reef Marine Park.

The legal framework under the EPBC Act provides, amongst other matters, that any actions that have, or are likely to have, a significant impact on a matter of national environmental significance require approval from the Australian Government Minister for the Environment. The Minister for the Environment decides whether assessment and approval is required (under Parts 7, 8 and 9 of the EPBC Act).

For example, the marine environment trigger under the EPBC Act (subdivision F of Division 1 of Part 3 of the EPBC Act) requires assessment of actions that have, will have or are likely to have significant impacts on the whole of the environment in the Commonwealth marine area (which is defined in section 24 of the EPBC Act and in general terms covers Australian territorial waters between three nautical miles and 200 nautical miles from the territorial sea baseline).

Separately, the EPBC Act also creates a range of offences in Commonwealth areas (including Commonwealth marine areas) relating to protected listed, migratory and marine species (under Part 13 of the EPBC Act). The regulation of these species through a permit system under the EPBC Act creates an additional level of protection in Commonwealth marine areas.

Further, the GBRMP Act and the Great Barrier Reef Marine Park Zoning Plan 2003 regulate the use of the Great Barrier Reef Marine Park, including through a permit system, in ways consistent with ecosystem-based management and the principles of ecologically sustainable use. The GBRMP Act and the *Great Barrier Reef Marine Park Regulations 1983* (GBRMP Regulations) also create a range of offences and civil penalties relating to conduct in the Great Barrier Reef Marine Park.

Prior to the EPBC Act, the sea installations legislation was designed to ensure that sea installations would be subject to the same legal regime as equivalent land-based operations. However, national environmental protection in the Commonwealth marine environment is now provided for under the EPBC Act and, in the Great Barrier Reef Marine Park, the GBRMP Act. This brings environmental regulation of sea installations into line with other activities in the Commonwealth marine environment.

The amendments do not change the level of environmental protection related to the majority of activities that involve sea installations as these will be regulated under the EPBC Act and/or the GBRMP Act, but remove the administrative burden of applying for and issuing exemption certificates under the SI Act.

It is not considered necessary for the Commonwealth to regulate the environmental impact of other small-scale activities related to certain sea installations that may have low-level impacts and would fall below the threshold for assessment under the EPBC Act (because they are not likely to have a significant impact on matters of national environmental significance) or are regulated by the GBRMP Act. Further, in practice and based on recent experience, all applications under the SI Act have received exemption certificates, except for four permits for installations in the Great Barrier Reef Marine Park. Following repeal of the SI Act, the installations of the type that are currently permitted in the Great Barrier Reef Marine Park would be regulated by the permitting regime under the GBRMP Act.

A number of non-environmental provisions in the SI Act, such as those that regulate maritime safety, customs, immigration and quarantine matters, are not affected by the amendments.

Customs Act 1901

Item 3: Subsection 4(1) (definition of *Permit*)
Item 4: Paragraphs 58A(2)(d), (3)(d), (4)(d) and (5)(d)

Items 3 and 4 are consequential amendments to the *Customs Act 1901* to repeal the definition of 'permit' and to omit references to 'the holder of the permit for the installation' as, following enactment of the proposed amendments, the permitting regime under the SI Act will cease.

Sea Installations Act 1987

Item 5: At the end of paragraph 3(a)
Item 6: Paragraph 3(b)
Item 7: Paragraph 3(c)

Items 5 to 7 amend the objects of the SI Act to reflect that the legislation no longer includes environmental permitting provisions.

Item 8: Subsection 4(1) (definition of *approved form*)
Item 9: Subsection 4(1) (definition of *contravention*)
Item 10: Subsection 4(1) (definition of *environment related work*)
Item 11: Subsection 4(1) (definition of *exemption certificate*)
Item 12: Subsection 4(1) (definition of *installation levy*)
Item 13: Subsection 4(1) (definition of *Levy Act*)
Item 14: Subsection 4(1) (definition of *licence*)
Item 15: Subsection 4(1) (definition of *modify*)
Item 16: Subsection 4(1) (definition of *permit*)
Item 17: Subsection 4(1) (definition of *permitted sea installation*)
Item 18: Subsection 4(1) (definition of *representative*)
Item 19: Subsection 4(1) (definition of *special condition*)
Item 20: Subsection 4(1) (definition of *unauthorised installation*)
Item 21: Subsection 4(1) (definition of *vary*)

Items 8 to 21 repeal or amend certain definitions from the SI Act that are no longer necessary following removal of the environmental permitting provisions under the Act. A number of the definitions in section 4 of the SI Act that do not relate to environmental permitting and/or impact non-environmental matters are retained.

Item 22: Paragraph 7(1)(b)

Item 22 repeals and replaces paragraph 7(1)(b). Section 7 of the SI Act sets out when an attached sea installation is taken to be part of another sea installation. Currently this partly relies on whether the contact is in accordance with a permit granted under the SI Act. Item 22 removes the requirement that the contact referred to under section 7 is in accordance with a sea installations permit to reflect that the sea installations permitting regime under the SI Act will cease.

Item 23: Section 10

Item 23 repeals section 10, which concerns the Minister consulting with relevant states and territories before granting, renewing, varying or revoking a permit or exemption certificate under the SI Act. This provision is no longer required as a consequence of amendments to remove the environmental permitting regime from the SI Act.

Item 59 establishes application provisions that will save this requirement for existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments made by this Bill.

Item 24: Parts II to IV

Item 24 repeals Parts II to IV of the SI Act. This item repeals the environmental permitting scheme under the Act.

Item 59 establishes application provisions that will save these Parts for the purpose of applying them to existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments. This will enable the Minister to suspend or revoke existing permits if appropriate.

There is only a small number of existing permits under the SI Act, and a relatively small number of exemption certificates with conditions. The approach to applying the repealed provisions to these existing permits and exemption certificates is necessary in order to ensure a smooth transition from the permitting regime to the amended Act.

However, section 38 of the SI Act will not continue to apply to existing permits and exemption certificates. The Sea Installations Account was established under subsection 5(3) of the *Financial Management Legislation Amendment Act 1999* and any monies that are paid under section 37 are required to be deposited into the account. There are currently no permits under the SI Act that use the Sea Installations Account and it is the Department of the Environment's intention to close the account. The application provision will ensure that the Sea Installations Account can be closed.

Item 25: At the end of paragraph 51(1)(a)
Item 26: Paragraph 51(1)(b)
Item 27: At the end of paragraph 51(2)(a)
Item 28: Paragraph 51(2)(b)
Item 29: At the end of paragraph 51(3)(a)
Item 30: Paragraph 51(3)(b)

Items 25 to 30 amend section 51 of the SI Act to remove references to the holder of the permit for the sea installation. These amendments are consequential to the amendments in item 24 which remove the permitting requirements, with the effect that there are no longer any holders of sea installation permits.

The application provisions established by item 59 will save this reference for existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments.

Item 31: Sections 52, 53 and 54

Item 31 repeals sections 52, 53 and 54 of the SI Act as these sections are no longer necessary following removal of the environmental permitting provisions.

Item 32: Subsection 55(1)

Item 32 amends section 55 so that it applies to sea installations, as defined in the SI Act, and not solely to unauthorised installations. This amendment is necessary following the removal of the environmental permitting regime which authorises the operation of sea installations. Retaining section 55 is also important in terms of fulfilling Australia's obligations under the United Nations Convention on the Law of the Sea.

Item 33: Subsection 55(2)
Item 34: Subsection 55(3)

Items 33 and 34 provide that section 55 applies to owners or operators of sea installations under the SI Act and no longer to holders of a permit to operate a sea installation. These amendments are consequential to the amendments in item 24 which remove the permitting requirements, with the effect that there are no longer any holders of a permit to operate a sea installation.

The application provisions established by item 59 will save this reference for existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments.

Item 35: Sections 56 and 58

Item 35 repeals section 56. This section allows the Minister to make a declaration that a sea installation or property is to be forfeited to the Commonwealth in the event that a direction has been given by the Minister under section 55 and the person has not complied with the direction to remove the installation. The provision relating to forfeiture is removed as section 55 currently includes a penalty provision in circumstances where a person does not comply with the direction to remove the installation. This penalty provision provides the Commonwealth with the necessary powers to ensure installations are removed if required and the further enforcement option of forfeiture is considered unnecessary.

Item 35 also repeals section 58, which makes it an offence for a permit holder to contravene the conditions of a permit. This provision is no longer necessary following repeal of the environmental permitting regime under the SI Act.

Item 36: Paragraph 62(2)(a)
Item 37: Subsection 62(3)

Items 36 and 37 amend section 62 to remove references to permitted sea installations. These amendments are consequential as a result of the amendments removing the environmental permitting requirements under the SI Act and that there is no longer a definition of permitted sea installation.

Item 38: Subsection 65(1)
Item 39: Paragraph 65(4)(a)

Items 38 and 39 remove references to sections 14, 15, 16, 52, 53, 58 and 78 from section 65. These sections are repealed by the amendments and therefore the offence provisions under those sections will cease to apply.

The application provisions established by item 59 will save these offences for existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments.

Item 40: Part VIII

Item 40 repeals Part VIII. This Part is redundant following the removal of the environmental permitting regime under the SI Act.

Item 41: Section 72

Item 41 repeals section 72. Following the repeal of the environmental permitting regime it will be unnecessary to collect fees for applications for permits, the renewal of permits or the variation of permits under the SI Act.

The application provisions established by item 59 will save these fees for existing permits and exemption certificates which are in force under the SI Act at the commencement of the amendments.

Item 42: Subsection 75(1)
Item 43: Paragraphs 75(1)(a) to (n)
Item 44: Paragraphs 75(1)(q) and (s)
Item 45: Paragraph 75(1)(u)
Item 46: Paragraphs 75(1)(w) and (y)

Items 42 to 46 amend section 75 to omit the decisions under provisions of the SI Act that will be removed by this Bill.

Item 47: Subsection 77(1)
Item 48: Paragraph 77(1)(f)
Item 49: Subsection 77(2)

Items 47, 48 and 49 amend the regulation making power in section 77 to remove the explicit reference to controlling the disposal of wastes on sea installations and the provision relating to compliance with conditions of sea installations permits. Following removal of the environmental permitting regime under the SI Act these references are unnecessary and redundant.

Item 50: Section 78

Item 50 repeals section 78. This section established transitional provisions that applied to sea installations installed before commencement of the SI Act and therefore it is no longer necessary.

Items 51, 52, 53 and 54: Schedule

Items 51 to 54 amend the Schedule to remove references to redundant Acts. The Schedule lists the Commonwealth Acts that apply to certain sea installations as provided for by section 45 of the SI Act.

Item 55: Schedule

Item 55 inserts the *Extradition Act 1988* to the Schedule. The *Extradition Act 1988* replaced the *Extradition (Commonwealth* Countries*) Act 1966* and the *Extradition (Foreign States) Act 1966* which have been repealed.

Item 56 and 57: Schedule

Items 56 and 57 amend the Schedule to remove references to redundant Acts. The Schedule lists the Commonwealth Acts that apply to certain sea installations as provided for by section 45 of the SI Act.

Item 58: Schedule

Item 58 corrects the reference to "*Tradespersons' Rights Regulation Act 1946*".

Item 59: Application of this Part

Item 59 provides for transitional arrangements for the small number of existing permits and exemption certificates under the SI Act that have been granted with conditions. This item provides that the amendments in this Part will not apply to the existing permits and exemption certificates that will remain in force until they expire. This means that the current provisions of the SI Act will continue to apply to these existing permits and exemption certificates.

Section 38 will not continue to apply to existing permits and exemption certificates. It is the Department of the Environment's intention to close the Sea Installations Account, and as there are no permits that currently use the account, this application provision will ensure the account can be closed.

Where applications for a permit or permit exemption certificate are being assessed at the time the amendments commence, the applications will cease to be necessary and the decision-maker will not progress the assessment of the application.

Part 3—Ozone amendments

Part 3 amends the *Ozone Protection and Synthetic Greenhouse Gas Management Act 1989* (OPSGGM Act) and associated Acts that affect the licensing, reporting and administrative obligations of licensees under the OPSGGM Act. The amendments also modernise and update certain provisions with the aim of improving the efficiency of the OPSGGM Act. Specifically, the amendments include provisions to:

- allow an amount of residual gas (referred to as 'heel') to be deducted from calculations that determine allowable import quotas and levies payable by licensees;
- establish a framework to exempt low volume importers from the licensing, reporting and levy requirements of the OPSGGM Act;
- remove the requirement to return a licence to the Minister when surrendered;
- amend the reporting requirements to require all importers, manufacturers and exporters to consistently report nil amounts where they have not imported, manufactured or exported ozone depleting substances (ODS) or synthetic greenhouse gases (SGGs) during a quarter;
- update the ozone depleting potential (ODP) values contained in the OPSGGM Act to make them consistent with internationally agreed values; and
- amend the current ban on refrigeration and air conditioning equipment to cover equipment that is designed to only use hydrochlorofluorocarbons (HCFCs) or chlorofluorocarbons (CFCs).

Division 1—Heel allowance percentage amendments

Item 60: After subsection 3A(6)
Item 61: After subsection 4(4)
Item 62: Section 7
Item 63: After subsection 18(1)
Item 64: After subsection 3A(4)
Item 65: After subsection 4(3)

Items 60 to 65 amend the OPSGGM Act and associated Acts to provide for a heel allowance percentage when calculating levies payable and the HCFC import quota.

The heel is a residual amount of gas remaining in an imported cylinder after all usable gas has been decanted or offloaded. Removal of the heel risks damaging the cylinder through changes in pressure or introducing contaminants into the gas. Removing the heel also increases safety risks for the handler.

As the heel is not removed from the imported cylinder it should not be counted in the calculation of levies payable under the OPSGGM Act or HCFC import quota. The amendments recognise a heel exists and for this to be excluded from the calculation of levies

applied to the importation and manufacture of ODS and SGG, and in the calculation of the HCFC import quota.

Item 62 inserts a definition of 'heel allowance percentage' in section 7 of the OPSGGM Act. The actual percentage rate will be specified in the *Ozone Protection and Synthetic Greenhouse Gas Management Regulations 1995* (the Regulations).

Item 63 amends subsection 18(1) of the OPSGGM Act to ensure that a heel allowance percentage is excluded in the calculation of levies applied to ODS and SGG imports and manufacture, and the HCFC import quota. The amendment will clarify that the heel allowance percentage is deducted from the quantity of HCFCs involved in regulated HCFC activities undertaken pursuant to a controlled substances licence.

Items 60 and 61 amend the *Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995* to allow for the consideration of a heel allowance percentage in calculating the levy for the importation of ODS and SGGs. The effect of the amendments is to reduce the prescribed rate component of the levy by the heel allowance percentage.

Items 64 and 65 amend the *Ozone Protection and Synthetic Greenhouse Gas (Manufacture Levy) Act 1995* to also allow for the consideration of a heel allowance percentage in calculating the levy for the manufacture of ODS and SGGs. The effect of the amendments is to reduce the prescribed rate component of the levy by the heel allowance percentage.

Item 66: Application of amendments

Item 66 is an application provision that describes when the amendments made in this Division will apply.

Division 2—Low volume import exemption amendments

Ozone Protection and Synthetic Greenhouse Gas (Import Levy) Act 1995

Item 67: Subsection 4A(3)
Item 68: Subsection 4B(2)
Item 69: At the end of subsection 13(6A)
Item 70: Paragraph 46A(3)(b)

Items 67 to 70 make amendments to allow for low volume importers of ODS or SGG equipment to be exempted from licensing requirements under the OPSGGM Act.

Currently, the OPSGGM Act requires all importers of ODS or SGGs to have the appropriate import licence unless an exemption applies. An import licence requires importers to pay a licence application fee and import levies, as well as to provide quarterly reports. Holding an import licence places an administrative burden on low volume importers that outweighs the small amount of gas imported and revenue collected, as well as the small potential for emissions to occur.

The Regulations provides a partial licence fee waiver for low volume importers. To be eligible for the fee waiver, importers must demonstrate that they:

will import no more than five pieces of equipment which contain ten kilograms or less in total of ODS or SGGs in a single consignment, and

have not had part of a licence fee waived in the two years prior to the licence application.

Item 69 inserts a framework into the OPSGGM Act to enable conditions to be prescribed by the Regulations or specified in a legislative instrument relating to low volume imports. Importers who satisfy the conditions will be exempt from the requirement to hold a licence

under the OPSGGM Act, and will also be exempt from the reporting and levy requirements. The removal of licensing requirements will lower administrative costs to individuals and businesses.

The conditions that must be satisfied for the low volume import exemption will be based on the number of pieces of equipment, the time period for importation, and conditions set in the Regulations relating to the person, the equipment and the importation. Pursuant to subsection 13(3) of the LIA, conditions may be prescribed or specified for different classes of equipment.

Items 67, 68 and 70 make consequential amendments to refer to the new framework for low volume importers inserted by item 69.

Division 3—Other amendments

Ozone Protection and Synthetic Greenhouse Gas Management Act 1989

Item 71: Subsection 21(1)

Item 71 repeals and replaces subsection 21(1) of the OPSGGM Act to remove the requirement for a licensee to return the licence to the Minister when a licensee surrenders their licence. The OPSGGM Act currently allows licensees to surrender their licence by returning it to the Minister with a written notice of the surrender.

The requirement to return the licence to the Minister is no longer necessary as licences are now issued in electronic form rather than by paper.

However, the requirement for written notice of the surrender remains.

Item 72: After subsection 46(1)
Item 73: Subsection 46(1A)
Item 74: Subsection 46(2)
Item 75: Subsection 46(2C)
Item 76: After subsection 46A(4)
Item 77: Paragraph 46A(5)(a)
Item 78: Subsection 46A(7)

Items 72 to 78 amend the OPSGGM Act to specify that the quarterly reporting obligations of all manufacturers, importers and exporters covered under the OPSGGM Act include reporting nil amounts, where no importation, export or manufacture occur in a quarter. These amendments will ensure that the requirement for a person to report a “nil amount” applies consistently to all manufacturers, importers and exporters covered under the OPSGGM Act.

At present, the quarterly reporting obligations for manufacturers, importers and exporters of SGGs and ODS, or SGG equipment, differ slightly from the obligations of manufacturers, importers and exporters of other substances, particularly with respect to reporting nil amounts.

It is important that the reporting obligations of all licence holders under the Act are consistent as this data is used by the Australian Government to meet its reporting obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer of 16 September 1987 (the Montreal Protocol) and Kyoto Protocol to the United Nations Framework Convention on Climate Change. The submission of reports declaring nil imports, manufacture or exports of ODS and SGG provide an important indicator of industry activity and compliance.

Item 79: Application of amendments in this Division

Item 79 is an application provision that outlines when the amendments to sections 46 and 46A of the OPSGGM Act relating to reporting requirements will apply.

Item 80: Part VI of Schedule 1
Item 81: Part VII of Schedule 1

Items 80 and 81 amend Parts VI and VII of Schedule 1 to the OPSGGM Act respectively to update the ozone depleting potential (ODP) values value of two substances, dibromofluoromethane ($CHFBr_2$) and methyl bromide (CH_3Br).

Currently, the ODP of ODS are specified in Schedule 1 to the Act and derive from Annexes A, B, C and E of the Montreal Protocol. The amendment ensures that the ODP values in the Act align with the internationally accepted values under the Montreal Protocol. The amendment does not impact on licence holders, quota holders or users of ODS.

Item 82: Paragraph 10(1)(b) of Schedule 4

Item 82 repeals and replaces paragraph 10(1)(b) of Schedule 4 to the OPSGGM Act to restrict the ban to cover equipment that is designed to *only* use CFC, HCFC or a combination of the two substances.

Currently, the OPSGGM Act bans the importation or manufacture of refrigeration or air conditioning equipment that contains CFC or HCFC refrigerant or is designed to operate by using a CFC or HCFC refrigerant, whether or not it is also designed to operate using another substance. An unintended consequence of this ban is that it restricts the entry of new models of refrigeration and air conditioning equipment that is designed to operate using alternative refrigerants as well as CFCs or HCFCs.

This amendment will narrow the scope of the ban to help ensure that the importation or manufacture of equipment designed to operate exclusively with CFC or HCFC continues to be banned while allowing a greater range of technologies to be imported or manufactured.

Part 4—Water amendment

Water Act 2007

Item 83: Section 255AA

Item 83 repeals section 255AA of the *Water Act 2007*. This section provides that prior to licences being granted for subsidence mining operations on floodplains that have underlying groundwater systems forming part of the Murray-Darling system inflows, an independent expert study must be undertaken to determine the impacts of the proposed mining operations on the connectivity of groundwater systems, surface water and groundwater flows and water quality.

Since this amendment was made to the Water Act in 2008, further regulatory and legislative changes have been made that make this section redundant, namely:

- The establishment of the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development;
- The addition of the protection of water resources from coal seam gas development and large coal mining development as a matter of national environmental significance under the *Environment Protection and Biodiversity Conservation Act 1999*; and
- The making of the Murray-Darling Basin Plan under the Water Act.

The repeal of section 255AA of the Water Act will remove duplication and increase certainty to business without diminishing regulatory standards.

Schedule 6—Finance

Outline

This Schedule repeals spent, exhausted and lapsed Appropriations Acts administered in the Finance portfolio.

Notes on Clauses

Appropriation Act (No. 1) 2010-2011

Appropriation Act (No. 1) 2011-2012

Appropriation Act (No. 2) 2010-2011

Appropriation Act (No. 2) 2011-2012

Appropriation Act (No. 3) 2010-2011

Appropriation Act (No. 3) 2011-2012

Appropriation Act (No. 4) 2010-2011

Appropriation Act (No. 4) 2011-2012

Appropriation Act (No. 5) 2011-2012

Appropriation Act (No. 6) 2011-2012

Appropriation (Parliamentary Departments) Act (No. 1) 2010-2011

Appropriation (Parliamentary Departments) Act (No. 1) 2011-2012

Item 1: The whole of the Act
Item 2: The whole of the Act
Item 3: The whole of the Act
Item 4: The whole of the Act
Item 5: The whole of the Act
Item 6: The whole of the Act
Item 7: The whole of the Act
Item 8: The whole of the Act
Item 9: The whole of the Act
Item 10: The whole of the Act
Item 11: The whole of the Act
Item 12: The whole of the Act

Items 1 to 12 repeal old annual Appropriation Acts relating to the 2010-11 and 2011-12 financial years, to commence as of 1 July 2014 (or later if the Bill commences as an Act after 1 July 2014).

The amounts appropriated by these Acts are largely spent, or have already been reduced using mechanisms in the Acts themselves. Appropriations, to a minor extent, still exist for some agencies, and will be available for their use until at least 1 July 2014.

To the extent that amounts still exist before commencement on 1 July 2014 (or later), these amounts can be considered for re-appropriation through the Budget process. This is consistent with the approach that was taken to the implementation of the *Statute Stocktake (Appropriations) Act 2013*, which repealed appropriations that had initially applied for the relevant financial years across the period of 1 July 1999 to 30 June 2010.

Schedule 7—Industry

Outline

This Schedule repeals spent and redundant Acts administered in the Industry portfolio and makes amendments consequential to the repeal of those Acts.

Notes on Clauses

Part 1—Repeals of Acts

ACIS Administration Act 1999

Item 1: The whole of the Act

Item 1 repeals the *ACIS Administration Act 1999* (the ACIS Act), which established the Automotive Competitiveness and Investment Scheme (ACIS). This scheme provided transitional assistance to the Australian automotive industry in two stages and the second stage ended on 31 December 2010. The *Automotive Transformation Scheme Act 2009* deals with periods after that date.

ACIS participants earned benefits in the form of duty credit from the production of motor vehicles and engines, as well as from investment in approved plant and equipment and research and development in Australia. Duty credits could be used to offset Customs duty on eligible imports, or could be transferred to another person.

All ACIS duty credits expired on 31 December 2011 and all compliance monitoring activity has ceased. The ACIS Act is therefore spent.

ACIS (Unearned Credit Liability) Act 1999

Item 2: The whole of the Act

Item 2 repeals the spent *ACIS (Unearned Credit Liability) Act 1999*, which imposed an amount of unearned credit liability that a participant was liable to pay under section 95 of the ACIS Act.

Part 2—Other amendments

Customs Act 1901

Item 3: Section 4 (definition of *ACIS*)

Item 3 makes consequential changes to the *Customs Act 1901* and the *Automotive Transformation Scheme Act 2009*. These Acts contained provisions that relied on provisions of the ACIS Act being operative.

Automotive Transformation Scheme Act 2009

Item 4: Paragraph 163(3)(b)
Item 5: Paragraph 168(2)(b)

Items 4 and 5 make consequential changes to the *Automotive Transformation Scheme Act 2009*. This Act contained provisions that relied on provisions of the ACIS Act being operative.

Schedule 8—Prime Minister

Outline

This Schedule repeals a redundant Act and provision in Acts administered in the Prime Minister's portfolio and provides for transitional arrangements associated with the repeals.

Notes on Clauses

Part 1—Repeal of Act

Coordinator-General for Remote Indigenous Services Act 2009

Item 1: The whole of the Act

Item 1 repeals the *Coordinator-General for Remote Indigenous Services Act 2009*.

The Coordinator-General was responsible for oversight of the Remote Service Delivery strategy under the Council of Australian Governments' National Partnership Agreement on Remote Service Delivery.

On 17 December 2013, the Government announced that funding for the Coordinator-General for Remote Indigenous Services would cease. The role and function of the Coordinator-General concluded on 31 January 2014. The Department of the Prime Minister and Cabinet has responsibility for overseeing the National Partnership Agreement on Remote Services Delivery which expires on 30 June 2014.

Item 2: Transfer of records and documents to the Department

Item 2 requires that records or documents held by the Coordinator-General be transferred to the Department of the Prime Minister and Cabinet.

Item 3: Transitional—annual reports

Item 3 requires the Secretary to prepare and give to the Minister an annual report for the financial year ending on 30 June 2014, in accordance with section 28 of the *Coordinator-General for Remote Indigenous Services Act 2009*.

Part 2—Other amendments

Indigenous Education (Targeted Assistance) Act 2000

Item 4: Section 17A

Item 4 repeals section 17A of the *Indigenous Education (Targeted Assistance) Act 2000*.

Section 17A requires an annual report to be tabled in each house of Parliament that deals with payments and performance information about agreements made under the *Indigenous Education (Targeted Assistance) Act 2000*.

This section is no longer required as there are now other reporting arrangements that provide more publicly available information, including the Aboriginal and Torres Strait Islander Education Action Plan annual reports, Australian Curriculum Assessment and Reporting Authority National Schooling Reports and the Productivity Commission's Overcoming Indigenous Disadvantage: Key Indicators bi-annual reports. These, and other reports, provide statistical and qualitative information about Indigenous education and well-being.

Furthermore, the information provided under section 17A is considered to be out-dated and does not meet the broader, contemporary needs met by the range of nationally comparable data sets.

Item 5: Transitional—reports

Item 5 provides for the continued operation of section 17A of the *Indigenous Education (Targeted Assistance) Act 2000* in respect of the funding year that started on 1 January 2013 and the period between 1 January 2014 and 30 June 2014.

Schedule 9—Social Services

Outline

This Schedule repeals spent and redundant Acts administered in the Social Services portfolio and makes amendments consequential to those repeals. It also repeals building certification requirements in the *Aged Care Act 1997* (AC Act) that duplicate state and territory building regulations.

Notes on Clauses

Part 1—Repeals of Acts

Commonwealth and State Housing Agreement Act 1945

Housing Agreement Act 1956

Housing Agreement Act 1961

Housing Agreement Act 1966

Housing Agreement Act 1973

Housing Agreement Act 1974

Housing Assistance Act 1973

Housing Assistance Act 1978

Housing Assistance Act 1981

Housing Assistance Act 1984

Housing Assistance Act 1989

Housing Assistance Act 1996

Item 1: Whole of the Act
Item 2: Whole of the Act
Item 3: Whole of the Act
Item 4: Whole of the Act
Item 5: Whole of the Act
Item 6: Whole of the Act
Item 7: Whole of the Act
Item 8: Whole of the Act
Item 9: Whole of the Act
Item 10: Whole of the Act
Item 11: Whole of the Act
Item 12: Whole of the Act

Items 1 to 12 repeal the *Commonwealth and State Housing Agreement Act 1945*, *Housing Agreement Acts* of 1956, 1961, 1966, 1973 and 1974 and *Housing Assistance Acts* of 1973, 1978, 1981, 1984, 1989 and 1996 (Housing Agreement and Assistance Acts).

The Housing Agreement and Assistance Acts are redundant as grants of financial assistance to States and Territories are no longer made under these Acts.

Housing Agreement and Assistance Acts provided the legislative basis for Commonwealth State-House Agreements. These agreements contained terms and conditions on which grants of financial assistance were made to state and territory governments for housing purposes. The last Commonwealth-State Housing Agreement expired in 2008.

Since 2009, grants of financial assistance to state and territory governments for housing purposes have been made under the *Federal Financial Relations Act 2009* and in accordance with the National Affordable Housing Agreement and National Partnership Agreement on Homelessness.

Item 13: Saving provision

Item 13 is a savings provision to ensure that ongoing rights and obligations established under Commonwealth-State Housing Agreements are retained.

A number of the agreements made under the Housing Agreement and Assistance Acts contained obligations for state and territory governments to repay loans or advances over a lengthy term (generally 53 years). The savings provisions make it clear that obligations to repay loans or advances remain binding on state and territory governments where the repayment term has not yet expired.

Part 2—Other amendments

Aged Care Act 1997

The *Aged Care Act 1997* introduced certification of residential aged care services to promote improvements in the physical quality, safety and amenity of residential aged care services. Certification is not mandatory under the AC Act, however certification allows service providers to charge residents certain accommodation payments, including accommodation bonds. Certified services are also eligible to receive the accommodation supplement or concessional resident supplement. In order to be certified, a service must meet specified standards in relation to their buildings and equipment and the standard of their residential care services.

Certification requirements under the AC Act are duplicative, in that a number of these requirements replicate building regulations administered by state, territory and local governments. Aspects of certification under the AC Act also replicate certain requirements under the Accreditation Standards administered by the Australian Aged Care Quality Agency.

Item 14: Section 5-1

Item 14 amends section 5-1 to remove reference to the certification requirements from the description of matters included in Chapter 2. These references are redundant as a consequence of the repeal of the certification requirement.

Item 15: Section 5-2 (table item 6)

Item 15 repeals table item 6 (regarding the certification of residential care services) from section 5-2. This section describes those approvals that are relevant to each type of aged care subsidy paid under the AC Act. Table item 6 in section 5-2 is redundant as a consequence of the repeal of the certification requirement.

Item 16: Paragraph 32-4(1)(d)

Item 16 removes the requirement under paragraph 32-4(1)(d) that, at the time of the application for extra service status, the residential care service is certified. Subsection 32-4(1) provides that the Secretary must not grant an application for extra service status unless certain criteria are satisfied. This requirement is redundant as a consequence of the repeal of the certification requirement. The residential care service will still need to meet its accreditation requirement as defined in section 42-4 of the AC Act.

Item 17: Subsection 32-9(3)

Item 17 amends subsection 32-9(3) to remove reference to the timing of certification. This subsection provides that the day on which the extra service status becomes effective must not be before the day on which the residential care service is certified. The item also repeals the example in the subsection as it relates to certification and will no longer be relevant. The reference and example are redundant as a consequence of the repeal of the certification requirement.

Item 18: Paragraph 33-1(e)

Item 18 repeals paragraph 33-1(e) which provides that extra service status will cease if the residential care service is no longer certified. This paragraph is redundant as a consequence of the repeal of the certification requirement.

Item 19: Paragraph 35-1(2)(c)

Item 19 amends paragraph 35-1(2)(c) to remove reference to certification. This paragraph provides that the Aged Care Pricing Commissioner must approve an application for extra service fees if the proposed fees and application meet specified requirements. The reference is redundant as a consequence of the repeal of the certification requirement.

Item 20: Part 2.6

Item 20 repeals Part 2.6 which describes how a residential care service is certified and the circumstances in which certification ceases to have effect. In particular, the Part deals with the suitability of a residential care service for certification, the requirement for assessment, application fees and the ceasing, lapsing and revocation of certification. The Part is redundant for the reasons outlined above.

Item 21: Subparagraph 44-28(2)(a)(ii)

Item 21 repeals subparagraph 44-28(2)(a)(ii). Section 44-28 describes when an approved provider will be paid an accommodation supplement in respect of an eligible care recipient. Subparagraph 44-28(2)(a)(ii) requires the residential care service to be certified in order for the care recipient to be an eligible care recipient to receive the accommodation supplement on a particular day. The subparagraph is redundant as a consequence of the repeal of the certification requirement.

Item 22: Paragraph 52G-2(d)

Item 22 repeals paragraph 52G-2(d). Section 52G-2 outlines the rules about charging an accommodation payment for a residential care service or a flexible care service. Paragraph 52G-2(d) requires the residential care service to be certified to charge an accommodation payment for a residential care service or a flexible care service. The paragraph is redundant as a consequence of the repeal of the certification requirement. The requirement for the residential care service to not charge an accommodation payment if it is prohibited under Part 4.4 of the AC Act (where the approved provider is under sanction) remains.

Item 23: Paragraph 52G-6(d)

Item 23 repeals paragraph 52G-6(d) which states that an accommodation contribution must not be charged for a residential care service that is not certified and replaces it with a requirement that an accommodation contribution must not be charged if it is prohibited under Part 4.4 (where the approved provider is under sanction).

Item 24: Subsection 52H-2(1)

Item 24 is a technical amendment to section 52H-2 that is consequential to item 25.

Item 25: Subsection 52H-2(2)

Item 25 repeals subsection 52H-2(2). Section 52H-2 specifies when daily payments accrue. This item removes the rule under section 52H-2 that a daily payment does not accrue for a residential care service for any day during which the residential care service is not certified. The rule is redundant as a consequence of the repeal of the certification requirement.

Item 26: Section 52J-4

Item 26 repeals section 52J-4 which sets out the rules about refundable deposits if a residential care service is not certified or if the certification of a service is revoked. These rules are redundant as a consequence of the repeal of the certification requirement.

Item 27: Paragraph 63-1(1)(j)

Item 27 repeals paragraph 63-1(1)(j). This paragraph required an approved provider to allow people authorised by the Secretary to access the service in order to review the certification of the service. The paragraph is redundant as a consequence of the repeal of the certification requirement.

Item 28: Paragraph 66-1(i)

Item 28 repeals paragraph 66-1(i). This paragraph states that the Secretary may revoke or suspend the certification of a residential care service, in respect of which the approved provider has not complied with its responsibilities. The paragraph is redundant as a consequence of the repeal of the certification requirement.

Item 29: Paragraph 66A-4(1)(a)

Item 29 repeals paragraph 66A-4(1)(a). This paragraph requires the Secretary to provide certification reports to certain entities. The paragraph is redundant as a consequence of the repeal of the certification requirement.

Item 30: Paragraph 68-1(2)(d)

Item 30 repeals paragraph 68-1(2)(d). Section 68-1 of the AC Act outlines when sanctions that have been imposed on an approved provider for non-compliance with its responsibilities, cease to apply. Subsection 68-1(2) specifies that certain sanctions do not cease to apply when a sanction period ends and cannot be lifted by the Secretary. Item 30 repeals paragraph 68-1(2)(d), which states that a sanction revoking the certification of a residential care service was a sanction that did not expire and could not be lifted. This paragraph is redundant as a consequence of the repeal of the certification requirement.

Item 31: Section 85-1 (table items 34, 35 and 36)

Item 31 amends section 85-1 to remove table items 34, 35 and 36. Section 85-1 sets out the decision made under the AC Act that are reviewable decisions. Table items 34, 35 and 36 relate to certification decisions and are redundant as a consequence of the repeal of the certification requirement.

Item 32: Section 96-1 (table item 8)

Item 32 repeals table item 8 (Certification Principles) in section 96-1. This section contains a table of all the Principles the Minister may make by way of legislative instrument. Table item 8 is redundant as a consequence of the repeal of the certification requirement.

Item 33: Clause 1 of Schedule 1 (definition of *certified*)

Item 33 repeals the definition of *certified* under Schedule 1 of the AC Act. This definition is redundant as a consequence of the repeal of the certification requirement.

Aged Care (Transitional Provisions) Act 1997

From 1 July 2014, significant changes will be made to the AC Act. This includes changes to the subsidy paid to approved providers and the fees and payments able to be charged by approved providers. These new arrangements will apply to certain care recipients who enter residential aged care services from 1 July 2014.

For those care recipients who are already in residential care on 1 July 2014, there will be no changes to the subsidy arrangements and the way the fees and payments that care recipients currently pay are calculated. To ensure this outcome, Schedule 5 to the *Aged Care (Living Longer Living Better) Act 2013* will create a new, second version of the AC Act on 1 July 2014, which will be known as the *Aged Care (Transitional Provisions) Act 1997.* This new Act preserves the status quo for certain care recipients who were in care before 1 July 2014 (continuing care recipients).

Amendments are required to the *Aged Care (Transitional Provisions) Act 1997* consequential to the repeal of the certification requirements from the AC Act.

Item 34: Paragraph 44-5A(2)(c)

Item 34 repeals paragraph 44-5A(2)(c). Subsection 44-5A(2) sets out the eligibility criteria for an accommodation supplement. Paragraph 44-5A(2) required the residential care service to be certified for a care recipient receiving care through that service to be eligible for an accommodation supplement. Paragraph 44-5A(2) is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 35: Paragraph 44-6(2)(c)

Item 35 repeals paragraph 44-6(2)(c). Subsection 44-6(2) sets out the eligibility criteria for a concessional resident supplement. Paragraph 44-6(2) required the residential care service to be certified for a care recipient receiving care through the service to be eligible for a concessional resident supplement. This paragraph is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 36: Subsection 44-6(2)

Item 36 omits the requirement in subsection 44-6(2) for a care recipient to have entered a residential care service after the residential care service was certified, in order to be eligible for a concessional resident supplement. This requirement is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 37: Paragraph 44-8A(2)(b)

Item 37 repeals paragraph 44-8A(2)(b). Subsection 44-8A(2) sets out the eligibility criteria for a charge exempt resident supplement. Paragraph 44-8A(2)(b) required the residential care service to be certified for a care recipient receiving care through the service to be eligible for

a charge exempt resident supplement. This paragraph is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 38: Paragraphs 44-12(4)(b) and (c)

Item 38 repeals paragraphs 44-12(4)(b) and (c). Subsection 44-12(4) provides that the Minister may determine different amounts of respite supplement based on any one or more of the matters set out in paragraphs (a) – (f). Paragraphs (b) and (c) provided that the Minister could determine different amounts of respite supplement based on whether the residential care service was certified or whether a care recipient entered a residential care service, for the provision of respite care, before or after the service was certified. These paragraphs are redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 39: Paragraph 57-2(1)(a)

Item 39 repeals the requirement in paragraph 57-2(1)(a) that the residential care service must be certified for the accommodation bond to become payable. Section 57-2 sets out the basic rules relating to charging an accommodation bond for entry of a person to a residential care service or flexible care service. This paragraph is redundant as a consequence of the repeal of the certification requirements under the AC Act.

Item 40: Subsection 57-16(1)

Item 40 is a technical amendment to subsection 57-16(1). Subsections will no longer be required in this section as a consequence of item 41.

Item 41: Subsection 57-16(2)

Item 41 repeals subsection 57-16(2). Section 57-16 sets out the period for payment of an accommodation bond. The subsection states that a care recipient must not be required to pay an accommodation bond where the residential care service was not certified at the time of entry. This subsection and the notes are redundant as a consequence of the repeal of the certification requirements under the AC Act.

Item 42: At the end of section 57-16

Item 42 includes a note after section 57-16 that explains that the amounts representing income derived and retention amounts (worked out under sections 57-18 and 57-20 of the Act) are payable from the date a care recipient enters a residential care service or a flexible care service.

Item 43: Subsection 57-18(6) (paragraph (a) of the definition of *due date*)

Item 43 repeals and replaces paragraph 57-18(6)(a) to remove aspects of the definition of *due date* that refer to certification. Section 57-18 sets out the circumstances where an approved provider may retain income derived from the investment of an accommodation bond balance. Subsection 57-18(6) defines the meaning of *due date* within the section. The references to certification in this definition are redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 44: Paragraph 57-20(4)(b)

Item 44 repeals paragraph 57-20(4)(b). Section 57-20 outlines the requirements for retention amounts. Subsection 57-20(4) outlines how retention amounts may be deducted, with different options for calculating the start date of the five-year period during which retention amounts may be deducted. Paragraph 57-20(4)(b) contains the option to have the start date be the day the residential care service became certified. This paragraph is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 45: Paragraph 57A-2(1)(h)

Item 45 omits the rule in paragraph 57A-2(1)(h). Section 57A-2 contains the basic rules about accommodation charges. Subsection 57A-2(1) contains the rules relating to charging an accommodation charge for the entry of a person to a residential care service. Paragraph 57A-2(1)(h) states that an accommodation charge cannot accrue for any day during which the service is not certified. This paragraph is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 46: Section 57A-8

Item 46 repeals section 57A-8 which states that an accommodation charge for entry into a residential care service must not accrue for any day during which the residential care service is not certified. This section is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Item 47: Clause 1 of Schedule 1 (definition of *certified*)

Item 47 repeals the definition of *certified* under Schedule 1 of the Act. This definition is redundant as a consequence of the repeal of the certification requirement under the AC Act.

Schedule 10—Treasury

Outline

This Schedule repeals spent and redundant Acts administered in the Treasury portfolio and provides for savings and transitional arrangements associated with those repeals.

Notes on Clauses

Part 1—Repeals of Acts

International Monetary Agreements Act 1965

Item 1: The whole of the Act

Item 1 repeals the *International Monetary Agreements Act 1965*. This Act consented to an increase in Australia's quota at the International Monetary Fund (IMF) and established an appropriation to support payments required to be made to the IMF as a result of that quota increase.

The required payments were made to the IMF and no further amounts need to be paid under this appropriation. The Act is redundant.

International Monetary Agreements Act 1970

Item 2: The whole of the Act

Item 2 repeals the *International Monetary Agreements Act 1970*. This Act consented to an increase in Australia's quota at the IMF and established an appropriation to support payments required to be made to the IMF as a result of that quota increase.

The required payments were made to the IMF and no further amounts need to be paid under this appropriation. The Act is redundant.

International Monetary Fund (Quota Increase) Act 1983

Item 3: The whole of the Act

Item 3 repeals the *International Monetary Fund (Quota Increase) Act 1983*. This Act consented to an increase in Australia's quota at the IMF and established an appropriation to support payments required to be made to the IMF as a result of that quota increase.

The required payments were made to the IMF and no further amounts need to be paid under this appropriation. The Act is redundant.

International Monetary Fund (Quota Increase and Agreement Amendments) Act 1991

Item 4: The whole of the Act

Item 4 repeals the *International Monetary Fund (Quota Increase and Agreement Amendments) Act 1991*. This Act:

- consented to an increase in Australia's quota at the IMF;
- established an appropriation to support payments required to be made to the IMF as a result of that quota increase; and

- amended the *International Monetary Agreements Act 1947* to reflect changes the IMF made to its Articles of Agreement (the IMF's Articles of Agreement form Schedule 1 to that Act).

The required payments were made to the IMF, no further amounts need to be paid under this appropriation and the amendments have taken effect. The Act is redundant.

Items 1 to 4 repeal redundant Acts that implement increases to Australia's quota at the International Monetary Fund (IMF) and establish appropriations to support the payments required to be made to the IMF as a result of those quota increases.

Specific Acts are no longer required to implement IMF quota increases in Australia as the *International Monetary Agreements Act 1947* now includes a standing appropriation for amounts Australia is from time to time required to pay to the IMF when quotas are changed.

Payment of Tax Receipts (Victoria) Act 1996

Item 5: The whole of the Act

Item 5 repeals the *Payment of Tax Receipts (Victoria) Act 1996*. The *Payment of Tax Receipts (Victoria) Act 1996* enabled the Commonwealth to make a one-off payment to Victoria in order to return the windfall tax associated with the settlement of a dispute between two Victorian gas utilities and their suppliers.

The required payment was made in 1996 and no further amounts need to be paid under this appropriation. The Act is spent.

States (Works and Housing) Assistance Act 1982

States (Works and Housing) Assistance Act 1983

States (Works and Housing) Assistance Act 1984

States (Works and Housing) Assistance Act 1985

States (Works and Housing) Assistance Act 1988

Item 6: The whole of the Act
Item 7: The whole of the Act
Item 8: The whole of the Act
Item 9: The whole of the Act
Item 10: The whole of the Act

Items 6 to 10 repeal the *States (Works and Housing) Assistance Acts* of 1982, 1983, 1984, 1985 and 1988. The repeal of these Acts is consequential to the repeal of the *Housing Assistance Acts* of 1978, 1981, 1984, 1989 and 1996 within the Social Services portfolio (see Schedule 9).

The *States (Works and Housing) Assistance Acts* provided concessional loans to the States and Territories for the provision of public housing under terms of agreements contained in the *Housing Assistance Acts*.

Item 11: Saving provision

Despite the repeal of an Act made by item 6, 7, 8, 9 or 10:

- the Act continues to apply, on and after the commencement of this item, in relation to a payment (including a loan) made by the Commonwealth under the Act before that commencement; and
- without limiting paragraph (a), the provisions of the Act relating to the terms or conditions of that payment, or to the repayment of that payment (including interest), continue to apply on and after that commencement.

Item 11 is a savings provision. As some of the loans are still current, a savings provision has been included to ensure any obligations to repay loans, or the power to modify agreements, is retained.

Parts 2 – 5 – Amendments to repeal redundant income tax provisions

Outline

Parts 2 to 5 of Schedule 10 repeal redundant provisions of the income tax laws that implement the Education Expenses Tax Offset, the Sugar Industry Reform Program, the Financial Services Reform Program and the Superannuation Safety Program.

Notes on Clauses

Part 2—Amendments relating to Education Expenses Tax Offset

A New Tax System (Family Assistance) (Administration) Act 1999

Item 12: Section 169B

Item 12 repeals redundant provisions relating to the Secretary's power to give information to the Commissioner of Taxation for the purpose of administering the education expenses tax offset in the *A New Tax System (Family Assistance) (Administration) Act 1999*

Income Tax Assessment Act 1997

Item 13: Subdivision 61-M

Item 13 repeals Subdivision 61-M of the *Income Tax Assessment Act 1997* (ITAA 1997). This subdivision entitled taxpayers to a refundable tax offset for education expenses incurred in relation to their children who were primary or secondary school students. The education expenses tax offset was only available in income years ending before 1 July 2011. The tax offset was replaced by the Schoolkids Bonus in the 2012 Budget. The subdivision is now redundant.

Item 14: Section 67-23 (table item 12)
Item 15: Section 960-265 (table item 4A)

Items 14 and 15 make consequential amendments to the ITAA 1997 to repeal redundant references to the education expenses tax offset.

Social Security (Administration) Act 1999

Item 16: Section 208A

Student Assistance Act 1973

Item 17: Section 356A

Items 16 and 17 repeal redundant provisions relating to the Secretary's power to give information to the Commissioner of Taxation for the purpose of administering the education expenses tax offset in the following Acts:

- *Social Security (Administration) Act 1999*
- *Student Assistance Act 1973*.

Taxation Administration Act 1953

Item 18: Section 45-340 in Schedule 1 (method statement, step 1, paragraph (db))
Item 19: Section 45-375 in Schedule 1 (method statement, step 1, paragraph (cb))

Items 18 and 19 make consequential amendments to the *Taxation Administration Act 1953* to repeal redundant references to the education expenses tax offset.

Part 3—Amendments relating to Sugar Industry Reform Program

Income Tax Assessment Act 1936

Item 20: Subsection 170(10AA) (table item 1A)

Income Tax Assessment Act 1997

Item 21: Section 10-5 (table item headed "sugar industry exit grants")

Item 22: Section 11-15 (table item headed "agricultural industry exit grants")

Items 20, 21 and 22 make consequential amendments to the guide, tables and notes.

Item: 23 Section 15-65

Item 23 repeals the five-year 'claw back' rule in section 15-65 of the ITAA 1997. If taxpayers re-entered the agricultural industry within five years of receiving the grant, the grant became taxable under the 'claw back' rule in section 15-65 of the ITAA 1997. The rule is now redundant.

Item 24: Section 53-10 (table item 4B)

Item 24 repeals the income tax exemption for exit grants paid under the Sugar Industry Reform Program. The exemption became redundant on 30 June 2007 when the Program ended.

The Sugar Industry Reform Program operated between 1 February 2003 and 30 June 2007 (inclusive). It provided an income tax exemption for grants paid to taxpayers who exited the sugar cane industry. The exemption was conditional on taxpayers undertaking not to own or operate an agricultural enterprise within five years of receiving the grant.

Item 25: Section 53-10 (note 2)

Item 25 repeals the note.

Item 26: Paragraph 118-37(1)(f)

Item 26 repeals paragraph 118-37(1)(f) of the ITAA 1997 which disregarded capital gains and losses resulting from grants paid under the Sugar Industry Reform Program.

Item 27: Transitional—amendment of assessments

Despite the repeals made by this Part, the following provisions continue to apply, on and after the commencement of this Part, in relation to amounts paid by way of a sugar industry exit grant before that commencement:

- table item 1A in subsection 170(10AA) of the *Income Tax Assessment Act 1936*;
- section 15-65 of the *Income Tax Assessment Act 1997*.

Item 27 provides that assessments may still be amended to give effect to subsection 15-65(2) of the ITAA 1997 after the commencement of Part 3. This transitional provision ensures that the 'claw back rule' in section 15-65 of the ITAA 1997 continues to apply to sugar industry exit grants paid on or before the commencement of Part 3.

Part 4—Amendments relating to Financial Services Reform roll-over

Income Tax Assessment Act 1997

Item 28: Section 108-50 (note)
Item 29: Subsection 108-75(2) (table item 3)
Item 30: Section 109-55 (table items 6A, 7A and 7B)
Item 31: Section 112-115 (table item 14BA)
Item 32: Subsection 124-5(1) (note 1)
Item 33: Subsection 124-5(1) (note 2)
Item 34: Subsection 124-5(2) (note)
Item 35: Subsection 124-10(3) (note 1)
Item 36: Subsection 124-10(3) (note 2)
Item 37: Subsection 124-15(5) (note)

Items 28 to 37 make consequential amendments to the ITAA 1997 to remove redundant references to subdivision 124-O from guides, tables and notes.

Item 38: Subdivision 124-O

Item 38 repeals subdivision 124-O of the ITAA 1997. This subdivision became inoperative on 10 March 2004 when the transition period ended.

The *Financial Services Reform Act 2001* replaced the separate licensing regime that existed for each financial product with a uniform 'Australian financial services licence'. Subdivision 124-O of the ITAA 1997 provided an automatic capital gains tax roll-over for licensees who replaced their existing licences with 'Australian financial services licences' during the transition period.

Item 39: Subsection 152-45(1A)
Item 40: Subsection 152-45(1A) (note 1)
Item 41: Subsection 152-45(1B)
Item 42: Subsection 152-45(1B) (note 1)
Item 43: Subsection 152-115(1A)
Item 44: Subsection 152-115(1A) (note)
Item 45: Subsection 152-115(1B)
Item 46: Subsection 152-115(1B) (note)

Items 39 to 46 provide that, for the purpose of determining taxpayers' eligibility for small business tax relief, taxpayers may continue to recognise the characteristics of the original asset which was subject to the roll-over.

Part 5—Amendments relating to Superannuation Safety Reform roll-over

Income Tax Assessment Act 1997

Item 47: Section 112-150 (table item 9)
Item 48: Subdivision 126-F

The Superannuation Safety Reforms introduced new licensing requirements for superannuation entities. Funds that were unable to meet the new licensing requirements were permitted to merge with other registrable superannuation entities that had a licenced trustee. Subdivision 126-F of the ITAA 1997 provided an automatic capital gains tax roll-over for the transfer of assets of superannuation entities that merged during the transition period.

Item 48 repeals subdivision 126-F of ITAA 1997. This subdivision became inoperative on 30 June 2006 when the transition period ended.

Item 47 makes a consequential amendment to the table in section 112-150 of the ITAA 1997 to remove a redundant reference to subdivision 126-F.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Omnibus Repeal Day (Autumn 2014) Bill 2014

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Omnibus Repeal Day (Autumn 2014) Bill 2014 (the Bill) is a whole of government initiative to amend or repeal legislation across ten portfolios. The Bill brings forward measures to reduce regulatory burden for business, individuals and the community sector that are not the subject of individual stand-alone bills.

Human rights implications

Schedules 1, 2, 3, 4, 5 (Parts 1 to 3), 6, 7, 8 and 10 do not engage any of the applicable rights or freedoms.

Schedule 1

This schedule makes minor corrections and repeals obsolete references in two Acts administered in the Agriculture portfolio. The amendments ease the administration of legislation. They do not engage any human rights issues.

Schedule 2

This schedule repeals spent and redundant Acts and provisions administered in the Communications portfolio.

The schedule also makes amendments to Acts administered in the Communications portfolio to reduce the regulatory burden on the telecommunications and broadcasting industries. Further technical amendments are made to other Commonwealth Acts as a consequence of these amendments

The repeals and amendments implemented in this schedule do not engage any human rights issues.

Schedule 3

This schedule repeals spent and redundant Acts administered in the Defence portfolio and makes a minor correction to remove an obsolete reference. The amendments improve the ease of administering legislation. They do not engage human rights issues.

Schedule 4

This schedule repeals a redundant Act administered in the Employment portfolio. The amendments ease the administration of legislation. The repeal of this Act does not engage human rights issues.

Schedule 5, Parts 1 to 3

Parts 1 to 3 of Schedule 5 repeal redundant Acts and provisions in Acts administered in the Environment portfolio and make minor technical amendments to these and other Commonwealth Acts. The amendments improve the ease of administering legislation. They do not engage human rights issues.

Schedule 5, Part 4

The *Water Act 2007* (the Water Act) engages the right to an adequate standard of living and the right to health in the International Covenant on Economic, Social and Cultural Rights (ICESCR). The right to an adequate standard of living is protected in Article 11 of the ICESCR and the right to physical and mental health is protected in article 12 of the ICESCR. The Committee on Economic, Social and Cultural Rights, established to oversee the implementation of the ICESCR, has interpreted these articles as including a human right to water which encompasses an entitlement to 'sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic uses'.

The overall framework of the Water Act, including the Murray-Darling Basin Plan (the Basin Plan) supports access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses, specifically through provisions relating to critical human water needs and water quality. The Basin Plan also sets out the water resource plan requirements to regulate types of interception which may have a significant impact on water resources within the Murray-Darling Basin.

In addition, the establishment of the Independent Expert Scientific Committee (IESC) and the inclusion of water resources as a matter of national environmental significance (NES), both under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) also support this right, by ensuring that actions likely to have significant impacts on water resources are referred, studied and considered under the EPBC Act regime.

Together, these measures provide for information that is relevant to policy makers, industry and the community to continue to support the right access to sufficient, safe, acceptable and physically accessible water for personal and domestic uses.

The repeal of section 255AA, a standalone provision, will not affect the overall framework of the Water Act, the Basin Plan or the EBPC Act.

Schedule 6

This schedule seeks to repeal 12 old annual Appropriation Acts. The High Court has emphasised that Appropriation Acts do not create rights and nor do they impose any duties. Given that the legal effect of Appropriation Acts is limited in this way, the repeal of Appropriation Acts is not seen as engaging, or otherwise affecting, rights or freedoms relevant to the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Schedule 7

This schedule repeals two spent Acts administered in the Industry portfolio and makes minor technical corrections to two other Commonwealth Acts. The amendments improve the ease of administering legislation. They do not engage human rights

Schedule 8

This schedule repeals a redundant Act and provision in an Act administered in the Prime Minister's portfolio. These amendments improve the ease of administering legislation and do not engage human rights.

Schedule 9

Part 1 engages the right to an adequate standard of living, as set out in Article 11 of the International Covenant on Economic, Social and Cultural Rights.

Since 2009, the Commonwealth State and Territory funding framework for affordable housing and homelessness purposes has been replaced by the *Federal Financial Relations Act*

2009 and National Agreements and Partnership Agreements made under that Act. Repeal of the acts in Schedule 9 Part 1 will have no impact on the right to an adequate standard of living.

Part 2 engages the following human rights:

- the right to an adequate standard of living contained in article 11 of the International Covenant on Economic, Social and Cultural Rights; and
- the right to health contained in article 12 of the International Covenant on Economic, Social and Cultural Rights.

Certification requirements are being repealed because the requirements replicate, in part, the building regulations administered by State and Territory authorities. Insofar as certification takes into account the standard of the residential care being provided by the service, this requirement replicates the monitoring of the service's compliance with the Accreditation Standards by the Australian Aged Care Quality Agency, which will not be affected by the repeal of the certification requirements.

Schedule 10

This schedule repeals spent and redundant Acts administered in the Treasury portfolio and makes amendments to other Commonwealth Acts to repeal redundant income tax provisions. The amendments improve the ease of administering legislation. They do not engage human rights.

Conclusion

The Bill is compatible with human rights because Schedules 1, 2, 3, 4, 5 (Parts 1, 2 and 3), 6, 7, 8 and 10 do not engage human rights.

Schedule 5, Part 4 is compatible with human rights because the Water Act will continue to support the human right to water.

Schedule 9 Part 1 does not adversely affect the right of people to access adequate housing. Schedule 9 Part 2 does not adversely affect the right of care recipients to an adequate standard of living or their right to health. Schedule 9 is therefore compatible with human rights.

Josh Frydenberg, Parliamentary Secretary to the Prime Minister