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HOUSE OF REPRESENTATIVES

**BROADCASTING AND OTHER LEGISLATION AMENDMENT
(DEREGULATION) BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Communications,
the Hon. Malcolm Turnbull MP)

BROADCASTING AND OTHER LEGISLATION AMENDMENT (DEREGULATION) BILL 2014

OUTLINE

The Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (the Bill) amends the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* (Radcomms Act) and the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to remove unnecessary legislation and reduce the regulatory burden on the broadcasting industry.

The Australian Government is committed to reducing the regulatory burden for business and the community to boost productivity. In May 2014, the Minister for Communications and his Parliamentary Secretary released the Communications Portfolio: Deregulation Roadmap 2014, which outlined the deregulation agenda within the Communications Portfolio.

The Bill will implement a number of broadcasting related measures identified in the Communications Deregulation Roadmap, as well as addressing issues that have been raised through consultation with industry. These measures include:

- repealing the redundant licensing and planning provisions that regulated the digital switchover and restack processes;
- amending the Australian Communications and Media Authority's (ACMA) planning powers to implement more streamlined processes when planning broadcasting spectrum;
- moving from annual reporting to a complaints-based approach when assessing a free-to-air television broadcaster's compliance with their captioning obligations;
- improving administrative arrangements and providing greater flexibility for free-to-air and subscription television broadcasters to meet their captioning obligations;
- removing the requirement for reports made by certain subscription television licensees and channel providers to the ACMA under the New Eligible Drama Expenditure Scheme to be independently audited;
- introducing minor amendments to the control and ownership provisions;
- removing the requirement for the ACMA to review codes of practice under section 123A and clause 29 of Schedule 6 to the BSA; and
- making consequential amendments to Schedule 4 to the BSA as a result of the Acts and Instruments (Framework Reform) Bill 2014.

Digital switchover and restack provisions

Schedule 4 to the BSA provided the regulatory framework for the transition from analog to digital-only television broadcasting. This included:

- requiring the ACMA to formulate schemes for the conversion, over time, of the transmission of television broadcasting services from analog to digital;

- specifying a simulcast period throughout which broadcasters were required to transmit their television programs in both analog and standard definition digital mode;
- allowing the Minister, by legislative instrument, to determine when analog transmissions were scheduled to cease; and
- requiring broadcasters to meet a quota for the transmission of programs in high definition.

The last terrestrial analog television services were switched off on 10 December 2013. After the completion of digital switchover in each licence area, the restack program commenced. The restack program involves the progressive reorganisation of television services across Australia to ensure that none use digital dividend spectrum and they are transmitted in a more spectrally efficient manner. The restack program is on schedule to be completed by 31 December 2014.

The Bill amends the BSA, the Radcomms Act and the ACMA Act to remove or amend the planning and licensing provisions that related to digital switchover and restack (once restack is completed).

ACMA planning powers

Part 3 of the BSA provides the framework for the planning of the broadcasting services bands spectrum by the ACMA. This includes planning criteria, consultation requirements and the requirement for the ACMA to develop a number of different types of planning instruments, including frequency allotment plans, licence area plans and television licence area plans. A number of these provisions were aimed at the initial planning of services in the broadcasting services bands spectrum, such as determining the planning priorities. As this initial planning phase is complete, the ACMA's role is focused on monitoring compliance with the instruments that are currently in force. This means that these planning powers can be amended and streamlined accordingly.

The Bill amends the BSA and the Radcomms Act to remove a number of requirements that were necessary during the initial planning phase but can now be amended and streamlined, taking into account the other requirements in the BSA and general legislation that the ACMA is required to adhere to.

Captioning reform

The Bill amends Part 9D of the BSA to improve administration arrangements and increase flexibility for free-to-air broadcasters and subscription television licensees in complying with captioning regulation. Part 9D of the BSA aims to assist viewers with a hearing impairment by requiring Australian free-to-air broadcasters and subscription television licensees to meet specified levels of captioning for television programs. Under Part 9D, free-to-air broadcasters and subscription television licensees are also required to meet target, quality, record-keeping and reporting requirements.

The Bill will reduce compliance costs for free-to-air broadcasters by removing annual reporting requirements for free to air broadcasters and introducing a complaints based process to replace it.

The amendments will also give subscription television licensees more flexibility when meeting their captioning obligations by:

- allowing for the annual captioning target for subscription television channel providers to be ‘averaged’ across an associated group of sports channels,
- granting 12 month exemptions from captioning obligations for new subscription television channels, and
- restricting repeat captioning obligations to programs provided by the same channel provider.

The amendments will also provide greater flexibility for the ACMA when assessing whether free-to-air broadcasters and subscription television licensees are meeting the captioning quality standards by:

- requiring the Captioning Quality Standard to differentiate between live and pre-recorded broadcasts, and
- introducing a new exception to captioning quality breaches where the breach is due to engineering or technical failures.

In addition the amendments will reduce record keeping requirements, and extend application deadlines for exemption and target reduction orders for free-to-air broadcasters and subscription television licensees.

As the operation of existing captioning regulation has been considered in developing the amendments proposed in this Bill, the existing statutory requirement for the ACMA to review the operation of captioning obligations before 31 December 2015 will be repealed.

These amendments will reduce costs associated with the captioning regime; ease the regulatory compliance burden for television broadcasters by simplifying administrative and reporting requirements, and substantially increase a broadcaster or licensee’s flexibility when meeting their captioning obligations. The amendments will better support the ability of television licensees to provide captioning services that benefit Australians with a disability that would otherwise restrict their ability to access television services.

New Eligible Drama Expenditure Scheme auditing requirements

Division 2A of the BSA requires certain subscription television channel providers and licensees to spend at least 10 per cent of their total programming expenditure on new Australian or New Zealand drama productions or co-productions. Scheme participants are required to report their annual eligible drama expenditure for the financial year by 29 August in the following financial year. Each annual return is submitted in an ACMA approved form and must be accompanied by a certificate from a registered auditor that states, in the auditor’s opinion, the return is correct.

The ACMA has advised that since the Scheme became mandatory in 1999, subscription television licensees and channel providers have reported a high level of compliance. The Bill therefore removes the Scheme’s audit requirements. The ACMA has advised that doing so will remove a significant administrative and financial burden on the subscription television industry. The Bill does not affect the level of Australian drama expenditure required by subscription television licensees.

The ACMA will maintain compliance strategies including the judicious use of its power to make inquiries about information received in reports from licensees and channel providers in order to retain a level of confidence in industry compliance.

Control and ownership

The Bill makes minor amendments to certain provisions within the media ownership and control framework to address a number of anomalies regarding the operation of the legislation and to reduce reporting requirements.

Complete overlapping licence areas

Division 5A of the BSA establishes the media diversity rules, which form part of the media ownership and control framework. One such rule, known as the ‘5/4 rule’, provides that at least five independent media ‘voices’ must be present in metropolitan commercial radio licence areas, and at least four in regional commercial radio licence areas. A voice is a commercial television broadcasting licence, a commercial radio broadcasting licence or an associated newspaper (a ‘media operation’), or a group of two or more such operations (a ‘media group’). Section 61AC of the BSA provides for a method to determine how media voices are to be calculated in a given licence area for the purposes of the media diversity rules.

An anomaly currently exists with regard to the calculation of media diversity voices in commercial radio licence areas. A commercial radio broadcasting licence is counted as a voice in a particular commercial radio licence area only if the licence area of the radio service is, or is the same as, the particular radio licence area in question. In other words, the licence areas have to match exactly for a service in one licence area to count as a voice in another. A commercial radio service licensed to operate in a licence area that entirely overlaps another licence area is not counted as a voice in the smaller, overlapped licence area.

This is an incongruous outcome that does not in any way reflect the practical availability of services in smaller, overlapped licence areas. The Bill corrects the anomaly outlined above and ensures that the method used to calculate media diversity points more accurately reflects the practical reality of services available to residents in overlapped licence areas. The Bill ensures that, where a smaller commercial radio licence area is entirely within another, larger commercial radio licence area, the commercial radio services licensed to operate in the larger licence area are also counted as media diversity voices in the smaller licence area.

Notification requirements

Section 62 of the BSA requires commercial television broadcasting licensees, commercial radio broadcasting licensees, specified datacasting licensees and companies that publish associated newspapers to provide an annual list of their directors to the ACMA. This must include all directors as at the end of the financial year, and must be provided to the regulator within three months of this date.

The Bill will repeal these requirements as they are no longer necessary. The ACMA can access directorship information about Australian companies from other sources, including by searching registers maintained by the Australian Securities and Investments Commission.

In addition, the Bill will extend the requirement for commercial broadcasting licensees, specified datacasting licensees and publishers of associated newspapers, and persons who obtain control of any such licences or newspapers, to notify the ACMA of changes in control under sections 63 and 64 of the BSA from 10 calendar days to 10 business days from any such change. This will reduce the administrative burden on licensees, publishers and incoming controllers by providing a more reasonable notification timeframe, while still allowing the ACMA to maintain accurate and current control registers.

Licence area population determinations

Section 30 of the BSA provides that the ACMA may determine the population of a licence area, the populations of areas where licence areas overlap, and the total population of Australia. In making such a determination, the ACMA is required to have regard to the most recently published Census count from the Australian Bureau of Statistics (ABS). Population determinations inform a range of provisions in the BSA, including certain media ownership and control limits and local content obligations for regional commercial radio.

The Bill provides grandfathering relief for commercial broadcasting licensees that, as a result of the making of a new population determination, would be in breach of the relevant statutory control and local content rules if they maintained their current commercial radio operations. This will prevent broadcasting licensees being adversely affected as a result of factors that are entirely beyond their control (i.e. changes in the population of licence areas). It will also ensure a more consistent application of grandfathering arrangements already established in the BSA under section 52 to deal with the consequences of the making of section 30 population determinations.

Requirement to review codes of practice

The Bill will remove the requirement for the ACMA to conduct periodic reviews to assess whether subsections 123(3A), 123(3C) and subclause 28(4) of Schedule 6 to the BSA operate in accordance with prevailing community standards. Those provisions relate to codes of practice developed by industry groups representing commercial and community television licensees, open narrowcasting television services or datacasting licensees regarding community standards and the protection of children from harmful content.

There are alternative mechanisms for the ACMA to determine whether these provisions operate in accordance with prevailing community standards. This may be based upon the volume of complaints received from viewers or the ACMA's own inquiries. In addition the industry codes of practice are periodically reviewed and the ACMA is required to ensure that a draft code provides appropriate community safeguards prior to registration.

FINANCIAL IMPACT STATEMENT

The amendments in the Bill are not expected to have any direct financial impact on Commonwealth revenue or expenditure.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014

The 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 Bill

The Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014 (the Bill) amends the *Broadcasting Services Act 1992* (BSA), the *Radiocommunications Act 1992* (Radcomms Act) and the *Australian Communications and Media Authority Act 2005* (the ACMA Act) to remove unnecessary legislation and reduce the regulatory burden on the broadcasting industry. This includes:

- repealing the redundant licensing and planning provisions that regulated the digital switchover and restack processes;
- amending the Australian Communications and Media Authority's (ACMA) planning powers to implement more streamlined processes when planning broadcasting spectrum;
- moving from annual compliance reporting to a complaints-based approach to captioning compliance for free-to-air broadcasters;
- improving administrative arrangements and providing greater flexibility for the free-to-air and subscription television broadcasters in relation to their captioning obligations;
- removing the requirement for reports made by certain subscription television licensees and channel providers to the ACMA under the New Eligible Drama Expenditure Scheme to be independently audited;
- introducing minor amendments to the control and ownership provisions;
- removing the requirement for the ACMA to review codes of practice under section 123A and clause 29 of Schedule 6 to the BSA; and
- making consequential amendments to Schedule 4 to the BSA as a result of the Acts and Instruments (Framework Reform) Bill 2014.

Human rights implications

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR), the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Convention on the Rights of Persons with Disabilities (the CRPD). These three conventions are listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Bill potentially engages several human rights:

- Rights of people with a disability (CRPD)
- Right to freedom of opinion and expression (Article 21 CRPD, Article 19 ICCPR)
- Right to equality and non-discrimination (Article 5 CRPD, Article 26 ICCPR)
- Right to take part in cultural life (Article 15 ICESCR).

Rights of people with a disability

The CRPD recognises the barriers that people with a disability may face in realising their rights. The rights under all human rights treaties apply to everyone, including people with disability. However, the CRPD applies human rights specifically to the context of people with disability.

The objective of the captioning obligations enshrined in the BSA is to promote increased access to television services for people with a hearing impairment, and to emergency warnings broadcast on television for people with a hearing and/or vision impairment. This is consistent with Australia's international obligations under the CRPD and domestic policies, such as the Government's social inclusion policy.

One of the eight general principles of the CRPD (Article 3) is accessibility, including access to information. Article 9 of the CRPD provides that countries shall take appropriate measures to ensure that persons with disabilities have access to information and communications, including information and communications technologies and systems. The appropriate measures should include the identification and elimination of obstacles and barriers to accessibility. Article 5 of the CRPD provides for the right to equality and non-discrimination, and requires that State Parties recognise that all persons are equal before and under the law.

The amendments to closed captioning arrangements made by this Bill will reduce the regulatory and compliance reporting burden on providers of those services, to better reflect existing industry practice, but will not reduce existing captioning quality standards or targets or legislated future captioning targets. As such the Bill will not have any impact on people with a disability in regards to seeking or receiving information via television broadcasting services or programming.

The Bill's objectives are consistent with the CRPD as they will provide relevant television broadcasters with increased flexibility to direct captioning towards events of greater interest to viewers. The Bill's objectives are also consistent with the general obligation under Article 4(1) of the CRPD which requires State Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability.

Right to freedom of opinion and expression

The Bill's objectives are also consistent with Article 21 of the CRPD which sets out a number of obligations on Parties to ensure that people with disability can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas, on an equal basis with others. In particular, Article 21 states that States Parties must take all appropriate measures to:

- ensure that information intended for the general public is provided to people with disability in accessible formats and technologies appropriate to different kinds of disabilities in a timely manner and without additional cost (Article 21(a));

- urge private entities that provide services to the general public to provide information and services in accessible and usable formats for persons with disabilities (Article 21(c)); and
- encourage the mass media to make their services accessible to persons with disabilities (Article 21(d)).

The Bill's objectives are directed at continuing to support the ability of free-to-air television broadcasters and subscription television licensees to caption television services and, as such, are consistent with Article 30 of the CRPD which states that countries must take all appropriate measures to ensure that persons with disabilities:

- enjoy access to cultural materials in accessible formats; and
- enjoy access to television programs, films, theatre and other cultural activities, in accessible formats.

Right to take part in cultural life

The objectives of the New Eligible Drama Expenditure Scheme provisions of the Bill, will remove the requirement for certain subscription channel providers and licensees to have their annual reports independently audited. Division 2A of Part 7 of the *Broadcasting Services Act 1992* requires certain subscription television channel providers and licensees to spend at least 10 per cent of their total programming expenditure on new Australian or New Zealand drama productions or co-productions. The Bill does not affect the minimum level of Australian drama expenditure required to be provided by subscription television broadcasting licensees and therefore will not impact a person's right to take part in cultural life.

Conclusion

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*.

To the extent that the measures in the Bill may engage rights in the CRPD, ICCPR and ICESCR, as outlined above, the measures are reasonable and proportionate to the goal of reducing the regulatory burden on the broadcasting industry.

ABBREVIATIONS

The following abbreviations are used in this explanatory memorandum:

ACMA	Australian Communications and Media Authority
ACMA Act	<i>Australian Communications and Media Authority Act 2005</i>
Bill	Broadcasting and Other Legislation Amendment (Deregulation) Bill 2014
BSA	<i>Broadcasting Services Act 1992</i>
Department	Department of Communications
Radcomms Act	<i>Radiocommunications Act 1992</i>

NOTES ON CLAUSES

BROADCASTING AND OTHER LEGISLATION AMENDMENT (DEREGULATION) BILL 2014

Clause 1 - Short title

Clause 1 provides that the Bill, when enacted, may be cited as the Broadcasting and Other Legislation Amendment (Deregulation) Act 2014

Clause 2 - Commencement

Clause 2 of the Bill provides for the commencement of the Bill.

Clauses 1-3 of the Bill and any other provisions not covered in the table provided at subclause 2(1), would commence on the day of Royal Assent.

Schedules 1 and 3 to 9 would commence the day after Royal Assent.

Schedule 2 of the Bill would commence on the later of 1 January 2015 and the day after the Bill receives Royal assent. This is because a number of the items in Schedule 2 relate to repeal of provisions relating to the 'restack' of broadcasting services. The restack involves the progressive reorganisation of television services across Australia to ensure that none use digital dividend spectrum and they are transmitted in a more spectrally efficient manner. The restack is on schedule to be completed by 31 December 2014. The proposed commencement for Schedule 2 ensures that these provisions do not commence until after 31 December 2014, but still at the earliest opportunity after that date.

Clause 3 - Schedules

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

Schedule 1 – Amendments relating to ACMA planning powers

Schedule 1 repeals various provisions in Part 3 of the BSA, relating to the ACMA's planning powers as well as making consequential amendments to both the BSA and the Radcomms Act.

Part 3 of the BSA provides the framework for the planning of the broadcasting services bands spectrum by the ACMA. This includes planning criteria, consultation requirements and the requirement for the ACMA to develop a number of different types of planning instruments, including frequency allotment plans, licence area plans and television licence area plans.

A number of these provisions were aimed at the initial planning of services in the broadcasting services bands spectrum, such as determining the planning priorities. As this initial planning phase is complete, the ACMA's role is focused on monitoring compliance with the instruments that are currently in force. This means that these planning powers can be amended and streamlined accordingly. The repeal of selected planning provisions will reduce the number of legislative instruments the ACMA is required to maintain under Part 3 of the BSA and reduce the administrative burden on the ACMA for future planning under Part 3.

Australian Communications and Media Authority Act 2005

Item 1 - Paragraphs 53(2)(e) and (f)

Item 1 repeals paragraphs 53(2)(e) and (f) of the ACMA Act. These paragraphs refer to the ACMA's powers under sections 24 and 25 of the BSA. Given the proposed repeal of sections 24 and 25 of the BSA (see commentary for item 2 below) these paragraphs will become redundant and it is therefore appropriate that they be repealed.

Broadcasting Services Act 1992

Item 2 - Sections 24 and 25

Item 2 repeals sections 24 and 25 of the BSA. Section 24 of the BSA requires the ACMA to determine priorities between different parts of Australia and different parts of the broadcasting services bands for preparing frequency allotment plans or licence area plans, whilst also allowing the ACMA to vary those priorities. The ACMA has completed the initial planning of services in the broadcasting services bands spectrum and section 24 is no longer required.

Section 25 of the BSA requires the ACMA, after being referred part of the radiofrequency spectrum for planning under Part 3 of the BSA, to prepare frequency allotment plans that determine the number of channels that are to be available in particular areas of Australia to provide for the various types of broadcasting services.

The ACMA has now completed the initial planning of services in the broadcasting services bands spectrum and has sufficient information and tools at its disposal to ensure that planning in one licence area will not compromise plans for adjacent licence areas. It is no longer necessary for the ACMA to maintain frequency allotment plans and section 25 is no longer required. Instead, any future changes to the number of channels that are to be available in particular areas of Australia can be accommodated by changes to the relevant licence area plans and television licence area plans.

The proposed repeal of section 25 includes the repeal of subsection 25(3). Subsection 25(3) provides the Minister with the power to provide specific or general directions to the ACMA concerning the preparation or variation of a frequency allotment plan. As the Bill will remove the requirement for the ACMA to prepare frequency allotment plans, licence area plans and television licence area plans will become the primary planning instruments for broadcasting services bands spectrum. As such, it is appropriate for the Minister to continue to be able to direct the ACMA with regards to these planning instruments.

With the repeal of subsection 25(3), the Minister would no longer have an express directions power relating to the exercise by the ACMA of its planning functions and powers under Part 3 of the BSA, other than a limited and temporary power under subsection 26(8) in respect of television licence area plans (see commentary for item 7 below). It is therefore proposed to broaden and extend the scope of the Minister's directions power under subsection 26(8) to apply to all licence area planning instruments.

Items 3, 4 and 5 - Subsection 26(1), paragraph 26(1B)(a) and subsection 26(1F)

Items 3 and 4 amend subsection 26(1) and paragraph 26(1B)(a) respectively. Item 5 repeals subsection 26(1F). These items remove references to section 25 and are a consequence of the repeal of section 25.

Item 6 - Subsection 26(1M)

Item 6 amends subsection 26(1M) to remove the reference to section 27 of the BSA, given the proposed repeal of section 27 (see commentary for item 8 below).

Item 7 - Subsection 26(8)

Item 7 amends subsection 26(8) by replacing the reference to 'television licence area plan' with 'licence area plan'. Currently, subsection 26(8) allows the Minister to direct the ACMA about the exercise of its powers to make or vary a television licence area plan for a particular area. This power only exists for a limited time, until 31 December 2014, being the 'designated re-stack day', under subsection 26(10). The proposed amendment broadens the scope of the Minister's power to make directions to the ACMA by referring to a 'licence area plan', which encompasses all types of licence area plans, including television licence area plans. This amendment is proposed due to the intended repeal of section 25 in item 2, discussed above.

The scope of subsection 26(8) would allow the Minister to maintain an express directions power in relation to the exercise by the ACMA of its planning functions and powers under Part 3 of the BSA. It is appropriate that the directions power be specified in relation to licence area plans, as licence area plans are the primary legislative instrument for the planning of broadcasting services bands spectrum. This power will also be extended so that the Minister can continue to be able to direct the ACMA with regards to licence area plans beyond the 'designated re-stack day'.

Item 8 - Sections 27 and 35

Item 8 repeals sections 27 and 35. Section 27 requires the ACMA to provide for wide public consultation when performing its functions under sections 24, 25 and 26. Given that it is proposed that sections 24 and 25 be repealed (see item 2) and given that the ACMA has completed the initial planning of services in the broadcasting services bands spectrum, the requirement for wide consultation by the ACMA in exercising its powers under section 26 is

considered unnecessary. The consultation requirements contained in section 17 of the *Legislative Instruments Act 2003* are sufficient to ensure affected parties are consulted when making or varying a licence area plan. The ACMA would still be able to undertake wide public consultation in these instances. For example, wide public consultation may be appropriate when significant variations to a licence area plan, such as the creation of new licence areas or major changes to a licence area's boundary, were being considered.

Item 9 - Paragraph 39(4)(a)

Item 9 repeals paragraph 39(4)(a) as a consequence of the proposed repeal of section 25 in item 2. Paragraph 39(4)(a) refers to the ACMA taking into account any frequency allotment plan under section 25 in forming an opinion about the availability of spectrum for providing another commercial radio broadcasting service in the same licence area. Frequency allotment plans would no longer exist with the repeal of section 25. Therefore paragraph 39(4)(a) would become redundant and this provision can be repealed.

Radiocommunications Act 1992

Item 10 - Subsections 32(2) and (2A)

Item 10 repeals subsections 32(2) and (2A) of the Radcomms Act as a consequence of the repeal of section 25 in item 2. Subsection 32(2) provides that if the conditions specified in that section are met, a frequency band plan must be consistent with a frequency allotment plan. Subsection 32(2A) sets out the circumstances in which the requirement in subsection 32(2) does not apply. The proposed repeal of section 25 of the BSA in item 2 means that frequency allotment plans would no longer exist. As a consequence, subsections 32(2) and (2A) of the Radcomms Act would become redundant and these provisions can be repealed.

Item 11 - Paragraph 44A(2)(c)

Item 11 repeals paragraph 44A(2)(c) of the Radcomms Act and as a consequence of the repeal of section 25 in item 2. Paragraph 44A(2)(c) provides that a digital radio channel plan prepared under section 44A must be consistent with any relevant frequency allotment plans prepared under section 25 of the BSA. The proposed repeal of section 25 of the BSA in item 2 means that frequency allotment plans would no longer exist. As a consequence, paragraph 44A(2)(c) of the Radcomms Act would become redundant and can be repealed.

Schedule 2 – Digital switchover and re-stack provisions

Australian Communications and Media Authority Act 2005

Item 1 - Paragraphs 53(2)(q) and (r)

Item 1 repeals paragraphs 53(2)(q) and (r) of the ACMA Act which refer respectively to a scheme in force under clause 6 of Schedule 4 to the BSA and a scheme in force under clause 19 of Schedule 4 to the BSA. These amendments are consequential to the proposed repeal of clauses 6 and 19 of schedule 4 to the BSA at items 100 and 101 respectively.

Broadcasting Services Act 1992

Item 2 - Subsection 6(1) (paragraph (b) of the definition of *commercial television broadcasting licence*)

Item 2 removes the reference to section 41B in paragraph (b) of the definition of ‘commercial television broadcasting licence’ in subsection 6(1) of the BSA. This is consequential to the proposed repeal of section 41B at item 15.

Item 3 - Subsection 6(1)

Item 3 repeals the following definitions in subsection 6(1) of the BSA:

- ‘core commercial television broadcasting service’
- ‘core/primary commercial television broadcasting service’
- ‘designated re-stack day’
- ‘final digital television switch-over day’.

Subsection 6(1) defines ‘core commercial television broadcasting service’ by reference to paragraph 41A(1)(b) or 41A(2)(a) of the BSA. The repeal of this definition is consequential to the proposed repeal of section 41A at item 15. The definition of ‘core commercial television broadcasting service’ is no longer relevant as the simulcast period has ended.

Subsection 6(1) defines ‘core/primary commercial television broadcasting service’ by reference to a ‘core commercial television broadcasting service’ or a ‘primary commercial television broadcasting service’ (within the meaning of Schedule 4 to the BSA). As outlined above the definition of ‘core primary television broadcasting service’ is no longer relevant as the simulcast period has ended.

The definition of ‘core/primary commercial television broadcasting service’ is no longer needed and instead a new definition of ‘primary commercial television broadcasting service’ is proposed to be inserted (see discussion under item 4).

Subsection 6(1) provides that ‘designated restack day’ has the meaning given by subsection 26(1K). The repeal of this definition is consequential to the proposed repeal of subsection 26(1K) at item 6.

Subsection 6(1) provides that ‘final digital television switch-over day’ has the meaning given by section 8AE. The repeal of this definition is consequential to the proposed repeal of section 8AE at item 5.

Item 4 - Subsection 6(1)

Item 4, inserts a new definition of ‘primary commercial television broadcasting service’ into subsection 6(1) so that it has the same meaning as in Schedule 4. This amendment is consequential to the proposed repeal of the definition of core/primary commercial television broadcasting service in item 3.

Item 5 - Section 8AE

Item 5 repeals section 8AE of the BSA. Section 8AE defines the ‘final digital television switch-over day’ as the last ‘switch-over day’. ‘Switch-over day’ is in turn defined as the last day of a ‘simulcast period’ (which has the same meaning as in Schedule 4). The definition of ‘simulcast period’ in Schedule 4 is proposed for repeal below at item 93.

As the simulcast period in all licence areas has ended and the ‘final digital television switch-over day’ has passed this section can now be repealed

Item 6 - Subsections 26(1H) to (1L) and (7), (10) and (12)

Item 6 repeals subsections 26(1H) to (1L) and (7), (10) and (12) of the BSA.

Subsections 26(1H) to (1L) and (7), (10) and (12) relate to the ‘designated digital restack day’ namely, 31 December 2014 (see subsection 26(1K)). The restack program is on schedule to be completed by 31 December 2014 and these provisions can therefore be repealed (noting that the earliest commencement date for these provisions is 1 January 2015).

Item 7 - Subsection 26(13)

Item 7 repeals the following definitions in subsection 26(13) of the BSA:

- simulcast-equivalent period
- simulcast period.

Subsection 26(13) in effect provides that these terms have the same meaning as in Schedule 4. The repeal of the definitions is consequential to the proposed repeal of the relevant definitions in Schedule 4 at item 93.

Item 8 - Sections 26A and 26B

Item 8 repeals sections 26A and 26B of the BSA. Sections 26A and 26B provide that licence area plans do not need to deal with multi-channelled services provided by a commercial television broadcasting licensee or a national broadcaster respectively.

Now that relevant Television Licence Area Plans (TLAPs) have been prepared and are now in force, these provisions are redundant and can be repealed.

Item 9 - Subparagraph 38A(2)(a)(ii)

Item 9 repeals subparagraph 38A(2)(a)(ii) of the BSA. Subparagraph 38A(2)(a)(ii) currently refers to a breach of the condition set out in subsection 38A(9). This repeal is consequential to the proposed repeal of subsection 38A(9) as discussed at item 10.

Item 10 - Subsections 38A(9) and (10)

Item 10 repeals subsections 38A(9) and (10) of the BSA. Section 38A provides for the ACMA to grant additional commercial television licences in in single markets in certain

circumstances. A number of licence conditions and restrictions apply to licences allocated under section 38A. The licence condition in subsection 38A(9) and the licence restriction in subsection 38A(10) were time limited and can now be repealed.

Item 11 - Subsections 38B(18) to (23)

Item 11 repeals subsections 38B(18) to (23) of the BSA. Section 38B provides for the ACMA to allocate additional commercial television broadcasting licences in 2-station markets in certain circumstances. A number of licence conditions and restrictions apply to a licence allocated under section 38B. The conditions and restrictions set out in subsections (18) to (23) were time limited and can now be repealed.

Item 12 - Subsections 38C(2) to (14)

Item 12 repeals existing paragraphs 38C(2) to (14) and replaces them with streamlined provisions allowing the ongoing licencing of commercial television broadcasting services provided with the use of a satellite under section 38C. These amendments will remove the out-dated and time limited provisions while maintaining the rights of existing relevant licensees.

Item 13 - Subsection 38C(17)

Item 13 repeals existing subsection 38C(17) relating to the allocation of a licence after cancellation and substitutes a new subsection 38C(17) relating to the allocation of a licence after cancellation. This amendment is consequential to the repeal of subsections 38C(2) to (14) at item 12.

Item 14 - Subsection 38C(26) (definition of *applicable terrestrial digital television switch-over date*)

Item 14 repeals the definition of ‘applicable terrestrial digital television switch-over date’ which is defined to have the same meaning as in clause 7H of Schedule 2. This is consequential to the proposed repeal of clause 7H of schedule 2 in item 88.

Item 15 - Sections 41A, 41B and 41C

Item 15 repeals sections 41A, 41B and 41C of the BSA and substitutes proposed new subsection 41C.

Sections 41A and 41B outline the services authorised by a commercial television broadcasting licence prior to the end of the simulcast period. As the simulcast period in all licence areas has ended these provisions are redundant and can be repealed.

Current section 41C makes a distinction between licences in force before and after the end of the simulcast period, yet both categories are authorised to provide the same services. The proposed new section does not preserve this distinction and does not refer to the simulcast period.

The proposed new section in effect provides that a relevant commercial television broadcasting licence for a licence area authorises the licensee to provide the following services in the licence area:

- one or more HDTV multi-channelled commercial television broadcasting services
- one or more SDTV multi-channelled commercial television broadcasting services.

Item 16 - Subparagraphs 41CA(1)(b)(ii), (c)(ii), (e)(ii) and (f)(ii)

Item 16 omits the reference to ‘core/primary commercial television broadcasting service’ in subparagraphs 41CA(1)(b)(ii), (c)(ii), (e)(ii) and (f)(ii) and substitutes ‘primary commercial television broadcasting service’.

As noted under item 3 above, the definition of ‘core commercial television broadcasting service’ is no longer relevant due to the end of the simulcast period.

Item 17 – Subsections 41CA(5) and 43AA(3AA)

Item 17 repeals subsections 41CA(5) and 43AA(3AA). Subsection 41CA(5) currently provides that ‘for the purposes of subsection 41CA(1), assume paragraph 5A(1)(d) of schedule 4 to the BSA had not been enacted’. This subsection is no longer required as paragraph 5A(1)(d) of Schedule 4 to the BSA is proposed for repeal at item 97.

Subsection 43AA(3AA) provides that subsection 43AA(1) does not require a licensee to provide a program to the licensee of a section 38C licence before the ‘start date’ for the licence area of the section 38C licence. Repeal of subsection 43AA(3AA) is consequential to the proposed repeal of clause 7H of schedule 2 to the BSA at item 88, which deals with ‘start dates’ for licence areas.

Item 18 - Subsection 43AA(7) (definition of *start date*)

Item 18 repeals the definition of ‘start date’ in subsection 43AA(7). The term ‘start date’ is defined to have the same meaning as in Division 2 of Part 3 of Schedule 2 to the BSA (see clause 7H of Schedule 2 to the BSA). The repeal of subsection 43AA(7) is consequential to the proposed repeal of clause 7H of Schedule 2 at item 88 and also consequential to the proposed repeal of subsection 43AA(3AA) at item 17.

Item 19 - Subsections 43AB(3), 43AC(3A) and (4)

Item 19 repeals subsections 43AB(3), 43AC(3A) and 43AC(4). Subsection 43AB(3) currently provides that for the purposes of subsection 43AB(1), assume paragraph 5A(1)(d) of Schedule 4 to the BSA had not been enacted. This subsection is no longer required as paragraph 5A(1)(d) of Schedule 4 to the BSA is proposed for repeal at item 97.

Subsection 43AC(3A) provides that subsection 43AC(2) does not require a licensee to provide a program to the licensee of a section 38C licence before the ‘start date’ for the licence area of the section 38C licence. The repeal of subsection 43AC(3A) is consequential to the proposed repeal of clause 7H of Schedule 2 to the BSA at item 88, which deals with ‘start dates’ for licence areas.

Subsection 43AC(4) currently provides that for the purposes of subsection 43AC(1), assume paragraph 5A(1)(d) of schedule 4 to the BSA had not been enacted. This subsection is no longer required as paragraph 5A(1)(d) of Schedule 4 to the BSA is proposed for repeal at item 97.

Item 20 - Subsection 43AC(5) (definition of *start date*)

Item 20 repeals the definition of ‘start date’ in subsection 43AC(5). The term ‘start date’ is defined to have the same meaning as in Division 2 of Part 3 of Schedule 2 to the BSA (see clause 7H of Schedule 2 to the BSA). Clause 7H is proposed for repeal at item 88. This repeal is consequential to that proposed repeal and is also consequential to the proposed repeal of subsection 43AA(3AA) at item 17.

Item 21 - Subsection 61AC(1) (table item 4)

Item 21 omits the reference to ‘core/primary commercial television broadcasting services’, in item 4 of the table found in subsection 61AC(1) and substitutes ‘primary commercial television broadcasting services’. As noted under item 3 above, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 22 - Subsection 61AE(3)

Item 22 repeals subsection 61AE(3), which exempts material covered by paragraph 6(8)(b), (c) or (d) of Schedule 4 to the BSA from the ‘shared content test’. This amendment is consequential to the proposed repeal of clause 6 of Schedule 4 to the BSA at item 100.

Item 23 - Subsection 121G(1) (heading)

Item 24 - Subsection 121G(1) (paragraph (b) of the definition of *total hours of Australian programs transmitted during the year*)

Item 25 - Subsection 121G(1) (paragraph (b) of the definition of *total hours of programs transmitted during the year*)

Items 23 to 25 replace references to ‘core/primary television broadcasting service’ with references to ‘primary commercial television broadcasting service’. As noted under item 3 above, references to ‘core commercial television broadcasting service’ are no longer relevant due to the end of the simulcast period.

Item 26 - Subsection 121G(2) (heading)

Item 26 repeals the heading to subsection 121G(2) and substitutes a new heading which effectively replaces the reference to ‘core/primary television broadcasting service’ with a reference to ‘primary commercial television broadcasting service’. As noted under item 3 above, references to ‘core commercial television broadcasting service’ are no longer relevant due to the end of the simulcast period.

Item 27 - Subsection 121G(2)

Item 27 repeals subsection 121G(2) and replaces it with a proposed new subsection 121G(2). Proposed new subsection 121G(2) effectively removes spent references in the current subsection.

Item 28 - Paragraph 121G(3)(b)

Item 28 replaces the reference to ‘core/primary television broadcasting service’ with a reference to ‘primary commercial television broadcasting service’.

As noted under item 3 above, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 29 - Subsections 130A(4) and (5)

Item 29 repeals subsections 130A(4) and (5), which apply technical standards for digital transmission to the commercial television conversion scheme and the national television conversion scheme. These repeals are consequential to items 100 and 101 that remove references to these schemes which are no longer relevant due to the end of the simulcast

period.

Item 30 - Paragraph 130L(d)

Item 30 repeals paragraph 130L(d), which prevents industry codes and standards dealing with the high-definition quotas set through Part 4 of Schedule 4 to the BSA. This repeal is consequential to item 103, which repeals Part 4 of Schedule 4 to the BSA.

Item 31 - Subparagraph 130ZB(3)(a)(ii)

Item 31 omits ‘area;’ from subparagraph 130ZB(3)(a)(ii) and substitutes ‘area; and’. This amendment is a consequence of the repeal of subparagraph 130ZB(3)(a)(iii) discussed at item 32.

Item 32 - Subparagraph 130ZB(3)(a)(iii)

Item 33 - Paragraphs 130ZB(3)(aa) and (ab)

Items 32 and 33 repeal subparagraph 130ZB(3)(a)(iii) and paragraphs 130ZB(aa) and (ab), which contain provisions relating to the identification of areas unlikely to receive adequate terrestrial digital television reception at the end of the simulcast period as ‘open access areas’. As the simulcast period in all licence areas has ended these provisions are redundant and can be repealed.

Item 34 - Subsections 130ZB(6), (11), (14) and (15)

Item 34 repeals subsections 130ZB(6), (11), (14) and (15), which in effect prevent conditional access schemes provided in the South Eastern Australia TV3 and Northern Australia TV3 licence areas from authorising the reception of commercial television services provided under section the relevant section 38C licence, before specified periods. As the simulcast period in all licence areas has ended these subsections are redundant and can be repealed.

Item 35 - Subsection 130ZB(16)

Item 35 amends subsection 130ZB(16) to remove the definitions of ‘digital-only local market area’, ‘local market area’, ‘simulcast area’ and ‘simulcast period’. These definitions are no longer necessary, due to the repeal of subparagraph 130ZB(3)(a)(iii), paragraphs 130ZB(3)(aa) and (ab) and subsections 130ZB(6), (11), (14) and (15), discussed at items 33 and 34.

Item 36 - Subparagraph 130ZBB(3)(a)(ii)

Item 36 omits “area;” from subparagraph 130ZBB(3)(a)(ii) and substitutes “area; and”. This amendment is a consequence of the repeal of subparagraph 130ZBB(3)(a)(iii) discussed at item 37.

Item 37 - Subparagraph 130ZBB(3)(a)(iii)

Item 38 - Paragraphs 130ZBB(3)(aa) and (ab)

Items 37 and 38 repeal subparagraph 130ZBB(3)(a)(iii) and paragraphs 130ZB(aa) and (ab), which contain provisions relating to the identification of areas unlikely to receive adequate terrestrial digital television reception at the end of the simulcast period as ‘open access areas’.

As the simulcast period in all licence areas has ended these provisions are redundant and can be repealed.

Item 39 - Subsection 130ZBB(6)

Item 39 repeals subsection 130ZBB(6) as a consequence of the repeal of subsections 130ZBB(18) and (19) discussed at item 41.

Item 40 - Subsection 130ZBB(8)

Item 40 amends subsection 130ZBB(8) to replace a reference to areas ‘in which people will, after the end of the simulcast period, or the simulcast-equivalent period, as the case may be, for the related terrestrial licence area in which the related terrestrial sub-area is included, be able to receive adequate reception’ with a reference to areas ‘in which people are able to receive adequate reception’. As the simulcast period in all licence areas has ended this subsection is redundant and can be repealed..

Item 41 - Subsections 130ZBB (12), (14), (15), (18) and (19)

Item 41 repeals subsections 130ZBB (12), (14), (15), (18) and (19), which contain provisions which in effect prevent the conditional access scheme provided in the Western Australia TV3 licence area from authorising the reception of commercial television services provided under the relevant section 38C licence, before specified periods. As the simulcast period in all licence areas has ended these subsections are redundant and can be repealed.

Item 42 - Subsection 130ZBB(22)

Item 42 amends subsection 130ZBB(22) to remove the definitions of ‘digital-only local market area’, ‘local market area’, ‘simulcast area’ and ‘simulcast period’. These definitions are no longer necessary, due to the amendments made by items 37, 38, 39, 40 and 41.

Item 43 - Sections 130ZBC and 130ZEA

Item 43 repeals sections 130ZBC and 130ZEA. As the simulcast period in all licence areas has ended, the ACMA is no longer required to publish a description of the open access period on its website (section 130ZBC) nor is the ACMA required any longer to maintain a register of designated digital service days for category D reception areas (section 130ZEA).

Item 44 - Subsections 130ZH(2) and (3)

Item 44 repeals subsections 130ZH(2) and (3), which in effect prevent the ACMA from declaring an area to be a ‘declared service-deficient area’ before 3 or 9 months after the end of the simulcast period or the date the local market area becomes a digital-only local market area. As those timeframes have now passed, these subsections are redundant and can be repealed.

Item 45 - Subsection 130ZH(6)

Item 45 amends subsection 130ZH(6) to remove the definitions of ‘digital-only local market area’, ‘local market area’, ‘simulcast area’ and ‘simulcast period’. These definitions are no longer necessary, due to the repeal of subsections 130ZH(2) and (3), discussed at item 44.

Item 46 - Section 130ZK

Item 46 amends section 130ZK to remove the definitions of ‘primary commercial television broadcasting service’, ‘simulcast-equivalent period’ and ‘simulcast period’ from Part 9D of the BSA, which deals with captioning requirements. As the simulcast period in all licence areas has ended the definitions of ‘simulcast-equivalent period’ and ‘simulcast period’ are redundant and can be repealed. The definition of ‘primary commercial television broadcasting service’ refers to the meaning given in schedule 4 (clause 41G), which was also only relevant during the simulcast period, is also redundant.

Item 47 - Subsections 130ZR(2) and (3)

Item 47 repeals subsections 130ZR(2) and (3), which provide exemptions from captioning obligations for certain programming simulcast as part of the commercial television conversion scheme or the national television conversion scheme. These repeals are consequential to items 100 and 101 that repeal these schemes which are no longer relevant due to the end of the simulcast period.

Item 48 - Subsection 130ZR(4)

Item 48 amends subsection 130ZR(4) to replace each reference to ‘core/primary commercial television broadcasting service’ with ‘primary commercial television broadcasting service’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 49- Subsection 130ZR(6)

Item 49 replaces existing subsection 130ZR(6), which provides exemptions from captioning requirements for national broadcasters in certain circumstances, with proposed new subsection 130ZR(6), which no longer includes references to programming provided during and after the ‘simulcast period’ and the ‘simulcast-equivalent period’. As the simulcast period in all licence areas has ended, this subsection is redundant and can be repealed.

Item 50 - Subsection 204(1) (table item dealing with refusal to allocate licence under section 38C)

Item 50 repeals the item dealing with refusal to allocate a licence under section 38C, from the table in subsection 204(1) that deals with appeals to the Administrative Appeals Tribunal. The repeal is as a consequence of amendments to section 38C at item 12. This amendment does not apply to a decision made before the commencement of item 50 as provided at item 164.

Item 51 - Section 211

Item 51 repeals section 211 of the BSA which specifies that a notice may be given to a person by telex or fax. A replacement provision is not required as notices provided under the BSA using electronic communications can rely on the *Electronic Transactions Act 1999*. The *Electronic Transactions Act 1999* is of general application and does not specify, or exclude any electronic communication techniques from its scope, accommodating future technological developments without the need for constant legislative amendments.

Item 52 - Paragraphs 7(1)(k) to (nb) of Schedule 2

Item 52 repeals paragraphs 7(1)(k) to (nb) of the standard licence conditions applying to commercial television broadcasting licences in Schedule 2 to the BSA. These paragraphs relate to the commercial television conversion scheme for metropolitan, regional and remote commercial television broadcasters, which was in force during the simulcast period or simulcast-equivalent period for the switchover to digital-only television broadcasting. These conditions relate to compliance with implementation plans and requirements for the broadcast of standard definition digital television on the core commercial service and the broadcast of high definition digital television on multi-channelled services. As the simulcast period in all licence areas has ended, these paragraphs are redundant and can be repealed.

Item 53 - Subclauses 7(4) to (8) of Schedule 2

Item 53 repeals subclauses 7(4) to (8) of the standard licence conditions applying to commercial television broadcasting licences in Schedule 2 to the BSA. These subclauses relate to requirements on metropolitan, regional and remote commercial television broadcasters for the simultaneous broadcast of their analog signal and their standard definition digital signal broadcast on their core commercial television broadcasting service which was in force during the simulcast period or simulcast-equivalent period for the switchover to digital-only television broadcasting. These requirements for the simultaneous broadcast of the analog channel and the standard definition digital television channel did not apply in those areas of a licence that had been designated a digital only local market area. As the simulcast period in all licence areas has ended these subclauses are redundant and can be repealed.

Item 54 - Clause 7B of Schedule 2 (heading)

Item 54 repeals the heading 'Conditions about the provision of core/primary commercial television services' and substitutes 'Conditions about the provision of primary commercial television broadcasting services'. As noted under item 3, references to 'core commercial television broadcasting services' are no longer relevant due to the end of the simulcast period.

Item 55 - Subclause 7B(1) of Schedule 2 (heading)

Item 55 repeals the heading 'Conditions about the provision of core/primary services' and substitutes 'Conditions about the provision of primary services'. As noted under item 3, references to 'core commercial television broadcasting services' are no longer relevant due to the end of the simulcast period.

Item 56 - Subclause 7B(1) of Schedule 2

Item 56 omits 'related terrestrial core/primary services' and substitutes the heading 'related terrestrial primary services'. As noted under item 3, references to 'core commercial television broadcasting services' are no longer relevant due to the end of the simulcast period.

Item 57 - Paragraph 7B(1)(b) of Schedule 2

Item 57 omits the phrase 'core/primary commercial television broadcasting service' in relation to standard conditions on commercial television broadcasting licences allocated under section 38C and substitutes the phrase 'primary commercial television broadcasting services'. As noted under item 3, references to 'core commercial television broadcasting services' are no longer relevant due to the end of the simulcast period.

Item 58 - Paragraph 7B(1)(d) of Schedule 2

Item 59 - Subclause 7B(2) of Schedule 2

Items 58 to 59 omit references to ‘core/primary’ and substitute references to ‘primary’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 60 - Paragraph 7B(2)(b) of Schedule 2

Item 61 - Subparagraph 7B(2)(d)(i) of Schedule 2

Item 62 - Subparagraph 7B(2)(e)(i) of Schedule 2

Items 60 to 62 omit the phrase ‘core/primary commercial television broadcasting services’ in relation to standard conditions on commercial television broadcasting licences allocated under section 38C and substitute the phrase ‘primary commercial television broadcasting services’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 63 - Paragraph 7B(3)(b) of Schedule 2

Item 63 omits ‘related terrestrial core/primary service’ and substitutes the heading ‘related terrestrial primary service’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 64 - Subparagraph 7B(3)(b)(ii) of Schedule 2

Item 65 - Paragraph 7B(3)(c) of Schedule 2

Item 66 - Subparagraph 7B(3)(d)(i) of Schedule 2

Items 64 to 66 omit the phrase ‘core/primary’ and substitutes ‘primary’. As noted under item 2, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 67 - Subclause 7B(4) of Schedule 2

Item 67 repeals subclause 7B(4) which effectively provides that a section 38C licensee is not required to provide at least three terrestrial core/primary commercial television broadcasting digital services in advance of start dates for section 38C licences. Since all section 38C licensees have now commenced providing satellite-delivered television services in South Eastern Australia, the Northern Territory and Western Australia, this subclause is redundant and can be repealed.

Item 68 - Subclause 7B(5) (heading) of Schedule 2

Item 68 repeals the heading ‘Exemption – cessation of related terrestrial core/primary service’ and replaces it with the heading ‘Exemption – cessation of related terrestrial primary service’. With the completion of the switchover to digital-only television on 10 December 2013, terrestrial commercial television broadcasting licence ‘core’ channels are now redundant.

Item 69 - Paragraphs 7B(5)(a) and (b) and (6)(a) and (b) of Schedule 2

Item 70 - Subparagraph 7B(6)(e)(i) of Schedule 2

Items 69 to 70 omit the phrase ‘core/primary commercial television broadcasting services’ in relation to the cessation of the supply of terrestrial commercial television broadcasting content which is the same or substantially the same as the program content of the core/primary commercial television broadcasting service for the purposes of satellite transmission of free-to-air television services by section 38C licensees and substitutes the phrase ‘primary commercial television broadcasting services’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 71 - Clause 7C of Schedule 2 (heading)

Item 71 repeals the heading for Clause 7C to remove the reference to a ‘non-core’ terrestrial commercial television broadcasting service and substitute the heading ‘Conditions about the provision of non-primary commercial television broadcasting services’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 72 - Subclause 7C(3) of Schedule 2

Item 72 repeals subclause 7C(3) which in effect provides that a section 38C licensee is not required to provide high definition multi-channelled terrestrial commercial television broadcasting digital services provided in metropolitan licence areas in advance of a start date for the licence area of section 38C licences. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed.

Item 73 - Subclause 7C(4) of Schedule 2

Item 73 repeals subclause 7C(4) which in effect provides that a section 38C licensee is not required to provide a high definition multi-channelled terrestrial commercial television broadcasting digital service provided in a metropolitan licence area after the end of the simulcast period. Proposed new subclause 7C(4) retains the substance of subclause 7C(4) but substitutes ‘10 December 2013’ (the date the last terrestrial analog television services were switched off) for the phrase ‘after the end of the simulcast period’ to provide greater clarity.

Item 74 - Paragraphs 7C(6)(b) and (7)(b) of Schedule 2

Item 74 amends paragraphs 7C(6)(b) and (7)(b) to remove the reference to ‘core/primary commercial television service’ and replace it with a reference to ‘primary commercial television service’. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 75 - Subclause 7C(8) of Schedule 2

Item 75 repeals subclause 7C(8) which effectively provides that a section 38C licensee is not required to provide standard definition multi-channelled terrestrial commercial television broadcasting digital services provided in metropolitan licence areas in advance of a start date for the licence area of section 38C licences. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed.

Item 76 - Subclause 7C(9) of Schedule 2

Item 76 repeals subclause 7C(9) which in effect provides that a section 38C licensee is not required to provide a standard definition multi-channelled terrestrial commercial television broadcasting digital service provided in a metropolitan licence area after the end of the simulcast period. The proposed new subclause 7C(9) retains the substance of subclause 7C(9) but substitutes ‘10 December 2013’ (the date the last terrestrial analog television services were switched off) for the phrase ‘after the end of the simulcast period’ to provide greater clarity.

Item 77 - Paragraph 7C(10)(b) of Schedule 2

Item 77 repeals paragraph 7C(10)(b) regarding the provision of standard definition multi-channelled terrestrial commercial television broadcasting services in metropolitan licence areas which is not the core/primary service, to remove reference to a ‘core’ service. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 78 - Subclause 7D(4) of Schedule 2

Item 78 repeals subclause 7D(4) concerning the condition on section 38C licensees for the provision of local news services before a start date for the licence area of section 38C licences. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed.

Item 79 - Paragraph 7E(b) of Schedule 2

Item 79 omits ‘after the start date for the licence area of the section 38C licence’ in paragraph 7E(b) concerning the provision of new commercial television broadcasting services which are not technically feasible for section 38C licensees. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed.

Item 80 - Subparagraph 7E(b)(ii) of Schedule 2

Item 80 omits ‘core/primary commercial television broadcasting service’ and substitutes ‘primary commercial television service’ in subparagraph 7E(b)(ii) regarding the provision of new commercial television broadcasting services which are not technically feasible for section 38C licensees. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 81 - Clause 7E of Schedule 2 (note 1)

Item 82 - Clause 7E of Schedule 2 (note 2)

Item 81 repeals note 1 which refers to the start date as provided in clause 7G, which in turn refers to the start date in clause 7H. The repeal of the note is a consequence of the repeal of clause 7H at item 88. Item 82 makes the consequential amendment to omit ‘Note 2’ and refer only to ‘Note’.

Item 83 - Subparagraph 7F(1)(a)(ii) of Schedule 2

Item 83 omits ‘core/primary commercial television broadcasting service’ and substitutes ‘primary commercial television service’ in subparagraph 7F(1)(a)(ii) regarding exemptions of commercial television broadcasting services with the same program content broadcast by

section 38C licensees. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period

Item 84 - Paragraph 7G(b) of Schedule 2

Item 84 omits ‘after the start date for the licence area of the section 38C licence’ in paragraph 7G(b) concerning the delay in commencing new commercial television broadcasting services for broadcast by section 38C licensees. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed.

Item 85 - Subparagraph 7G(b)(ii) of Schedule 2

Item 85 omits ‘core/primary commercial television broadcasting service’ and substitutes ‘primary commercial television service’ in subparagraph 7G(b)(ii) regarding exemptions of commercial television broadcasting services with the same program content broadcast by section 38C licensees. As noted under item 3, references to ‘core commercial television broadcasting services’ are no longer relevant due to the end of the simulcast period.

Item 86 - Clause 7G of Schedule 2 (note 1)

Item 87 - Clause 7G of Schedule 2 (note 2)

Item 86 repeals note 1 regarding the start date which refers to the start date in clause 7H. As all relevant timeframes in this subclause have now passed, this subclause is redundant and can be repealed. Item 87 makes the consequential amendment to omit ‘Note 2’ and refer only to ‘Note’.

Item 88 - Clauses 7H and 7K of Schedule 2

Item 88 repeals clause 7H regarding start dates for section 38C licence areas. As all relevant timeframes in this clause have now passed, this clause is redundant and can be repealed. Clause 7K refers to paragraph 5A(1)(d) of Schedule 4. Schedule 4, paragraph 5A(1)(d) refers to the core commercial television broadcasting service. As noted under item 3, references to ‘core commercial television broadcasting service’ are no longer relevant due to the end of the simulcast period

Item 89 - Clause 7L of Schedule 2

Item 89 repeals definitions in clause 7L of digital-only local market area, local market area and simulcast period regarding start dates for Division 2. As the simulcast period in all licence areas has ended these definitions are redundant and can be repealed.

Item 90 - Clause 1 of Schedule 4

Item 90 repeals and substitutes the simplified outline in clause 1 of Schedule 4 to the BSA, to reflect the amendments to Schedule 4 made elsewhere by the Bill. The simplified outline is included to assist readers to understand the substantive provisions.

Item 91 - Clause 2 of Schedule 4

Item 91 repeals the definitions of *commercial television broadcasting service* and *commercial television conversion scheme*. The repealed definitions are no longer necessary in light of amendments made elsewhere by the Bill.

Item 92 - Clause 2 of Schedule 4 (note at the end of the definition of *coverage area*)

Item 92 repeals the note at the end of the definition of coverage area cross-referencing clause 5J, which is to be repealed by item 99.

Item 93 - Clause 2 of Schedule 4

Item 93 repeals a series of definitions, contained in Clause 2 of Schedule 4 to the BSA, that are no longer necessary as a result of the amendments to Schedule 4 made elsewhere by this Bill.

Item 94 - Clauses 3, 4C and 4D of Schedule 4

Item 94 repeals clauses 3, 4C and 4D of Schedule 4 to the BSA. Clause 3 sets out the meaning of *analog mode* for the purposes of Schedule 4. Clauses 4C and 4D, respectively, provide the ACMA with power to declare that a specified period is the *simulcast-equivalent period* for a licence area and for a coverage area. These provisions are no longer necessary following the completion of digital switchover.

Item 95 - Subclause 5A(1) of Schedule 4

Item 96 - Paragraph 5A(1)(c) of Schedule 4

Item 97 - Paragraph 5A(1)(d) of Schedule 4

Clause 5A of Schedule 4 to the BSA sets out the circumstances in which a commercial television broadcasting service will be a *SDTV multi-channelled commercial television broadcasting service* for the purpose of Schedule 4, including the requirement in paragraph 5A(1)(d) that the service not be the core commercial television broadcasting service. Item 97 repeals paragraph 5A(1)(d) consequential to the repeal of the definition of core *commercial television broadcasting service* by item 3 of this Bill. Items 95 and 96 make related technical amendments.

Item 98 - Subclauses 5A(2), 5C(2) and (3) of Schedule 4

Item 98 repeals subclauses 5A(2), 5C(2) and (3) of Schedule 4 to the BSA, which are no longer necessary following the completion of digital switchover.

The repeal of subclause 5A(2) is consequential to the repeal of the definitions of *simulcast period* and *simulcast-equivalent period* made by item 93 above.

The repeal of subclauses 5C(2) is consequential to the repeal of clause 19, relating to the National Television Conversion Scheme, by item 101 below. The repeal of subclause 5C(3) is consequential to the repeal of the definitions of *simulcast period* and *simulcast-equivalent period* made by item 93 above.

Item 99 - Clauses 5E, 5F and 5J of Schedule 4

Item 99 repeals clauses 5E, 5F and 5J of Schedule 4 to the BSA.

Clause 5E sets out the meaning of a *designated HDTV multi-channelled national television broadcasting service* provided by a national broadcaster. Clause 5E is no longer required due to the repeal by item 103 of the HDTV quotas and standards in Part 4 of Schedule 4 to the BSA.

Clause 5F provides for the Minister to determine that a specified area is a local market area and will become a *digital only local market area* at a specified time. Clause 5F enabled the Government to provide for a region by region switchover based on geographical areas other than licence areas. It is no longer required following the completion of digital switchover.

Clause 5J sets out a rule about the end of the *simulcast period* in overlapping coverage areas. It was designed to address the possibility that a national broadcaster may be subject to conflicting simulcasting obligations – through the existence of two identical coverage areas with potentially different *simulcast periods* determined by reference to the commercial television licence area. Clause 5J is no longer required following the completion of digital switchover.

Item 100 - Part 2 of Schedule 4

Item 100 repeals Part 2 of Schedule 4 to the BSA in its entirety. Part 2 provided the framework for digital switchover by commercial television broadcasting licensees, including formulation by the ACMA of the Commercial Television Conversion Scheme, the determination of *simulcast periods* and the determination of exempt digital transmission areas. Part 2 of Schedule 4 is no longer required following the completion of digital switchover.

Item 101 - Clauses 19 to 35AA of Schedule 4

Item 101 repeals clauses 19 to 35AA of Schedule 4 to the BSA. The clauses to be repealed provided the framework for digital switchover by national television broadcasters, including formulation by the ACMA of the National Television Conversion Scheme, the provision by national broadcasters of implementation plans, the determination by the Minister of exempt digital transmission areas and the grant of additional spectrum for digital transmission. Clauses 19 to 35AA are no longer required following the completion of digital switchover.

Item 102- Subclause 36(1) of Schedule 4

Item 102 is a minor technical amendment to correct a drafting error.

Item 103 - Part 4 of Schedule 4

Item 103 repeals Part 4 of Schedule 4 to the BSA. Part 4 sets out high definition digital television quotas and standards that applied to certain commercial television broadcasting licensees and the national broadcasters during the *simulcast period*. The high definition quotas expired at the end of the *simulcast period* and are no longer necessary following the completion of digital switchover.

Item 104 - Clauses 41A to 41D of Schedule 4

Item 104 repeals clauses 41A to 41D of Schedule 4 to the BSA, which set out restrictions on the televising, during the *simulcast period*, of anti-siphoning events on standard and high definition multi-channelled commercial television broadcasting services. As the simulcast period has expired, these restrictions are no longer necessary.

Item 105 - Clause 41E of Schedule 4 (heading)

Item 106 - Subclause 41E(1) of Schedule 4

Item 107 - Paragraph 41E(1)(a) of Schedule 4

Item 108 - Paragraph 41E(1)(b) of Schedule 4

Clause 41E sets out restrictions on the televising of anti-siphoning events (events specified in a notice made by the Minister under subsection 115(1) of the BSA) by commercial television broadcasting licensees, on standard definition (SDTV) multi-channelled services, after the end of the *simulcast period* (or *simulcast-equivalent period*).

Items 106 to 108 update clause 41E to reflect the fact that the simulcast period has passed and the proposed repeal of the definitions of *simulcast period* and *simulcast-equivalent period* by item 93. Item 105 make a related technical amendment to the heading.

Item 109 - Clause 41F of Schedule 4 (heading)

Item 110 - Subclause 41F(1) of Schedule 4

Item 111 - Subclause 41F(2) of Schedule 4

Item 112 - Subclause 41F(3) of Schedule 4

Clause 41F sets out corresponding rules for the televising of anti-siphoning events by commercial television broadcasting licensees, on high definition (HDTV) multi-channelled services, after the end of the *simulcast period* (or *simulcast-equivalent period*).

Items 110 to 112 update clause 41F to reflect the fact that the simulcast period has passed and the proposed repeal of the definitions of *simulcast period* and *simulcast-equivalent period* by item 93. Item 109 make a related technical amendment to the heading.

Item 113 - Subclauses 41G(1) and (1A) of Schedule 4

Item 114 - Subclause 41G(2) of Schedule 4 (heading)

Item 115 - Subclause 41G(2) of Schedule 4

Item 116 - Subclause 41G(3) of Schedule 4

Item 117 - Subclause 41G(6) of Schedule 4

Item 118 - Subclause 41G(7) of Schedule 4

Items 113 to 118 make a series of amendments to clause 41G of Schedule 4 to the BSA, which deals with the ACMA's powers to declare *primary commercial television broadcasting services*.

Specifically, item 113 repeals subclauses 41G(1) and (1A), which deal with services provided during the *simulcast period*. Item 114 to 117 amend (or substitute) subclauses 41G(2), (3) and (6), which deal with services provided after the end of the *simulcast period*. Item 118 repeals the definition of *start date*, which is no longer used, in subclause 46(7).

The amendments reflect the fact that the simulcast period has passed, and the proposed repeal of the definitions of *simulcast period* and *simulcast equivalent period* by item 93.

Item 119 - Clauses 41H and 41J of Schedule 4

Item 119 repeals clauses 41H and 41J of Schedule 4 to the BSA, which place restrictions on the televising of anti-siphoning events (events specified in a notice made by the Minister

under subsection 115(1) of the BSA) by national broadcasters during the *simulcast period*. Clause 41H applies to SDTV multi-channelled services and clause 41J applies to HDTV multi-channelled services. The clauses to be repealed are no longer relevant now that the *simulcast period* has expired.

Item 120 - Clause 41K of Schedule 4 (heading)

Item 121 - Subclause 41K(1) of Schedule 4

Item 122 - Paragraph 41K(1)(a) of Schedule 4

Item 123 - Paragraph 41K(1)(b) of Schedule 4

Items 120 to 123 amend clause 41K of Schedule 4 to the BSA, which contain restrictions on the televising of anti-siphoning events (events specified in a notice made by the Minister under subsection 115(1) of the BSA) on standard definition (SDTV) multi-channelled services by national broadcasters after the end of the *simulcast period*. The amendments update clause 41K to reflect the fact that the simulcast period has passed, and the proposed repeal of the definitions of *simulcast period* and *simulcast equivalent period* by item 93.

Item 124 - Clause 41L of Schedule 4 (heading)

Item 125 - Subclause 41L(1) of Schedule 4

Item 126 - Subclauses 41L(2) and (3) of Schedule 4

Items 124 to 126 amend clause 41L of Schedule 4 to the BSA, which contain restrictions on the televising of anti-siphoning events (events specified in a notice made by the Minister under subsection 115(1) of the BSA) on standard definition (SDTV) multi-channelled services by national broadcasters after the end of the *simulcast period*. Clause

The amendments update clause 41L to reflect the fact that the simulcast period has passed, and the proposed repeal of the definitions of *simulcast period* and *simulcast equivalent period* by item 93.

Item 127 - Subclause 41M(1) of Schedule 4

Item 128 - Subclause 41M(2) of Schedule 4

Items 127 and 128 amend clause 41M of Schedule 4 to the BSA, which requires national broadcasters to provide the Minister with a notice declaring which SDTV multi-channel provided by the broadcaster after the end of the *simulcast period* or *simulcast-equivalent period* is the primary service, and to ensure that such a notice is in force at all times after the end of the *simulcast period* or *simulcast-equivalent period* for a coverage area.

The amendment to subclause 41M is consequential to the repeal of the definitions of *simulcast period* and *simulcast-equivalent period* by item 93.

Item 129 - Part 7 of Schedule 4

Item 129 amends repeals Part 7 of Schedule 4 to the BSA, which provides for the grant of injunctions by the Federal Court as a remedy to contravention by the holder of a commercial television broadcasting licence of an ACMA-approved implementation plan (provided under the Commercial Television Conversion Scheme).

Part 7 of Schedule 4 is no longer necessary following the completion of digital switchover, and its repeal is consequential to the repeal of clause 6 of Schedule 4 (under which the Commercial Television Conversion Scheme was formulated) by item 100.

Item 130 - Subclauses 62(1) to (4) of Schedule 4

Item 130 repeals subclauses 62(1) to (4) of Schedule 4 to the BSA, which provide for review by the Administrative Appeals Tribunal of certain decisions made by the ACMA under the Commercial Television Conversion Scheme and the National Television Conversion Scheme.

Part 7 of Schedule 4 is no longer necessary as the ACMA will no longer make decisions under the schemes due to the completion of digital switchover and repeal of clauses 6 and 19 under which the schemes were made.

Item 131 - Part 11 of Schedule 4

Item 131 repeals Part 11 of Schedule 4 to the BSA, consisting of clause 64 only, which requires the Minister to formulate a written Regional Equalisation Plan specifying the measures proposed to be taken by the Government to facilitate the transmission of digital commercial television and datacasting services in regional licence areas.

The Regional Equalisation Plan is no longer necessary following the transition to digital-only broadcasting.

Item 132 - Subclause 2(1) of Schedule 6

Item 133 - Clause 51A of Schedule 6

Item 132 inserts a definition of *designated teletext service* into clause 2 of Schedule 6 to the BSA. The inserted definition substantially replicates the definition which is currently in Schedule 4 (and is proposed to be repealed by item 93). Item 133 makes a small consequential amendment to clause 51A of Schedule 6, to reflect the amendment made by item 132.

Datacasting Charge (Imposition) Act 1998

Item 134 - Section 3 (definition of designated teletext service)

Item 134 omits 'Schedule 4' from the definition of 'designated teletext service' in section 3 of the *Datacasting Charge (Imposition) Act 1998* and substitutes 'Schedule 6'. This amendment is consequential to the proposed amendments to Schedule 4 and Schedule 6 of the BSA discussed in the explanatory material for item 93 and item 132 above.

Radiocommunications Act 1992

Item 135 - Section 5 (paragraph (a) of the definition of datacasting transmitter licence)

Item 135 omits 'section 101B, 101C, 102 or 102A' from paragraph (a) of the definition of datacasting transmitter licence in section 5 of the Radcomms Act and substitutes 'section 102'. This amendment is consequential to the proposed repeal of sections 101B, 101C, 102 and 102A of the Radcomms Act discussed in item 143 and item 145.

Item 136 - Section 5 (definition of designated teletext service)

Item 136 omits 'Schedule 4' from the definition of 'designated teletext service' in section 5 of the Radcomms Act and substitutes 'Schedule 6'. This amendment is consequential to the proposed amendments to Schedule 4 and Schedule 6 of the BSA discussed in item 93 and item 132.

Item 137 - Paragraph 44A(2)(d)

Item 137 omits ‘1992; and’ from paragraph 44A(2)(d) of the Radcomms Act and substitutes ‘1992.’. This amendment is consequential to the proposed amendments to section 44A of the Radcoms Act discussed at item 138.

Item 138 - Paragraphs 44A(2)(e) and (f)

Item 138 repeals paragraphs 44A(2)(e) and (f) of the Radcomms Act. These amendments are consequential to the proposed repeal of Part 2 of Schedule 4 to the BSA (discussed at item 100) and the proposed repeal of clauses 19 to 35AA of Schedule 4 to the BSA (discussed at item 101).

Item 139 - Subsection 44A(12)

Item 139 repeals subsection 44A(12) of the Radcomms Act. This amendment is consequential to the proposed amendments to clause 2 of Schedule 4 to the BSA discussed at item 91 and item 93.

Item 140 - Subsection 100(1)

Item 140 omits references to sections ‘100B, 101B, 101C, 102, 102A’ of the Radcomms Act from subsection 100(1) and substitutes ‘102’. This amendment is consequential to the proposed repeal of sections 100B, 101B, 101C of the Radcomms Act, discussed at item 143, and of the repeal of section 102A of the Radcomms Act, discussed at item 145.

Item 141 - Subsection 100(5)

Item 141 omits ‘100B, 102A, 102AH or’ from subsection 100(5). This amendment is consequential to the proposed repeal of sections 100B, 102A and 102AH, discussed at items 143, 145 and 147, respectively.

Item 142 - Section 100AA

Item 142 repeals section 100AA and substitutes proposed new section 100AA. As the simulcast period in all licence areas has ended, proposed new section 100AA does not include references to redundant provisions.

Item 143 - Sections 100B, 101B and 101C

Item 143 repeals sections 100B, 101B and 101C. As the simulcast period in all licence areas has ended and the cancellation of licences under subsection 100B(2C) has come into effect, section 100B is redundant and can be repealed. Sections 101B and 101C relate to the issuing of transmitter licences where licensees elect to multi-channel under subclause 6(7B) of Schedule 4 (a multi-channelling election). As all multi-channel elections have been revoked by the relevant licensees, these sections are now redundant and can be repealed.

Item 144 - Subsections 102(2A), (2B), (2C), (2D), (2E), (2EA), (2F), (2G), (2H), (2J) and (6)

Section 102 provides information on transmitter licences for certain broadcasting services. As all multichannel elections have been revoked by the relevant licensees, subsections (2A), (2B), (2C), (2D), (2E), (2EA), (2F), (2G), (2H) and (2J) are redundant. The definitions of multi-channelling election and exempt remote area service in subsection (6) are also redundant and can be repealed.

Item 145 - Sections 102A, 102AA and 102AB

Sections 102A, 102AA and 102AB concern the authorisation of multi-channel commercial services during the simulcast period. As the simulcast period in all licence areas has ended these sections are redundant and can be repealed.

Item 146 - Sections 102AC and 102AD

Sections 102AC and 102AD refer to transmitter licences issued before and after the end of the simulcast period. As the simulcast period in all licence areas has ended these sections can be streamlined. Under proposed new section 102AD, the transmitter licence continues to authorise one or more HDTV multi-channelled commercial television broadcasting services and one or more SDTV multi-channelled commercial television broadcasting services.

Item 147 - Sections 102AG and 102AH

Section 102AG prevents the ACMA from issuing a transmitter licence to a self-help provider to retransmit in analog mode the programs transmitted by a commercial television broadcasting licensee. Section 102AH provided for cancellation of these transmitter licences. As the simulcast period in all licence areas has ended this prohibition is no longer necessary and can be repealed.

Item 148 - Subsection 103(1)

Subsection 103(1) concerns the duration of apparatus licences and requires consequential amendment to reflect the proposed repeal of section/subsections 101C, 102(2D), and 102(2G) and 102A(2D) under items 143 to 146.

Item 149 - Subsection 103(2)

Subsection 103(2) concerns the duration of apparatus licences and requires consequential amendment to reflect the proposed repeal of section/subsection 101B, 101C, 102 and 102A under items 143 to 146.

Item 150 - Subsections 103(4AA), (4AB), (4C), (4D), (4E) and (4F)

Subsections 103(4AA), (4AB), (4C), (4D), (4E) and (4F) concern the duration of apparatus licences and require and have been repealed to reflect the proposed repeal of section/subsections 101B, 101C, 102(2D), (102(2G), 102A(1) and 102A(2D) under items 143 to 146.

Item 151 - Subsection 106A(2)

Subsection 106A relates to the issue of an apparatus licence being treated as an asset of a person for the purposes of section 50 of the *Competition and Consumer Act 2010*. References to licences issued under 101B, 101C and 102A in this subsection are omitted because they are redundant due to proposed repeal of these sections under items 143 to 146.

Item 152 - Paragraphs 107(3)(a) and 108(5)(a)

Section 107 refers to the general conditions of apparatus licences. Section 108 refers to additional conditions for transmitter licences. References to transmitter licences issued under sections 101B, 101C and 102A in paragraphs 107(3)(a) and 108(5)(a) are omitted because they are redundant due to proposed repeal of these sections/subsections under items 143 to 146.

Item 153 - Subsection 109(1)

Section 109 refers to the conditions of transmitter licences for certain broadcasting services. References to licences issued under sections 101B, 101C and 102A in subsection 109(1) are omitted because they are redundant due to proposed repeal of these sections/subsections under items 143-146.

Item 154 - Subsections 109(1A) and (1B)

Subsection 109(1A) refers to licences issued under section 101B and subsection 109(1B) refers to licences issued under section 101C. These subsections are omitted because they are now redundant due to the proposed repeal of sections 101B and 101C under item 143.

Item 155 - Subsection 109(2)

Subsection 109(2) refers to licences issued under section 102 and 102A. The reference to section 102A is omitted because it is now redundant due to the proposed repeal of section 102A under item 145.

Item 156 - Paragraph 111(1)(d)

Section 111 refers to changes to licence conditions. References to sections 101B, 101C and 102A in paragraph 111(1)(d) are omitted as they are now redundant due to the proposed repeal of these sections under items 143 to 146.

Item 157- Subsection 111(5)

Subsection 111(5) refers to changes to licence conditions under the digital television conversion schemes. As the simulcast period in all licence areas has ended this section is redundant and can be repealed.

Item 158 - Subsections 125(2) and 129(1)

Section 125 refers to general provisions for the suspension and cancellation of apparatus licences. Section 129 refers to the renewal of apparatus licences. References in subsections 125(2) and 129(1) to sections 101B, 101C and 102A are omitted as they are now redundant due to the proposed repeal of those sections under items 143 to 146.

Item 159 - Subsection 130(3)

Section 130 refers to the renewal of apparatus licences. Subsection 130(3) contains references to licences issued under section 100B which are now redundant due to the proposed repeal of that section under item 143.

Item 160 - Subsection 131AB(2)

Section 131AB refers to the transfer of apparatus licences. Subsection 131AB(2) contains references to licences issued under section 100B which are now redundant due to the proposed repeal of that section under item 143.

Item 161 - Subparagraphs 153H(1)(c)(ii) and (iii)

Section 153H refers to apparatus licences spectrum reallocation declarations. Subparagraph (1)(c)(ii) contains a reference to licences issued under section 101B and subparagraph (1)(c)(iii) contains a reference to licences issued under section 101C. These references are now redundant due to the proposed repeal of sections 101B and 101C under item 143.

Item 162 - Paragraph 153P(2)(db)

Section 153P refers to restrictions on the issuing of apparatus licences in spectrum designated for reallocation. Paragraph (2)(db) concerns arrangements associated with the interim period for the restack of channels. As the restack is scheduled to be completed by 31 December 2014, this paragraph will become redundant and can be repealed.

Item 163 - Subsection 153P(4)

Subsection 153P(4) makes reference to paragraph 153P(2)(db) which concerns the interim period for the restack of channels. This reference will become redundant due to the proposed repeal of paragraph 153P(2)(db) under item 162.

Item 164 – Application – appeals to the AAT

Item 164 is an application provision providing that the amendments to section 204 of the BSA, relating to refusal to allocate a licence under section 38C (see item 50) do not apply in relation to decisions made before the commencement of item 164.

Item 165 - Application—right of review

Item 165 provides that the amendment of clause 62 to Schedule 4 of the BSA made by this Schedule does not apply in relation to a decision made before the commencement of this item.

Item 166 Application – NBS transmitter licences

Item 166 provides that the amendment of section 100AA of the Radcomms Act made by this Schedule applies relation to a transmitter licence whether the licence was issued before or after the commencement of this item.

Schedule 3 – Eligible drama program expenditure audits

Broadcasting Services Act 1992

Item 1 – Section 103B

Item 1 repeals the definitions of ‘compliance certificate’ and ‘registered auditor’ from section 103B.

The definition of ‘compliance certificate’ is no longer required as a consequence of the repeal of Subdivision I of Division 2A of Part 7. The repeal of Subdivision I of Division 2A of Part 7 is discussed in the commentary for item 4 below.

Similarly, the definition of ‘registered auditor’ is no longer required due to the repeal of subsections 103ZA(1) and 103ZB(1). The repeal of these subsections is discussed in the commentary for items 2 and 3 below.

Item 2 – Subsection 103ZA(1)

Item 2 repeals subsection 103ZA(1) and substitutes proposed new subsection 103ZA(1).

This amendment removes the requirement that annual returns lodged with the ACMA by licensees who provide one or more subscription TV drama services be accompanied by a certificate by a registered auditor that states that the return, in so far as it relates to expenditure incurred by the licensee, is correct.

Proposed new subsection 103ZA(1) still requires that such licensees lodge an annual return with the ACMA that is in a form approved by the ACMA and that contains such information as the form requires in relation to the application of Division 2A of Part 7 in connection with the licensee’s service.

Item 3 – Subsection 103ZB(1)

Item 3 repeals subsection 103ZB(1) and substitutes proposed new subsection 103ZB(1).

This amendment removes the requirement that annual returns lodged with the ACMA by persons who are channel providers or part-channel providers in relation to one or more subscription TV drama services be accompanied by a certificate by a registered auditor that states that the return is correct in the opinion of the auditor.

Proposed new subsection 103ZB(1) still requires that such channel providers or part-channel providers lodge an annual return that is in a form approved by the ACMA and that contains such information as the form requires in relation to the application of Division 2A of Part 7 in connection with the relevant services.

Item 4 – Subdivision I of Division 2A of Part 7

Item 4 repeals Subdivision I of Division 2A of Part 7, which includes two sections - sections 103ZE and 103ZF.

The repeal of section 103ZE would remove requirements that the ACMA issue compliance certificates to licensees, channel providers and part-channel providers, which state whether eligible drama expenditure requirements have been met, or whether there is a shortfall that needs to be made up the following year.

Section 103ZF is repealed by item 4 as a consequence of the repeal of section 103ZE. Section 103ZF provides that a compliance certificate is prima facie evidence of the matters in the certificate and that it is a matter for the licensee to whom the certificate relates to bring evidence to rebut this prima facie evidence in any court proceedings arising under the BSA. With the proposed repeal of section 103ZE, a compliance certificate would no longer be issued. Section 103ZF would become redundant and it is therefore appropriate that it be repealed.

Item 5 – Application of amendments

Item 5 is an application provision. The amendments to eligible drama program expenditure auditing requirements made by this Schedule 3 will apply in relation to the financial year in which the items in Schedule 3 commence and later financial years.

Schedule 4 – Requirement to review codes of practice

Broadcasting Services Act 1992

Item 1 – Section 123A

Item 1 repeals section 123A.

Subsection 123A(1) requires the ACMA to periodically conduct a review of the operation of subsections 123(3A) and (3C) to see whether those subsections are in accordance with prevailing community standards. Subsections 123(3A) and (3C) require codes of practice to: apply the classification system provided by the *Classification (Publication, Films and Computer Games) Act 1995* for the purpose of classifying film; provide methods for modifying films so they are suitable for broadcast; require films classified a ‘M’ or ‘MA 15+’ to be broadcast within specified time periods; and provide for advice to consumers on the reasons for films receiving a particular classification.

Subsection 123A(2) requires the ACMA to recommend appropriate amendments to the BSA to the Minister if, after conducting such a review, the ACMA concludes that either, or both, subsections 123(3A) or (3C) are not in accordance with prevailing community standards.

Subsection 123A(3) requires the Minister to table a copy of such a recommendation in each House of the Parliament within 15 sitting days of that House after receiving the recommendation.

Item 2 – Clause 29 of Schedule 6

Item 2 repeals clause 29 of Schedule 6.

Clause 29 mirrors section 123A and requires the ACMA to periodically conduct a review of the operation of subclause 28(4) to see whether that subclause is in accordance with prevailing community standards. Subclause 28(4) requires codes of practice developed by a group representing datacasting licensees to: apply the classification systems administered by the Classification Board for the purpose of classifying films, interactive computer games and other content; provide for methods of modifying films and other content (other than interactive computer games) so that they are suitable to be transmitted; and provide for advice to consumers on the reasons for films, interactive computer games and other content receiving a particular classification.

Schedule 5 – Directorship notifications

This Schedule amends the media ownership and control provisions in the BSA.

The Omnibus Repeal Day (Autumn 2014) Bill 2014 proposes certain, other, amendments to the BSA media ownership and control provisions.

The amendments proposed by Schedule 5 have been drafted on the basis that the Omnibus Repeal Day (Autumn 2014) Bill 2014 will receive the Royal Assent, and these other amendments will commence, prior to this Bill passing both Houses of the Parliament (if it does, indeed, pass both Houses).

Broadcasting Services Act 1992

Item 1 – Section 62

Item 1 repeals section 62 of the BSA. The repeal of section 62 would remove requirements that commercial television broadcasting licensees, commercial radio broadcasting licensees, specified datacasting licensees and companies that publish associated newspapers, provide a list of their directors to the ACMA within 3 months after the end of each financial year.

Item 2 – Subsections 63(1), (2A) and (3) and 64(1), (2A) and (3)

Item 2 omits the phrase ‘10 days’ from subsections 63(1), (2A) and (3) and 64(1), (2A) and (3) and replaces it with ‘10 business days’.

These amendments extend the timeframe within which a licensee, controller or newspaper publisher must provide the required, contemporaneous, notifications of changes in control. The time period for compliance is extended from ten calendar days to ten business days.

Item 3 – Sections 65A and 65B

Item 3 omits ‘62’ from sections 65A and 65B. These amendments are a consequence of the repeal of section 62.

Item 4 – Application of amendments

Item 4 is an application provision. It provides that:

- the amendment of section 62 of the BSA made by this Schedule applies in relation to the financial year in which this item commences and later financial years;
- the amendments of section 63 of the BSA made by this Schedule apply in relation to the notification by a person of an event, if the person becomes aware of the event after the commencement of this item; and
- the amendments of section 64 of the BSA made by this Schedule apply in relation to the notification by a person of a position, if the person becomes aware of the position after the commencement of this item.

Schedule 6 – Captioning

Broadcasting Services Act 1992

Item 1 - Section 130ZK

Item 1 inserts four new definitions into section 130ZK for the purposes of Part 9D of the BSA. These definitions are ‘channel’, ‘channel provider’, ‘incidental matter’ and ‘part-channel provider’. The meanings for the definitions of channel provider and part channel-provider are provided in proposed sections 130ZKA and 130ZKB respectively, and are discussed in the commentary for item 2, below.

Proposed new definition of ‘incidental matter’ has the same meaning as the definition in section 103B of the BSA and means advertising, program promotions, announcements, hosting, or any other interstitial program. ‘Incidental matter’ is used within the definition of ‘channel provider’, discussed in the commentary for item 2, below.

Proposed new definition of ‘channel’ has the same meaning as the definition in section 103B of the BSA and means a continuous stream of programs. ‘Channel’ is used within the definitions of ‘channel provider’ and ‘part-channel provider’ as discussed in the commentary for item 2, below.

Item 2 - After section 130ZK

Item 2 inserts proposed sections 130ZKA, 130ZKB and 130ZKC after section 130ZK.

Proposed section 130ZKA provides a meaning for the term ‘channel provider’, for the purposes of Part 9D. A ‘channel provider’ is described as a person who packages a channel and supplies a subscription television licensee with the channel, where, apart from any breaks for the purposes of the transmission of incidental matter, the channel is televised by the licensee on their subscription television service. ‘Channel provider’ is introduced in Part 9D to confine the existing obligations to caption repeat programs in section 130ZZ to programs previously transmitted by the licensee that were supplied by the same channel provider, as discussed in the commentary for item 10, below

Proposed new subsection 130ZV(3), discussed in the commentary for item 4 below, also relies on the definition of channel provider as a means of specifying which subscription sports television services may aggregate their annual captioning targets for the purposes of the subsection.

The definition of ‘channel provider’ in proposed section 130ZKA is broader than the definition in section 103C in relation to subscription TV drama services on which it is based. The definition is not specific to drama services and excludes subsection 103C(c), that is, the requirement to carry on a business in Australia ‘by means of a principal office or of a branch, that involves the supply of the channel’. The definition accordingly includes persons who if offering a drama service would be considered to be ‘pass-through providers’ for the purposes of Part 7, Division 2A of the BSA.

Proposed section 130ZKB provides a meaning for the term ‘part-channel provider’, for the purposes of Part 9D. A ‘part-channel provider’ is described as a person who assembles a package of programs and supplies a subscription television licensee with the package, where that package is televised on a service for which there is no channel provider. The package of programs may not contain sufficient content to make up an entire channel. However, the

package must constitute a significant proportion of the program material that is televised by the licensee on their subscription television service. ‘Part-channel provider’ is introduced in Part 9D to confine the existing obligations to caption repeat programs in section 130ZZ to programs previously transmitted by the licensee that were supplied by the same part-channel provider, as discussed in the commentary for item 10, below.

The definition of ‘part-channel’ provider is similar to the existing definition in section 103D in relation to subscription TV drama services on which it is based but is not specific to drama services and excludes subsection 103D(c), that is, the requirement to carry on a business in Australia ‘by means of a principal office or of a branch, that involves the supply of the package’. The definition accordingly includes persons who if offering a drama service would be considered to be ‘pass-through providers’ for the purposes of Part 7, Division 2A of the BSA.

Proposed section 130ZKC confirms that a person is taken to have supplied a channel or a package of programs to a subscription television licensee whether that person has supplied a channel directly, or indirectly through one or more interposed persons.

Item 3 - Paragraph 130ZUA(3)(c)

Item 3 repeals paragraph 130ZUA(3)(c) and replaces it with a revised provision, the effect of which is to extend the deadline for lodgement of applications for exemption orders and target reduction orders by commercial television broadcasting licensees and national broadcasters.

Currently paragraph 130ZUA(3)(c) requires that applications for exemption orders or target reduction orders by commercial television broadcasting licensees and national broadcasters under section 130ZUA be made from the commencement of the financial year preceding the eligible period specified in the application and ending on the 180-day period beginning at the start of the eligible period specified in the application. ‘Eligible period’ is defined in subsection 130ZUA(15) as a financial year or any number of consecutive financial years up to five consecutive financial years. The effect of the proposed amendment is that if a free-to-air broadcaster intends to seek an exemption or target reduction order for one or more consecutive financial years, they have until 31 March in the first financial year for which the exemption or target reduction order is being sought to make the application.

Item 4 - Subsections 130ZV(1) to (4)

Item 4 repeals subsections 130ZV(1) to (4) and replaces those subsections with new subsections 130ZV(1) to (3). The effect of this is to remove spent captioning targets for the 2012 and 2013 financial years, enhance the readability of the provisions and introduce a modified formula in subsection 130ZV(3) for captioning targets for subscription television sports services.

Under proposed new subsection 130ZV(3), to satisfy the captioning target for a subscription television sports service, the licensee is entitled to apply the relevant captioning target to the total hours on all relevant sports services, rather than individual services. ‘Relevant sports services’ are defined as services televised by the licensee that are supplied by the same channel provider.

Proposed new subsection 130ZV(3) would provide subscription television licensees with the flexibility to direct captioning towards events of greater interest to subscribers, for example periodic sporting events such as world cups. The provision also recognises that sometimes televised sports events run past their scheduled viewing time resulting in the ‘next-on’ captioned program being moved to an alternate channel. Under the current rules subscription

broadcasters can either caption the next-on program in the alternate channel, resulting in ‘over-captioning’ (if the alternate channel has already met its target), or caption another potentially less popular program on a channel that has not reached its target. The proposed provisions will permit the licensee to continue captioning the next-on program and apply the captioned hours towards an aggregated captioning target for all relevant sports services. To ensure individual sports services still maintain an acceptable level of captioning, a minimum of two-thirds of the annual captioning target must be maintained for each separate sports service.

Section 130ZV(3) would only apply to subscription television sports services that have an annual captioning target set under s.130ZV(1). Subsection 130ZV(3) does not therefore apply to subscription television services exempted under subsection 130ZX(7) or services subject to an exemption order or target reduction order under section 130ZY.

Item 5 - At the end of section 130ZV

Item 5 adds proposed subsection 130ZV(6) at the end of section 130ZV. Proposed subsection 130ZV(6) provides that new subscription television services transmitted by a licensee are exempt from the captioning target established by section 130ZV for a period of one to almost two years, depending on when the new service commences. To qualify for the exemption the subscription television service must predominantly consist of programs not previously transmitted in Australia prior to the commencement of the service. Under proposed subsection 130ZV(6) the captioning targets would not apply from when the new service first commences continuing until the financial year beginning on the first 1 July that is at least 1 year after the service commenced. For example, if a new subscription television service commenced on 1 September 2015, the applicable exclusion period would be 1 September 2015 to 30 June 2017.

Item 6 - Subsection 130ZVA(2)

Item 6 amends subsection 130ZVA(2) so as to simplify the drafting of that provision.

Item 7 - Paragraph 130ZY(2)(c)

Item 7 repeals paragraph 130ZY(2)(c) and replaces it with a revised provision, the effect of which is to extend the deadline for lodgement of applications for exemption orders and target reduction orders by subscription television licensees in relation to their captioning obligations.

Currently paragraph 130ZY(2)(c) requires that applications for exemption orders or target reduction orders by subscription television licensees under section 130ZY be made from the commencement of the financial year preceding the eligible period specified in the application and ending on the 180-day period beginning at the start of the eligible period specified in the application. ‘Eligible period’ is defined in subsection 130ZY(13) as a financial year or any number of consecutive financial years up to five consecutive financial years. The effect of the amendment is that if a subscription television licensee intends to seek an exemption or target reduction order for one or more consecutive financial years, they have until 31 March in the first financial year for which the exemption or target reduction order is being sought to make the application.

Item 8 - Section 130ZYA(2)

Item 8 repeals existing subsection 130ZYA(2) and replaces it with a revised provision, the effect of which is to ensure consistency in expression and formula with the simplified expressions used in proposed amended section 130ZV. It also alters the subsection heading to include subscription television narrowcasters consistent with the scope of section 130ZYA.

Item 9 - Section 130ZZ

Item 9 inserts '(1)' at the beginning of section 130ZZ as a consequence of the amendment in item 10, discussed below.

Item 10 - At the end of section 130ZZ

Item 10 adds proposed new subsection 130ZZ(2) at the end of section 130ZZ. Proposed new subsection 130ZZ(2) would introduce a set of circumstances under which current section 130ZZ (to be renumbered as subsection 130ZZ(1) as noted in the commentary for item 8 above), would not apply. Currently section 130ZZ requires a subscription television licensee to ensure that all program-repeats are captioned if the program was captioned when previously transmitted.

However, in some circumstances the licensee will obtain the same program from two different channel providers. For example, the first version of the program obtained from one channel provider might already be captioned and therefore the licensee elects to transmit the program with captioning. The second version of the same program obtained from a different channel provider might not have captions included or the included captions might not comply with Australian requirements and therefore it is more burdensome for the licensee to transmit the program with suitable captioning. Under current section 130ZZ the licensee would be required to caption the second version, because it had previously transmitted the first version of the program with captioning. All future repeats of the program would also need to be captioned, regardless of who supplied the program. Proposed new subsection 130ZZ(2) would provide an exemption from the requirements of section 130ZZ if the program previously transmitted was originally supplied by a channel provider or part-channel provider and the program when repeated was supplied by a different channel provider or part-channel provider. Definitions for channel provider, part-channel provider are provided in proposed sections 130ZKA and 130ZKB, discussed in the commentary for item 2, above. Definitions for channel and incidental matter are provided in proposed revised section 130ZK, discussed in the commentary for item 2 above.

Item 11 - After subsection 130ZZA(2)

Item 11 inserts proposed new subsection 130ZZA(2A) after subsection 130ZZA(1). Proposed new subsection 130ZZA(2A) would provide that in determining a standard under subsection (1), the relevant industry regulator - the ACMA - must consider the differences between providing captioning services for:

- live television programs and pre-recorded television programs;
- wholly live television programs and programs that include both live and pre-recorded program material; and
- wholly pre-recorded television programs and programs that include both live and pre-recorded program material.

Currently section 130ZZA provides that the ACMA may determine standards that relate to the quality of captioning services provided by television broadcast licensees, including commercial television broadcast licensees, national broadcasters, subscription television licensees and subscription television narrowcasting licensees. The proposed new subsection 130ZZA(2A) will provide for the ACMA, in the event of determining a standard under subsection (1), to take into account that the provision of captioning services for a live television program (or partially live television program) may be subject to different conditions and restrictions than the provision of captioning services for a pre-recorded television program. Notwithstanding subsection 130ZZA(2A), where a standard is determined under s.130ZZA(1) proposed new subsection 130ZZA(2B) makes it clear that free-to-air broadcasters and subscription television licensees must aim to achieve the same captioning quality regardless of whether the program, or program material, was live or pre-recorded.

Item 12 - After subsection 130ZZA(7)

Item 12 inserts proposed new subsection 130ZZA(7A) after subsection 130ZZA(7). Proposed new subsection 130ZZA(7A) would provide that a failure by a licensee or a broadcaster to comply with a standard determined under subsection (1) is to be disregarded to the extent to which the failure is attributable to significant difficulties of a technical or engineering nature for the licensee or broadcaster, which it could not reasonably have foreseen.

Currently section 130ZZA provides that the ACMA may determine standards that relate to the quality of captioning services provided by television broadcast licensees, including commercial television broadcast licensees, national broadcasters, subscription television licensees and subscription television narrowcasting licensees. The proposed new subsection 130ZZA(7A) recognises that a broadcaster's captioning service may at times be affected by particular circumstances and factors that may be outside of the relevant broadcaster's control and cause a breach of a captioning quality standard determined by the ACMA under section 130ZZA.

Item 13 - Subsections 130ZZC(1) to (4)

Item 13 repeals subsections 130ZZC(1) to (4). Currently, subsections 130ZZC (1) and (2) require that a commercial television broadcasting licensee must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the licensee with Divisions 2, 4 and 5 during the financial year, and that the relevant report must both be in a form approved in writing by the ACMA, and set out required information. Similarly, subsections (3) and (4) require that a national broadcaster must, within 90 days after the end of each financial year, prepare and give to the ACMA a report relating to compliance by the national broadcaster with Divisions 2, 4 and 5 during the financial year, and that the relevant report must both be in a form approved in writing by the ACMA, and set out required information.

Captioning requirements on the free-to-air television sector have gradually increased to such an extent that it has become clear to consumers when services do not meet them, allowing a move to a complaints-based compliance framework. Accordingly the repeal of subsections 130ZZC(1) to (4) would remove the requirement for free-to-air broadcasters to provide annual compliance reports.

Item 14 - Subsection 130ZZC(7)

Item 14 amends subsection 130ZZC(7) to omit “(1), (3) or” as a consequence of item 13, discussed above. Currently subsection 130ZZC(7) requires the ACMA to publish on its website a copy of a report given to it under subsection (1), (3) or (5). Item 13 repeals the provision at subsections (1) and (3) that broadcasters must prepare and give to the ACMA a compliance report, and these subsections would be redundant as a result.

Item 15 - Section 130ZZD

Item 15 repeals section 130ZZD and the current record-keeping framework set in that section and replaces it with a revised section providing for a new ‘two-tiered’ record-keeping framework. Revised paragraph 130ZZD(2)(a) provides that free-to-air broadcasters and subscription television licensees must make written records to enable the responsible person’s compliance with Division 2 or 3 to be readily ascertained, including whether an annual captioning target has been met. Paragraph 130ZZD(2)(b) operates similarly to require audio-visual records to be kept to enable a responsible person’s compliance with Divisions 4 and 5 to be ascertained. Division 4 provides for the regulator to determine a captioning quality standard and Division 5 sets out circumstances in which emergency warnings should be captioned.

Revised section 130ZZD recognises that in practice only written records are required to ascertain whether a free-to-air broadcaster or subscription television licensee has met captioning targets whereas audio-visual records are required to ascertain whether quality standards have been met (were the captions readable, accurate and comprehensible). Revised subsection 130ZZD(3) specifies that written records will only be required to be kept for up to 90 days following the financial year to which they relate. Revised subsection 130ZZD(4) specifies that audio-visual records must be kept for only 30 days following broadcast unless the responsible person becomes aware of a complaint in which case they must be kept for 90 days following broadcast.

Proposed new subsection 130ZZD(5) requires a responsible person to make records retained under the section available without charge to the ACMA on request.

Item 16 - Division 7 of Part 9D

Item 16 repeals Division 7 of Part 9D. Currently, Division 7 of Part 9D requires that, before 31 December 2015, the ACMA must conduct a review of certain matters, including:

- (a) the operation of Part 9D;
- (b) whether the Part should be amended;
- (c) the operation of paragraph 7(1)(o) of Schedule 2;
- (d) whether paragraph 7(1)(o) of Schedule 2 should be amended;
- (e) the operation of paragraph 10(1)(eb) of Schedule 2;
- (f) whether paragraph 10(1)(eb) of Schedule 2 should be amended;
- (g) the operation of paragraph 11(1)(bc) of Schedule 2;
- (h) whether paragraph 11(1)(bc) of Schedule 2 should be amended.

From December 2013 an examination of Part 9D of the BSA has been conducted by the Department and the ACMA resulting in it no longer being necessary or appropriate to conduct a comprehensive statutory review that considers the operation of Part 9D.

Item 17 - Application of amendments

Item 17 specifies the application of amendments to the relevant sections of the BSA, and clarifies the timing associated with their application.

Item 18 - Transitional provision—standards under section 130ZZA

Item 18 provides that the ACMA must review, and vary as appropriate, any standards made under section 130ZZA of the BSA, having regard to subsection 130ZZA(2A) of that Act as inserted by this Schedule. The ACMA must do so within 12 months of the commencement of the subsection.

The provision recognises that the ACMA will need a period of time in which to re-determine a standard under section 130ZZA.

Schedule 7 – Media diversity points for commercial radio voices

Broadcasting Services Act 1992

This Schedule amends the media diversity provisions in the BSA to address an anomaly concerning the calculation of media diversity points in overlapping licence areas. The amendments provide that where a smaller commercial radio licence area is entirely within another, larger commercial radio licence area, the commercial radio broadcasting services licensed to operate in the larger licence area are also counted as media diversity voices in the smaller licence area.

Item 1 – Subsection 61AC(1) (table item 1, paragraph (d))

Item 2 – Subsection 61AC(1) (table item 2, paragraph (b))

Section 61AB establishes the circumstances in which an unacceptable media diversity situation exists in relation to metropolitan and regional licence areas of a commercial radio broadcasting licence (metropolitan and regional licence areas are defined under section 61AA).

- An unacceptable media diversity situation exists in relation to a metropolitan licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 5 (subsection 61AB(1)).
- An unacceptable media diversity situation exists in relation to a regional licence area of a commercial radio broadcasting licence if the number of points in the licence area is less than 4 (subsection 61AB(2)l).

This is also known colloquially as the ‘5/4’ rule, with a point equivalent to a media ‘voice’.

The number of diversity points or voices in a licence area is determined by reference to the table at subsection 61AC(1). The paragraphs of the table relevant to the amendments contained in this schedule are as follows.

- Table item 1, paragraph (d) of subsection 61AC(1) provides that a group of 2 or more media operations that includes a commercial radio broadcasting licence constitutes 1 point if the licence area of that commercial radio broadcasting licence is, or is the same as, the first radio licence area (media groups and media operations are defined in section 61AA).
- Table item 2, paragraph (b) provides that a single commercial radio broadcasting licence (i.e. a media operation that is not controlled as part of a media group) constitutes one point provided that, consistent with table item 1, paragraph (d), the licence area of the commercial radio broadcasting licence is, or is the same as, the first radio licence area.

As a result, a commercial radio broadcasting licence is only counted as a point for the purposes of assessing media diversity in a particular radio licence area if the licence area of the service is, *or is the same as*, the particular radio licence area in question. A commercial radio service that is licensed to operate in a licence area that entirely overlaps another, smaller licence area is not counted as a voice in the smaller licence area, even though the service would in practice be available to all residents in this smaller licence area.

Item 1 amends table item 1, paragraph (d) of subsection 61AC(1) to provide that a media group that includes a commercial radio broadcasting licence counts as 1 point in a particular

radio licence area where that licence area is the same as, or entirely within, the licence area of the commercial radio broadcasting licence. Item 2 amends table item 2, paragraph (b) in a similar fashion in relation to a commercial radio broadcasting licence that is not part of a media group.

Together, these amendments provide that a commercial radio broadcasting service licensed to operate in a licence area that entirely overlaps a smaller licence area is counted as a voice, or included in the determination of a voice, in that smaller licence area.

This schedule does not amend the calculation of media diversity points in relation to commercial television broadcasting licences or associated newspapers.

Schedule 8 – Effects of licence area population change

Broadcasting Services Act 1992

This Schedule amends the local content rules applying to regional commercial radio broadcasting licences, and the media ownership and control rules, to improve consistency in grandfathering arrangements relating to licence area population determinations. Specifically, the amendments introduce grandfathering provisions for commercial broadcasting licensees that, as a result of the ACMA making a population determination under section 30, would otherwise be in breach of the statutory limits on control and directorships contained in Divisions 2 and 3 of Part 5, or the local content rules for commercial radio.

Item 1 – Subsections 43C(4) to (4C)

Item 1 repeals a number of spent provisions and introduces grandfathering arrangements to prevent regional commercial radio broadcasting licensees from being adversely affected, in relation to the local content rules, as a result of population determinations by the ACMA.

Section 30 provides that the ACMA may determine the population of a licence area, the populations of areas where licence areas overlap, and the total population of Australia. In making such a determination, the ACMA is required to have regard to the most recently published census count from the Australian Bureau of Statistics (ABS).

Subsection 43C(1) requires the ACMA to ensure that, at all times on and after 1 January 2008, there is in force a licence condition requiring regional commercial radio broadcasting licensees to broadcast the applicable number of hours of material of local significance.

Subsection 43C(3) provides a default number of 4.5 hours, but provides for the Minister to vary that number by declaration under paragraph 43C(3)(b) or (c). The *Broadcasting (Hours of Local Content) Declaration No. 1 of 2007*, made by the then Minister in 2007 under paragraph 43C(3)(c), requires regional commercial radio broadcasting licensees in licence areas with populations of fewer than 30,000 people ('small licensees') to broadcast 30 minutes per day of material of local significance (or 'local content') during daytime business hours. Licensees in areas with a population in excess of 30,000 ('standard licensees') are required to broadcast 3 hours per day of local content during daytime business hours.

Item 1 repeals subsections 43C(4) to (4C), which are spent provisions requiring a statutory review into the making of a declaration of applicable hours under subsection 43C(3) and, subsequently, the making of such a declaration within a specified period. The review was conducted (*Local Content Levels Investigation Report – June 2007*) and, as noted above, a declaration made.

More substantively, item 1 introduces a new subsection 43C(4) that provides that if the ACMA makes under section 30 a new determination of the population of a licence area, or the population of Australia, and as a result of the determination a person would be in breach of the local content licence condition applicable to regional commercial radio broadcasting licensees, the licence condition continues to apply to the person as if the previous ACMA determination remained in force.

For example, if the ACMA made a new licence area population determination under section 30 which increased the population of a regional commercial radio broadcasting licence area from below 30,000 people to above 30,000 people then, absent this amendment, a regional commercial radio broadcasting licensee in that licence area would be required to broadcast an

additional 2.5 hours of material of local significance during daytime business hours each business day (i.e 3 hours rather than the current 30 minutes). The effect of this amendment is to prevent regional commercial radio broadcasting licensees from having to meet a higher regulatory burden arising from factors beyond their control (changes in the population of licence areas).

This amendment will not prevent regional commercial radio broadcasting licensees from voluntarily broadcasting levels of local content in excess of their regulatory obligation.

Item 2 – Section 52

Item 2 extends existing grandfathering arrangements to prevent commercial radio or television broadcasting licensees from being adversely affected in relation to the statutory control rules as a result of the making population determinations by the ACMA.

- Subsections 53(1) and 55(1) and (2) provide that a person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of commercial television broadcasting licences whose total licence area population exceeds 75 per cent of the population of Australia (commonly known as the ‘75 per cent audience reach’ rule).
- Subsections 53(2) and 55(3) and (4) provide that a person, either in their own right or as a director of one or more companies, must not be in a position to exercise control of more than one commercial television broadcasting licence in a licence area (commonly known as the ‘one-to-a-market’ rule).
- Sections 54 and 56 provide that a person, either in their own right or as a director of one or more companies, must not be able to exercise control of more than two commercial radio broadcasting licences in the same licence area (commonly known as the ‘two-to-a-market’ rule).

The application of these rules in relation to overlapping licence areas is affected by section 51, which provides that if more than 30 per cent of the population of one licence area is attributable to an overlap with another licence area, or one licence area is entirely within the other, the two licence areas are to be treated as one for the purposes of Part 5.

Section 52 provides that if the ACMA makes a new determination of the licence area population of a licence area or the population of Australia and, as a result of the determination, a person would be in breach of the 75 per cent audience reach rule, the reach rule continues to apply to the person as if the previous determination was in force. This grandfathering prevents commercial television broadcasting licensees from being inadvertently placed in breach of the 75 per cent audience reach rule by changes in licence area populations, which are factors beyond their control.

However, this grandfathering arrangement does not extend to the other statutory control rules (the one-to-a-market rule for commercial television broadcasting licences and the two-to-a-market rule for commercial radio broadcasting licences).

Item 2 amends section 52, with the effect that the existing grandfathering provisions extend to Divisions 2 or 3 in their entirety (also including the 75 per cent audience reach rule, the one-to-a-market rule and the two-to-a-market rule).

This Schedule does not amend or affect the treatment of overlapping licence areas under Division 5A of Part 5 of the BSA (the media diversity rules) as Division 5A establishes separate rules dealing with the treatment of population overlaps between licence areas.

Item 3 – Application of amendments

Item 3 provides that the amendments to sections 43C and 52 made by this Schedule apply in relation to population determinations made by the ACMA under section 30 on or after the day item 3 commences.

Schedule 9 – References to Legislative Instruments

This Schedule makes minor and technical amendments to Schedule 4 of the BSA. These amendments are a consequence of the repeal of sections 46A, 48 and Part XII of the *Acts Interpretation Act 1901* and include measures such as the removal of references to section 46A of the *Acts Interpretation Act 1901* and the insertion of references to legislative instruments.

Broadcasting Services Act 1992

Item 1 – Subclause 5(1) of Schedule 4

Item 1 omits the word “writing” from subclause 5(1) of Schedule 4 and replaces it with the phrase “legislative instrument”.

Item 2 – Subclause 5(3) of Schedule 4

Item 2 repeals subclause 5(3) of Schedule 4.

Item 3 – Subclause 48(1) of Schedule 4

Item 3 omits the word “written” from subclause 48(1) of Schedule 4 and replaces it with the word “legislative”.

Item 4 – Subclause 48(5) of Schedule 4

Item 4 repeals subclause 48(5) of Schedule 4.

Item 5 – Subclause 51(2) of Schedule 4

Item 5 omits the phrase “written determination made by the ACMA” from subclause 51(2) of Schedule 4 and replaces it with the phrase “determination under subclause (2A)”.

Item 6 – After subclause 51(2) of Schedule 4

Item 6 inserts proposed new subclause 51(2A) after subclause 51(2). Proposed new subclause 51(2A) provides that the ACMA may, by legislative instrument, make a determination for the purposes of subclause 51(2).

Item 7 – Subclause 51(3) of Schedule 4

Item 7 omits the word “written” from subclause 51(3) and replaces it with the word “legislative”.

Item 8 – Subclause 51(9) of Schedule 4

Item 8 repeals subclause 51(9) of Schedule 4.