BROADCASTING LEGISLATION AMENDMENT (DIGITAL TELEVISION) BILL 2010

SUPPLEMENTARY EXPLANATORY MEMORANDUM

Amendments to be moved on behalf of the Government

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy)
The Broadcasting Legislation Amendment (Digital Television) Bill 2010 (the Bill) contains provisions which implement the Government’s decision to enable provision of a satellite solution to areas of terrestrial digital television signal deficiency (black spots) and to address a number of related digital television issues.

The Bill as introduced would amend the Broadcasting Services Act 1992 (BSA) and the Copyright Act 1968 to:

- establish a new satellite broadcasting licence;
- require regional commercial television broadcasting licensees to provide local news content to the satellite service licensee for delivery on the satellite;
- require metropolitan commercial broadcasting licensees to provide their digital television services as requested by satellite service licensees for satellite delivery;
- establish a statutory licence arrangement under the Copyright Act 1968 to ensure satellite service licensees can fulfil their obligations to broadcast content without the potential for copyright infringement;
- establish conditional access arrangements to maintain the integrity of the new satellite licence areas;
- provide a mechanism by which satellite service licensees are able to meet the content requirements of classification time zones currently applicable to terrestrial services;
- identify primary satellite services for the regulation of content, captioning requirements and application of anti-siphoning provisions; and
- promote equivalency in the number of commercial digital television services broadcast in all terrestrial licence areas by enabling terrestrial commercial broadcasters in the under-served markets of regional South Australia, Griffith and Broken Hill to provide a third digital-only commercial television service, and to provide all related multi-channel services.

PROPOSED GOVERNMENT AMENDMENTS

The Government proposes a number of amendments to the Bill (sheet number BT230) that would:

- facilitate the re-stacking of digital channels within the broadcasting services bands (BSB) spectrum to achieve a digital dividend;
• give effect to the outcomes of the report of the review into the regulation of program standards for Australian content and children’s programs and captioning requirements on digital multi-channels;

• establish transmitter licensing arrangements for the conversion of analog re-transmission sites operating under self-help arrangements to digital and the establishment of new in-fill transmission sites by broadcasters;

• modify the regional commercial television broadcasting licence condition so that regional commercial television broadcasters are required to supply only ‘local news programs’ to the satellite service;

• make minor amendments to digital-analog simulcast and related requirements in the BSA to address unintended consequences that may create unnecessary regulatory complexity for the digital switchover process;

• provide for commercial and national broadcasters to apply to the Minister for exemption from obligations to convert analog terrestrial transmission facilities to digital in certain limited and specified circumstances;

• clarify what local news programming regional commercial television broadcasters are required to provide to satellite service licensees for broadcast on the satellite;

• clarify that commercial broadcasters in under-served areas are able to provide three licensed commercial services, including multi-channels, using only two channels of spectrum, and that all multi-channel services in these licence areas can be provided in standard definition format;

• address concerns raised by broadcasters during the Senate Environment, Communications and the Arts Legislation Committee inquiry into the Bill regarding potential criminal or civil liability arising from material broadcast on the local news service;

• amend technical standards provisions for domestic digital satellite television reception equipment to extend scope to reception of services other than commercial and national television broadcasting services;

• modify the proposed conditional access arrangements for the new satellite services to address minor issues related to the regulation and administration of the proposed conditional access scheme; and

• resolve an inconsistency between the proposed copyright provisions and the requirement for broadcasters to retain records of broadcast of political or current affairs matters.

FINANCIAL IMPACT STATEMENT

The amendments to the Bill will not of themselves result in any direct financial impact on the Government.
ABBREVIATIONS

The following abbreviations are used in this supplementary explanatory memorandum:

ABC: Australian Broadcasting Corporation
ACMA: Australian Communications and Media Authority
Bill: Broadcasting Legislation Amendment (Digital Television) Bill 2010
BSA: Broadcasting Services Act 1992
BSB: Broadcasting services bands
CAS: Conditional Access Scheme
Copyright Act: Copyright Act 1968
DOLMA: digital-only local market area
HD: high definition
LAP: Licence Area Plan
Minister: Minister for Broadband, Communications and the Digital Economy
NBS: national broadcasting service
Radiocommunications Act: Radiocommunications Act 1992
SBS: Special Broadcasting Service Broadcasting Corporation
SD: standard definition
The Code: Commercial Television Industry Code of Practice
NOTES ON AMENDMENTS
SHEET BT230

Amendment (1)

This amendment adds a new commencement provision to the Bill. The new commencement provision relates to the inclusion of a Schedule 2 to the Bill (see Amendment (79) of these proposed Government Amendments).

Amendment (2)

This amendment clarifies that the defined term for conditional access scheme means a scheme that sets out the rules that control viewer access to the satellite television services provided under a commercial television broadcasting licence issued under proposed section 38C (proposed section 38C is at Item 26 of the Bill).

Amendment (3)

This amendment would insert a new Item 4A into Schedule 1 of the Bill. New Item 4A provides a new defined term for section 6 of the BSA. The new defined term is final digital television switch-over day. The term is defined in proposed section 8AE of the BSA (see Amendment (5) below).

Amendment (4)

This amendment is a technical amendment to replace the defined term for scheme administrator (see Item 7 in Schedule 1 to the Bill). The new defined term clarifies that a scheme administrator has the meaning given by proposed subsection 130ZB(8) (proposed section 130ZB is at Item 64 of Schedule 1 to the Bill), which contemplates the scheme administrator being either:

- a company identified as being the administrator by the conditional access scheme that is developed by industry and registered by the ACMA; or
- the ACMA, where the conditional access scheme is developed by the ACMA.

Amendment (5)

This amendment defines the term final digital television switch-over day. The term is used in relation to the application of:

- the Australian content and children’s television standards to commercial television digital multichannels (see proposed Amendment (24) below); and
- captioning requirements for commercial television digital multichannels and the digital multichannels provided by the ABC and the SBS (see proposed Amendments (61)-(68), (69)-(70) below).

The final digital television switch-over day is identified by reference to the day the simulcast period ends in the last commercial television licence area in Australia (and corresponding coverage area for the ABC and the SBS) - that is, the last licence area or coverage area that ceases analog television broadcasting.
The duration of a simulcast period, including the day when a simulcast period ends, is determined according to the rules set out in Schedule 4 to the BSA.

The operation of the final digital television switch-over day concept will effectively defer the imposition of compliance obligations on multi-channeled services provided by broadcasters under the Broadcasting Services (Australian Content) Standard 2005, the Children’s Television Standards 2009, and certain captioning requirements until all commercial television services and national broadcasting services have switched to digital-only television broadcasting. This is discussed in more detail in the notes on Amendments (24), (61)-(68), (69)-(70).

**Amendments (6) to (10)**

These amendments make changes to Items 28 and 29 in the Bill. Item 29 is about the service authorisation for a licensee who holds two additional commercial television broadcasting licences, one of which is issued under section 38B of the BSA. Licence areas where section 38B licences have been issued are known as under-served markets, as are licence areas where licences have been issued under section 38A of the BSA. In these licence areas there are, or have been, fewer than three commercial television broadcasting services.

Items 28 and 29 proposed to modify the service authorisations for eligible parent licensees and eligible section 38B licensees. The modified service authorisations would apply in relation to the holder of a parent licence who is issued a section 38B licence after the commencement of proposed section 38C (that is, the day after Royal Assent). The modified service authorisation would permit each eligible licensee to substitute a HDTV multi-channeled commercial television broadcasting service provided under the licence with a SDTV multi-channeled commercial television broadcasting service. The provision of an SD service in place of an HD service uses less transmission capacity and so is more cost-effective for licensees in markets that have historically been less commercially viable (and thus under-served).

However, Items 28 and 29 did not cater properly for services provided under a section 38A licence where the licensee of that licence is in future issued a licence under section 38B (a situation that would be enabled by Item 14 of the Bill). Amendments (6)-(10) propose to rectify this omission.

Amendment (6) amends Item 28 in the Bill to add to proposed subsection 41B(1A) a reference to an eligible section 38A licence. As would be the case for the parent licence, the effect of the amendment is to disapply the service authorisation that would ordinarily apply to a commercial television broadcasting licence issued before 1 January 2009 in relation to services provided during the remainder of the simulcast period, and enlivens the modified service authorisation.

Amendments (7)-(8) amend Item 29 in the Bill to insert references to an eligible section 38A licence in proposed subsection 41B(2A). The modified service authorisations for an eligible section 38A licence are set out in proposed subsections 41B(2CA)-(2CB) (see Amendment (9) below). The modified service authorisations for an eligible parent licence and an eligible section 38B licence are respectively set out in proposed subsections 41B(2B)-(2C) and proposed subsection 41B(2D) (as introduced).
Amendment (9) would insert additional service authorisations so that an eligible section 38A licensee can choose to provide a service that, during the remainder of the simulcast period, does not include an HD multi-channel. If the licensee chooses to not transmit an HD multi-channel, they are authorised to provide an SD multi-channel instead. A section 38A licensee can also choose to provide an HD multi-channel.

Amendment (10) amends proposed subsection 41B(2E) in Item 29 in the Bill. This proposed subsection is an application provision for a section 38B licence that is issued after the commencement of proposed section 38C. Such a section 38B licence will be issued to a person who already holds two other commercial television licences for that licence area (the original licence and a section 38A licence). Proposed subsection 41B(2E) (as amended) would provide that for the purpose of the modified service authorisations for particular eligible licences:

- the original licence is an eligible parent licence;
- the section 38A licence is an eligible section 38A licence; and
- the section 38B licence allocated after the commencement of proposed section 38C is an eligible section 38B licence.

Collectively, these services are permitted to substitute an HD multi-channel with an SD multi-channel.

Amendments (11) and (12) 
Amendments (20) to (23)

Amendment (12) would delete Items 36, 37, 38, 39 and 40 from the Bill. Amendments (11), (21), (22) and (23) would consequentially amend Items 32, 41 and 50 to delete cross-references and references to the measure contained in Item 38. Amendment (20) consequentially amends Item 41 to delete a defined term that related to Item 38.

Item 38 in the Bill proposed to amend section 43A of the BSA to add a licence condition. The new condition would have required regional aggregated commercial television broadcasting licensees (defined in subsection 43A(2) of the BSA) to supply the material of local significance that they broadcast to the section 38C licensee, so that such material could be re-broadcast on the satellite commercial television broadcasting service that covered the regional aggregated commercial television licence area.

The Government has since decided to narrow the scope of this ‘must supply’ obligation on regional aggregated commercial television licensees. The revised condition only applies to local news and weather information and not all material of local significance that may be broadcast in regional aggregated commercial television licence areas. This narrower obligation is consistent with the obligation imposed on other regional commercial television licensees (as per proposed section 43AA in Item 41 of the Bill, subject to Amendments (13)-(21)). As a result, the originally proposed amendments to section 43A are no longer required.
Amendments (13) and (14)  
Amendment (16)

These amendments make minor changes to the text of Item 41 in the Bill, consequential to the substantive amendments proposed by Amendments (15), (17)-(19).

Amendment (15)  
Amendments (17) to (19)

These amendments would modify the licence condition that requires regional commercial television licensees to supply local news programs to the section 38C licensee for re-broadcast on the satellite commercial television broadcasting service that covers that regional commercial television licence area.

Amendment (15) amends Item 41 of the Bill to modify the licence condition. The proposed modification makes it clear that regional commercial television licensees will be required to comply with the licence condition if the licensee has not previously broadcast the program in the licence area.

Amendment (17) also amends Item 41 of the Bill to modify the licence condition. The proposed replacement subsection 43AA(3) and the addition of proposed subsection 43AA(3A) would modify the application of the licence condition so that the regional commercial television licensee does not breach the condition if it does not supply all or part of a local news program it is otherwise required to supply because it reasonably believes that the broadcast of the program (or a part of the program) in the satellite licence area could lead to the satellite broadcaster breaking the law in the specified ways.

The proposed modification recognises that the satellite licence area will, in most cases, be substantially larger than the regional licence area from where the local news program originates. Most regional licence areas are wholly within a particular State or Territory, whereas the South Eastern Australia TV3 and the Northern Australia TV3 satellite licence areas cover several jurisdictions. As a result, it is possible that a local news program that is created primarily for an audience within the regional licence area may contain material that, if broadcast in another jurisdiction, could contravene a law (including court orders). For example, a local news program might contain a report on a court proceeding taking place in another jurisdiction. That proceeding may be subject to a suppression order that applies within that jurisdiction but not outside it.

Amendment (17) also proposes to modify the licence condition in relation to the supply of ‘repeat’ local news programs. Proposed subsection 43AA(3B) requires the regional commercial television broadcasting licensee to take reasonable steps to not supply repeat programs to the satellite broadcaster.

Amendment (18) deletes proposed subsections 43AA(4) and (5) from Item 41 of the Bill. Those subsections would have empowered the ACMA to determine, by legislative instrument, the meaning of a local news program and a local information program for the purpose of proposed section 43AA. Rather than delegating this law making function, the Government now proposes to define ‘local news program’ in the BSA.
Amendment (19) would insert a definition of local news program in proposed subsection 43AA(7) of the Bill. A program will be a local news program (and the regional commercial television broadcaster must - with limited exceptions - supply it to the satellite broadcaster in accordance with proposed section 43AA) if:

- it consists solely of local news and/or local weather information; or
- it consists primarily of local news and/or local weather information, with the rest of the program consisting of other news and/or other weather information (such as national or international news and weather).

‘News’ is intended to comprise information about current events, including sports events.

However, a local news program would not include short segments or headline updates that primarily promote another program (such as an upcoming news program) or that repeat news content previously broadcast by the regional commercial television broadcasting licensee concerned.

**Amendment (24)**

Under clause 60C of Schedule 4 to the BSA, the Minister was required to conduct a review of the regulation of captioning requirements and program standards for Australian content and children’s programs on digital multi-channels. The report of the review, *Content and Access: The future of program standards and captioning requirements on digital television multi-channels*, was tabled in Parliament on 3 June 2010.

The report recommended that:

- current legislated exemptions from captioning and program standards on digital multi-channels be extended until the final digital television switch-over date in 2013; and
- a further statutory review be undertaken to consider the application of the regulations for program standards and captioning requirements on digital multi-channels after the final switch-over date, to be conducted prior to 31 December 2012.

This amendment deletes Items 57 to 61 from the Bill, and proposes new Items to implement the recommendations relating to content standards. Recommendations relating to captioning (Amendments (61)-(68)) and a further statutory review (Amendment (75)) are discussed below.

Items 57 to 61 (as introduced) contained measures concerning the application of program standards made under section 122 of the BSA - that is, the *Broadcasting Services (Australian Content) Standard 2005* and the *Children’s Television Standards 2009* - to a licensee of a proposed section 38C licence.

The amendments to Item 57 will repeal and replace that Item. Item 57 provides that the program standards will not apply to any digital multi-channel provided by a commercial television licensee before the end of the final digital television switch-over day (see Amendment (5) above). However, the program standards will apply (as they currently do) to the licensee’s core/primary commercial television broadcasting service (Item 4 of the Bill refers). In short, this Item extends the multi-channel exemption that currently applies...
(and which ends at the end of the simulcast period for a licence area) until digital switch-over has been completed nationwide.

Multi-channels broadcast by regional commercial television broadcasters are generally supplied by their metropolitan affiliate broadcasters. The Government is implementing a region-by-region switch-over timetable, commencing in regional areas, with the major metropolitan markets to switch-over at the end of the process in the second half of 2013. Without the above amendments, regional commercial television broadcasters may not be able to broadcast the multi-channel services as supplied to them by metropolitan broadcasters, as the regional commercial television broadcaster multi-channel would be subject to full content and captioning regulation while the metropolitan broadcaster would not.

The amendments to Items 58 and 59 are consequential to the amendments to Item 57.

The amendments to Item 58 will repeal and replace that Item. Replacement Item 58 amends subsection 122(9) of the BSA to delete the reference to licences issued under section 36 of the BSA, as these licences will be covered by Item 57 as amended. As a result, subsection 122(9) will in future only apply to television licences issued under section 40 of the BSA.

The amendments to Item 59 will repeal and replace that Item. Replacement Item 59 would repeal subsection 122(10) of the BSA (definition of simulcast period). As a consequence of Item 57, all references to simulcast periods are being removed from section 122; they are being replaced by the final digital television switch-over day.

**Amendment (25)**

This Amendment would insert a new Item 61A into the Bill. The Item would insert a new section 123A into the BSA. The new section enables the ACMA to conduct a review into the application of the Code, in order to consider the appropriateness of its application to the broadcasting operations of commercial television licensees holding a licence under proposed section 38C (the satellite services).

Such a review may be necessary where the particular requirements on a section 38C licensee are not sufficiently addressed in the relevant code of practice. For example, the material a section 38C licensee may receive from regional broadcasters for broadcast on the local news service may contain an amount of non-program matter (as defined in the code of practice) which, if transmitted, may mean the section 38C licensee breaches the relevant provision of the code.

If the ACMA conducts a review and considers that the Code is not appropriate for the satellite services, the ACMA may request the industry group that developed the Code to develop a replacement code, within a period specified by the ACMA, that addresses specific matters as identified by the ACMA.

**Amendments (26) to (38)**

These Amendments amend Item 63 of the Bill, which inserts proposed section 130BB into the BSA to provide for technical standards for domestic digital television equipment for
services provided with the use of a satellite. Proposed section 130BB would give the ACMA the power to determine, by legislative instrument, technical standards for satellite reception equipment for the reception of commercial television broadcasting services provided by a section 38C licensee, and for national television broadcasting services provided by a satellite.

The Amendments add community television broadcasting services and open narrowcasting television services to the services for which the ACMA may determine technical standards in relation to satellite reception equipment. The intention is that, where a community television or an open narrowcasting television service negotiates transmission capacity with the relevant satellite platform provider, there should be no technical impediment to prevent that service from being accessible through the same reception equipment that is used to receive section 38C services and national broadcasting services provided by satellite.

Amendments (26), (27) and (28) amend proposed subsection 130BB(1) to include community television broadcasting services and open narrowcasting television services in the categories of broadcasting service for which the ACMA may make a standard.

Amendments (29), (30) and (31) amend proposed subsection 130BB(2) to include community television broadcasting services and open narrowcasting television services in the categories of broadcasting for which, if a standard was determined under proposed subsection 130BB(1) in relation to the reception of these services, it would be an offence if reception equipment was supplied that did not comply with the standard.

Amendments (32), (33) and (34) amend proposed subsection 130BB(3) to include community television broadcasting services and open narrowcasting television services in the categories of broadcasting for which, if a standard was determined under proposed subsection 130BB(1) in relation to the reception of these services, the supply of reception equipment that did not comply with the standard would be subject to civil penalty provisions.

Amendments (35) and (36) amend proposed subsection 130BB(6) such that, for the purposes of proposed section 130BB, it is immaterial whether domestic reception equipment is capable of receiving in isolation or in conjunction with any other equipment, any or all of the following:

- services provided by a section 38C licensee,
- national broadcasting services provided by a satellite,
- community television broadcasting services, or
- open narrowcasting television services.

Amendment (37) inserts new subsections 130BB(6A) and 130BB(6B) to provide for the Minister to direct the ACMA about the exercise of its powers to determine or vary technical standards under proposed subsection 130BB(1). The ACMA would be required to comply with such a direction.

Amendment (38) inserts a definition of community television broadcasting service for the purposes of proposed section 130BB.
Amendment (39)

This amendment makes a minor change to the objectives for the CAS made under proposed Part 9C of the BSA. A CAS complies with proposed section 130ZB if it is directed to the achievement of the statutory policy objectives.

Amendment (40)

This amendment amends Item 64 of the Bill to adjust the period of time mentioned in the eighth policy objective for the CAS (proposed subsection 130ZB(12) refers). As amended, the scheme administrator would have 15 business days within which to handle an application for a reception certificate. Business day is a defined term (see section 6 of the BSA).

Amendments (41) to (47)

These amendments to Item 64 of the Bill make a series of changes relating to the development of the CAS by industry and its registration by the ACMA, as well as the ACMA’s power to determine a CAS where industry’s attempt to do so is unsuccessful.

Amendment (41) amends Item 64 of the Bill to replace proposed paragraph 130ZC(1)(d), and adds a new paragraph 130ZC(1)(da). These new paragraphs:

- cater for the different circumstances in which a CAS may be submitted to the ACMA for registration (subparagraph 130ZCA(1)(d) - the substantive change to this paragraph is to accommodate new section 130ZCAA (Amendment (43) below refers); and
- makes clear that a CAS is only registrable if the ACMA is satisfied that it complies with proposed section 130ZB.

Amendment (42) extends the time within which the ACMA must register a CAS given to it by the industry association or body that developed it from 28 to 35 days.

Amendments (43) and (44) respectively insert new sections 130ZCAA and 130ZCAB.

New section 130ZCAA modifies the arrangements that apply to the initial CAS registration process. When the industry group has developed the first CAS and submitted it to the ACMA for registration in accordance with the preconditions set out in paragraphs 130ZCAA(1)(a)-(d), the ACMA may form the opinion (when considering whether to register the CAS under proposed section 130ZC) that either:

- the draft CAS is not compliant with the policy objectives set out in proposed section 130ZB, or
- the CAS is not consistent with the over-arching principle that a television viewer in the satellite licence area should have adequate reception of either all of the applicable terrestrial digital commercial television services or all of the satellite digital commercial television services that are required to be provided under the section 38C licence.

If the ACMA forms such an opinion, subsection 130ZCA(2) provides that the ACMA must invite the industry group to develop a revised CAS and to submit it to the ACMA. If
a revised CAS is developed and submitted to the ACMA, the ACMA can then decide whether to register it under proposed section 130ZC.

Subsection 130ZCAA(2) sets out the particulars for an invitation to the industry group from the ACMA, including the timeframes within which the ACMA must send out an invitation and the industry group must respond to such an invitation.

New section 130ZCAB deals with the process through which a registered CAS may be replaced. This section permits the ACMA to request the industry group to develop a replacement CAS if the ACMA is satisfied that the first registered CAS (as developed by that industry group under proposed section 130ZB and (if applicable) section 130ZCAA) is not achieving one or more of the policy objectives set out in proposed section 130ZB.

When inviting the industry group to develop a replacement CAS, the ACMA may specify particular matters that a replacement CAS should address, and specify a timeframe between 30 and 60 days within which the industry group is to develop a replacement CAS and submit it to the ACMA for registration.

Amendment (45) is consequential to Amendments (43) and (44). This Amendment amends Item 64 of the Bill to replace subsection 130ZCA(1). New subsection 130ZCA(1) would accommodate the changes to be made by the inclusion of new sections 130ZCAA and 130ZCAB.

Proposed section 130ZCA is about the registration of a CAS that is developed by the ACMA, not the industry group. Subsection 130ZCA(1) is the scope clause, which sets out the circumstances in which the ACMA may itself determine a CAS. As introduced, proposed subsection 130ZCA(1) provided that the ACMA’s CAS making function was only enlivened if the industry group had failed to have its CAS registered within 90 days after the allocation of the first satellite commercial television broadcasting licence under proposed section 38C.

As amended, subsection 130ZCA(1) would provide that the ACMA’s CAS making function is enlivened when:

- 90 days pass after the allocation of the licence, and no CAS has been registered by the ACMA;
- a CAS has been submitted for registration, but the ACMA has invited the industry group to revise the CAS yet no CAS is re-submitted within 60 days of the invitation;
- a CAS has been registered, and the ACMA has requested the industry group to develop a replacement CAS, but no replacement CAS is submitted for registration;
- a CAS has been registered, and the ACMA has requested the industry group to develop a replacement CAS, a replacement CAS is submitted for registration but is not registered by the ACMA within 35 days.

Amendment (46) amends Item 64 of the Bill to replace proposed subsection 130ZCA(3). This subsection provided that the ACMA cannot formulate and register its own CAS under proposed section 130ZCA unless it is satisfied that the scheme is consistent with the principle that a television viewer in the licence area for the satellite service should have adequate reception of all applicable terrestrial digital commercial television services or all applicable satellite digital commercial television services.
As amended, subsection 130ZCA(3) would supplement this principle with a requirement that the ACMA formulated CAS complies with the policy objectives set out in section 130ZB.

Amendment (47) amends the minimum time period in section 130ZCA for public consultation by the ACMA about a draft CAS it has formulated. The amended time period is 15 business days (business day is defined in section 6 of the BSA).

Amendment (48)

This Amendment inserts a new section 211AA into Item 68 of the Bill. Section 211AA is similar to proposed section 211A (which precedes it in Item 68 of the Bill). Section 211AA would address regulatory compliance issues faced by the licensees who provide commercial television broadcasting services in the two remote licence areas specified in subsection 211AA(1). The specified licence areas are Remote Central and Eastern TV1 (RCEA TV1) and Remote Central and Eastern TV2 (RCEA TV2). These licence areas cover more than one time zone.

Subsection 211AA(2) would permit the licensees for the RCEA TV1 and RCEA TV2 licence areas to nominate in writing to the ACMA a specified place within the licence area that would be the point of reference for measuring compliance with particular broadcasting obligations that turn upon the time of day.

Subsection 211AA(5) provides that if a nomination is in force, then the BSA and any program standards, other legislative instruments and any codes of practice registered under section 123, have effect in relation to any programs broadcast by the licensee in their licence area as if these programs had been broadcast in all parts of the licence area at the time that is legal time in the nominated place. (Legal time for each State and Territory refers to ‘standard time’ as determined under the relevant State or Territory legislation. Legal time also includes daylight saving time where applicable)

Subsections 211AA(3)-(4) provide that a licensee may, by written notice to the ACMA, withdraw a nomination. The withdrawal of a nomination does not prevent the licensee from making a fresh nomination.

Amendment (49)

This amendment modifies the scope of a commercial television licence condition which obliges the licensee to transmit their core service in analog and standard definition digital modes during the simulcast period for a licence area. This is known as the simulcast obligation. The simulcast obligation will apply to all of the licensee’s core service broadcasts within the licence area unless the Minister has made a DOLMA determination (such a determination requires the licensee to stop analog transmissions in a specified local market area for the remainder of the simulcast period).

The proposed modification would, for assessing a licensee’s compliance with the simulcast obligation, disregard digital transmissions made by the licensee under the authority of a transmitter licence issued under section 100 of the Radiocommunications Act. These types of transmitter licences are routinely issued to broadcasters to ‘fill gaps’ in their digital coverage of their licence areas. The location and operating power of some
of these ‘gap filler’ digital transmitters can sometimes result in the digital transmitter signal covering the licence area to a greater extent than existing analog transmission. This can amount to an inadvertent and technical breach of the simulcast obligation.

A similar amendment is proposed for the simulcast obligation carried by national broadcasters - see Amendment (60) below.

**Amendment (50)**

This amendment makes a technical correction to Item 72 of the Bill - this Item sets out the licence conditions that would apply to a satellite commercial television broadcasting licence allocated under proposed section 38C of the BSA. As introduced, the licence conditions set out in proposed clause 7B of Schedule 2 to the BSA includes an incorrect cross-reference in subclause 7B(3). This amendment corrects that cross-referencing error.

**Amendment (51)**

This Amendment to Item 72 restates the licence condition about the provision of local news that attaches to the satellite commercial television broadcasting service licensed under proposed section 38C. This licence condition is set out in clause 7D.

The restatement is partly for technical reasons, consequential to Amendments (11)-(12), and Amendments (20)-(23), noted above, regarding the supply by regional commercial television broadcasters of local news programs to the licensee of a section 38C licence.

In addition, clause 7D will be amended to make clear that a licensee of a section 38C licence is not subject to the licence condition to broadcast local news programs as supplied by a regional commercial television broadcaster if the broadcast via satellite of a news program could result in the section 38C licensee contravening a law (including a court order).

The proposed exception recognises the fact that the licence area for the section 38C licensee will, in most cases, be substantially larger than the regional licence area from where the local news program originates. Most regional licence areas are wholly within a particular State or Territory, whereas the South Eastern Australia TV3 and the Northern Australia TV3 satellite licence areas cover several jurisdictions. As a result, it is possible that a local news program that is produced by a regional commercial television broadcaster for an audience within the regional licence area may contain material that, if broadcast throughout the (larger) licence area for the section 38C licensee, could legally expose the section 38C licensee. For example, a local news program might contain a report on a court proceeding that is subject to a suppression order in a part of the satellite licence area.

**Amendments (52) and (53)**

Amendment (52) inserts a legislative note in the definitions clause (clause 2) of Schedule 4 to the BSA, under the defined term coverage area. The note directs the reader to clause 5J of Schedule 4.
Amendment (53) would insert a new clause 5J into Schedule 4 to the BSA. The new clause sets out a rule about the end of the simulcast period in overlapping coverage areas.

There are various locations around Australia where commercial television licence areas overlap. The end of the simulcast period in one licence area may be a different date to the end of the simulcast period in another licence area with which the first licence area overlaps.

The national broadcasters simulcast their services in ‘coverage areas’. A ‘coverage area’ is a geographic area that corresponds to a commercial television licence area. Where commercial television licence areas overlap a national broadcaster may be subject to conflicting simulcasting obligations – to the extent of the overlap there are two identical coverage areas with a (potentially different) simulcast period determined by reference to the commercial television licence area.

To address this anomaly, Amendment (53) provides that, if there are overlapping commercial television licence areas, the overlap area will be treated as if it were part of the commercial television licence area that has the later date for the end of the simulcast period. This will mean that the simulcast of a national broadcasting service in a coverage area that is an overlap area will end on that later day.

**Amendment (54)**

This amendment changes the duration of the simulcast period for regional licence areas in subparagraph 6(3)(c)(iiia) of Schedule 4 to the BSA. Currently, the duration of the simulcast period is expressed to run for 8 years from the date the simulcast period started. The proposed amendment would provide that the simulcast period for a regional licence area is to run until the end of 31 December 2013. This is subject to any determination that the Minister might make under clause 6A of Schedule 4 to the BSA to end the simulcast period in a particular regional licence area on an earlier date.

To this point, determinations have been made for the regional licence areas of Mildura/Sunraysia, the regional South Australian licence areas of Mount Gambier/South East, Riverland and Spencer Gulf, and Broken Hill. Under current legislation, the simulcast period for the remaining non-remote regional licence areas (Eastern Victoria, Western Victoria, Regional Victoria, Regional Queensland, Northern NSW, Southern NSW, Griffith/MIA, Darwin and Tasmania) would end on 31 March 2011, unless Ministerial determinations to re-set the date for the end of the simulcast period for these licence areas are made before 31 March 2011 (clause 6A of Schedule 4 to the BSA refers). If a Ministerial determination is made to fix a different date, that date may only be subsequently varied to a limited extent.

The current regulatory arrangements for digital switchover in regional licence areas do not allow sufficient flexibility for the Minister, in consultation with the ACMA, to make a considered assessment of the appropriate date for the end of the simulcast period in each of these licence areas. The Government considers that the current 8 year duration for the simulcast period in regional licence areas should be adjusted.
Amendments (55) and (56)

These amendments delete Items 94 and 96 from the Bill. The Government has decided that it is no longer necessary to automatically cancel multi-channelling elections made by particular commercial television broadcasters in historically underserved markets.

A multi-channel election under subclause 6(5A) or 6(5AA) of Schedule 4 of the BSA (for non-remote regional licence areas) or subclause 6(7B) (for remote licence areas) allows a broadcaster in an under-served area with an additional broadcasting licence to provide digital services under those licences using reduced transmitter and broadcasting spectrum capacity. These provisions reflect the greater financial difficulties facing regional commercial television broadcasters in smaller regional and remote markets to invest in the infrastructure required to convert to digital.

The Government considers that the better approach is to modify the multi-channelling election arrangements in anticipation of the completion of the switch-over to digital television. The Government’s revised arrangements for multi-channelling in historically under-served markets is set out in Amendment (78) below (new Items 144A-144E).

Amendment (57)

This amendment puts in place the regulatory arrangements needed to support the implementation of the Government’s decision to facilitate the conversion to digital television of some analog self-help re-transmission facilities.

Commercial television broadcasters have agreed to convert a number of existing analog self-help re-transmission sites to digital. The Minister has written to owners or operators of existing self-help re-transmission facilities, informing them as to whether they have been identified by commercial television broadcasters as facilities that are candidates for conversion to digital by those broadcasters.

It is anticipated that commercial broadcasters will contact the owners or operators of self-help re-transmission sites that have been identified for conversion, to negotiate details of transmission equipment upgrades, site access and maintenance, and related matters.

This amendment would insert a new Item 88A into Schedule 1 to the Bill, which in turn would insert into Schedule 4 to the BSA a new clause 6C that sets out an additional policy objective for Part A of the Commercial Television Conversion Scheme (which applies to non-remote television licence areas).

The new policy objective is directed towards the conversion of particular self-help re-transmission sites by particular commercial television broadcasting licensees.

New clause 6C, in setting out the policy objective for the conversion scheme, envisages that commercial broadcasters who are interested in converting self-help sites will notify their intentions to the ACMA before the end of analog broadcasting in all or part of the particular licence area, subject to any other conditions that may be set out in the Commercial Television Conversion Scheme. (The required timeframes for this notification process is set out in paragraph 6C(2)(d), and subclauses 6C(3)-(4).)
If the statutory pre-conditions are met, the ACMA must ensure that the transmitter licensing arrangements are modified, in accordance with the arrangements set out in the Commercial Television Conversion Scheme.

New clause 6C does not specify the type of transmitter licence that may be used for the conversion of self-help re-transmission sites and would not prevent, for example, the issuing of a transmitter licence under section 100 of the Radiocommunications Act (subject to spectrum availability and other requirements set out in that section) to a commercial television broadcaster to transmit its own service from that site.

**Amendments (58) and (59)**

There are a number of transmitters operating under licences issued to national and commercial broadcasters that provide analog television services to populations of 500 people or less. There are also a number of national and commercial broadcaster transmission facilities in a part of a licence area where not all of the national and/or analog commercial television broadcasting services available in the licence area are transmitted by broadcasters in that particular part of the licence area.

The introduction of new satellite services to provide digital television services may mean that the conversion of these broadcaster operated transmission facilities for the provision of terrestrial digital services may no longer be practical. The Government intends that, in certain limited and specific circumstances, a national or commercial television broadcaster may apply to the Minister for exemption from the digital conversion of a particular analog transmission facility.

Amendments (58) and (59) inset new Items 100A and 101A respectively into Schedule 1 to the Bill. These Items insert new clauses 9A and 21A respectively into Schedule 4 to the BSA. New clause 9A allows a commercial television broadcasting service to apply to the Minister for certain transmitters to be exempt from requirements under the Commercial Television Conversion Scheme to convert to digital. New clause 21A similarly allows a national broadcaster to apply to the Minister for exemption of certain transmitters under the National Television Conversion Scheme.

Where there is a requirement on a broadcaster under either the national or commercial television conversion schemes in Part A and Part B of Schedule 4 of the BSA to commence digital transmissions in an area, that broadcaster would be eligible to apply to the Minister to exempt a transmitter from digital conversion for that part of the licence area (for commercial broadcasters) or the corresponding coverage area (for national broadcasters), if:

- that transmitter would serve 500 people or less; or
- not all the commercial and national analog television services available in the licence area/coverage area are transmitted to that part of the licence area; and
- the broadcaster has not yet submitted an implementation plan to the ACMA for the commencement of digital transmission in that area.

A transitional arrangement is also proposed such that, if an implementation plan has already been approved by the ACMA under the relevant television conversion scheme, but digital transmissions have yet to commence in accordance with that implementation plan, then the broadcaster may apply to the Minister for exemption from complying with
the implementation plan in relation to a particular transmitter site which meets the conditions above.

Before granting an exemption to a commercial or national broadcaster the Minister would also need to be satisfied that viewers in areas served by these analog transmitters would have access to alternative digital television options, such as access to the relevant satellite television service in that area. The Minister would be required to consult with the ACMA before granting an exemption.

Amendment (60)

This amendment would insert a new Item 101B into Schedule 1 to the Bill. New Item 101B would amend Schedule 4 to the BSA to modify the scope of a national broadcaster’s obligation (set out in clause 35 of Schedule 4 to the BSA) to transmit their core service in analog and standard definition digital modes during the simulcast period for a coverage area.

Similar to the simulcast obligation that applies to commercial television broadcasters, the national broadcasters must simulcast their primary service broadcasts in analog and digital modes within the coverage area unless the Minister has made a DOLMA determination (such a determination requires the national broadcaster to stop analog transmissions in a specified local market area for the remainder of the simulcast period).

The proposed insertion of clause 35A into Schedule 4 to the BSA would, for the purpose of assessing a national broadcaster’s compliance with the simulcast obligation, disregard digital transmissions made by the broadcaster under the authority of a transmitter licence issued under section 100 of the Radiocommunications Act.

This clause is not intended to apply to transmitter licences required to be issued to national broadcasters under the National Television Conversion Scheme pursuant to section 100B of the Radiocommunications Act. Rather, the intention is to disregard additional transmitter licences issued to national broadcasters under section 100 of the Radiocommunications Act that increase digital transmission coverage within a coverage area, beyond what is required by the Conversion Scheme.

Amendments (61) to (68)

These amendments make changes to the captioning rules that apply to commercial television digital multi-channels and the digital multi-channels provided by the ABC and the SBS.

The Minister’s report of a review on the regulation of content and captioning on multi-channelled services was tabled in Parliament on 3 June 2010 (discussed above re: Amendment (24)). In relation to captioning, the report recommended that the current exemption from legislated requirements from captioning on digital multi-channels be extended until the final digital television switch-over date in 2013.

The changes will effectively defer the imposition of captioning obligations on broadcasters in relation to their secondary digital multi-channel services until all commercial television services and national broadcasting services have switched to
digital-only television broadcasting. The Government’s implementation of a staggered, region-by-region switch-over means that, if these amendments were not made, full captioning requirements would be placed on secondary digital multi-channels provided in regional licences areas while multi-channelled services in metropolitan markets would still be exempt from captioning requirements. As the multi-channelled services in regional markets are supplied by metropolitan broadcasters, this could mean that regional commercial television broadcasters could not broadcast these channels without breaching captioning obligations.

Amendment (61) would delete and replace Item 103 in the Bill with a series of new Items that make minor amendments to the text of clause 38 of Schedule 4 to the BSA. Clause 38 of Schedule 4 to the BSA sets out the captioning exemption that applies to commercial television broadcasting licences in force before 1 January 2009.

New Item 103 is restated to remove the reference in paragraph 38(4)(a) to a simulcast period being in force for a commercial television broadcasting licence. This Item, together with new Item 103B, extends the duration of the exemption from captioning for commercial television SDTV and HDTV multi-channels. The exemption will no longer be lifted at the end of the simulcast period for a licence area. Rather the exemption will continue to apply until the final digital television switch-over day.

New Items 103A and 103C make technical amendments to subclause 38(4) of Schedule 4 to the BSA to update references to a defined term. The new defined term is core/primary commercial television broadcasting service (Item 4 of the Bill refers).

Amendments (62) and (63) make changes to the captioning requirements set out in subclause 38(4A) of Schedule 4 to the BSA which applies to commercial television broadcasting services licences allocated on or after 1 January 2009.

Amendment (62) would amend Item 104 in the Bill to increase the scope of the application of subclause 38(4A) of Schedule 4 to those services that are covered by the new service authorisations for:

- new parent licences allocated on or after 1 January 2009, as set out in proposed subsection 41B(2C) (Item 29 of the Bill, in conjunction with Amendment (7), refers); and
- new section 38A licences allocated on or after 1 January 2009, as set out in proposed new subsection 41B(2CB) (Amendment (9) refers).

Amendment (63) would insert new Items 104A and 104B into Schedule 1 to the Bill. These Items amend subclause 38(4A) of Schedule 4 to the BSA to extend the application of the captioning exemption for SDTV and HDTV multi-channels in a similar way as Items 103 and 103B (Amendment (61) above refers).

Amendment (64) would apply the captioning exemption to the satellite commercial television broadcasting services in a corresponding fashion by amending Item 105 in the Bill to extend the duration of the exemption until the final digital television switch-over day (see also Amendments (3) and (5)).

Amendments (65)-(66) make similar changes to the captioning exemption as it applies to the national broadcasters.
Amendments (67)-(68) make changes to Items 110 and 111 in the Bill. Item 110 confined the application of subsection 38(9) of Schedule 4 to the BSA to terrestrial commercial television broadcasting services, while Item 111 provided a corresponding rule (set out in new subclause 38(4A) of Schedule 4 to the BSA) for the satellite commercial television broadcasting services licensed under proposed section 38C.

The amendments to Items 110 and 111 would provide that the captioning rules will not apply to the broadcast of programs by commercial television broadcasting licensees (except those that are issued a licence under proposed section 38C) on a SDTV or HDTV multi-channel before the final digital television switch-over day (unless the program has been previously broadcast with captions on one of the broadcaster's other services).

**Amendments (69) and (70)**

These amendments are consequential to amendments (63)-(64) above in relation to captioning requirements on national broadcasters. Amendment (69) inserts Items 111A, 111B and 111C into the Bill. These Items would amend subclause 38(10) of Schedule 4 to the BSA so that the requirement to provide captions on material broadcast on a national broadcaster multi-channel, where that material has already been subject to captioning on another of that broadcaster’s services, applies until the last digital television switchover day rather than the end of the simulcast period in a coverage area.

Item 112 in the bill inserts subclauses 38(10A) and 38(10B) into Schedule 4 of the BSA. Amendment (70) amends proposed subclause 38(10B) so captioning requirements for national broadcaster multi-channelled services provided by satellite are the same as for those transmitted terrestrially.

**Amendment (71)**

Amendment (71) is consequential to Amendments (69)-(70). This amendment would delete Item 113 from the Bill. Item 113 would insert a definition of *applicable terrestrial digital television switch-over date* for the purposes of clause 38 of Schedule 4 of the BSA. This definition is no longer required. A different defined term (*final digital television switch-over day*) is used in Amendments (69)-(70); see also Amendments (3) and (5).

**Amendments (72) to (74)**

Amendments (72)-(74) are consequential to Amendment (10) above and amend Items 115, 118 and 123 respectively. These items amend the anti-siphoning restrictions on multi-channelled commercial television broadcasting services in clauses 41B-41D of Schedule 4 to the BSA to include multi-channelled services authorised under section 41B of the BSA, as amended by Item 29.

**Amendment (75)**

This amendment inserts Item 132A into the Bill. Item 132A would insert new clause 60D into Schedule 4 of the BSA. The new clause requires the Minister to cause to be conducted a review of the operation of Part 9 of the BSA (which concerns program standards) and the BSA’s captioning rules to the extent that they apply to multi-
channelled television broadcasting services. The review must consider not only the operation of the current legislative provisions, but also consider whether those provisions should be amended.

The review must be completed before 31 December 2012. The Minister must cause a report of the review to be prepared, and table that report in each House of Parliament within 15 sitting days of the report being completed.

This amendment was recommended by the report of the review of captioning and content regulation of multi-channelled services tabled in Parliament on 3 June 2010 (see also Amendments (24) and (61)-(68)).

Amendment (76)

This amendment amends Item 141 in the Bill and is consequential to Amendment (12) above. Item 141 provides for a statutory licensing scheme in new Part VD of the Copyright Act for programs broadcast by a section 38C licensee, in circumstances where no commercial agreement is in place between a section 38C licensee and a program supplier (known as the original broadcaster in Part VD). The original broadcaster refers to the regional commercial television broadcaster who is required to supply local news (known as an eligible program in Part VD) to the section 38C licensee.

Amendment (76) would delete subsection 135ZZZG(1) from Item 41 in the Bill. This subsection concerned eligible programs supplied by the broadcaster who is subject to the licence condition set out in Item 38 of the Bill, Amendment (12) – noted above – would delete Item 38, and related items, from the Bill. As a result subsection 135ZZZG(1) is no longer required.

Amendment (77)

Amendment (77) replaces subsection 135ZZZI(5) so that a section 38C licensee, where it makes a copy of a program for the purposes of re-broadcasting a program pursuant to Part VD, is not required to destroy the copy within 7 days if the section 38C licensee is required to retain the copy for a longer period under a law of the Commonwealth.

This amendment addresses a potential inconsistency between subsection 135ZZZI(5) and clause 5 of Schedule 2 to the BSA, which requires a broadcaster to retain a record of matter relating to a political subject or current affairs for a period of 6 weeks from the date the matter was broadcast, or 60 days if a complaint was made about the matter.

Amendment (78)

This amendment inserts new Items into the Bill that amend the broadcasting transmitter licensing provisions in the Radiocommunications Act. These amendments are related to other amendments to the BSA noted above - see Amendments (55)-(56) (about multi-channel elections for commercial television broadcasters in under-served areas), and Amendment (57) (about the conversion of re-transmission facilities).

New Item 144A is related to Item 145. Item 144A amends subsection 100(5) of the Radiocommunications Act such that the ACMA is to disregard an apparatus licence that
has been cancelled during the preceding two years through the operation of new sections 102AF and 102AH (see Item 145). Licence cancellations through operation of law are not relevant to the merit of the licence application - and so are to be disregarded by the ACMA.

New Items 144B-144E amend sections 101B and 101C of the Radiocommunications Act. Section 101B allows a commercial television broadcasting licensee in a remote licence area whose licence is allocated under section 38B of the BSA since 1 January 2009 and who has in force a multi-channelling election to apply to the ACMA for an additional transmitter licence. Such an application must be made before the end of the simulcast period or simulcast-equivalent period.

Section 101C applies to both remote and non-remote licence areas, and allows a commercial television broadcasting licensee whose licence is allocated under section 38A or 38B of the BSA since 1 January 2009, and who has in force a multi-channelling election, to apply to the ACMA for an additional transmitter licence, provided the licensee has not already obtained a licence under section 101B. Like section 101B, the application for an additional transmitter licence must be made before simulcasting ends in the licence area.

Item 144B would amend section 101B to remove the requirement that the application for an additional transmitter licence be made before simulcasting ends in the licence area. Item 144C would repeal subsection 101B(6) which defines simulcast period and simulcast equivalent period. New Items 144D and 144E respectively amend section 101C in substantially the same way as Items 144B-144C amend section 101B.

New Item 145 inserts new provisions into the Radiocommunications Act relating to the conversion of analog self-help re-transmission facilities.

Proposed section 102AE requires the ACMA to vary transmitter licences held by those commercial television broadcasters who have, subject to meeting the requirements of the Commercial Television Conversion Scheme, notified to the ACMA their intention to convert particular self-help transmission facilities at particular sites (see the new policy objective for the Conversion Scheme set out in proposed clause 6C of Schedule 4 to the BSA - Amendment (57) above refers). The licence variations would authorise the commercial television broadcaster to operate additional digital transmitters at or near the former self-help provider transmission sites.

Proposed section 102AF is a counterpart to section 102AE. Section 102AF requires the ACMA to vary or cancel a transmitter licence held by a self-help provider (self-help provider is defined in section 212A of the BSA) as required by a scheme set out in the Commercial Television Conversion Scheme. A transmitter licence variation would remove the authorisations to operate radiocommunications transmitters in relation to those transmitter sites that a commercial television broadcaster has agreed to convert. (See the policy objectives set out in paragraphs 6C(2)(d) and (h) of Schedule 4 to the BSA - Amendment (57) above refers).

The ACMA will be required to cancel the self-help provider’s transmitter licence if, after the completion of the conversion process in accordance with the Commercial Television Conversion Scheme, there are no radiocommunications transmitters left for the self-help
provider’s transmitter licence to authorise the use of - see the policy objectives set out in paragraphs 6C(2)(d) and (g) of Schedule 4 to the BSA (Amendment (57) above refers).

Proposed section 102AG would regulate the transmission mode for transmitter licences issued to self-help providers after the end of the simulcast period. Section 102G would not permit the issuing of transmitter licences to self-help providers where that licence authorises transmission in analog mode. This is consistent with the Government’s policy to end analog television broadcasting at the end of the simulcast period. However, this section does not prevent the ACMA from renewing a self-help provider’s analog transmitter licence during the remainder of the simulcast period for a particular licence area.

Proposed section 102AH provides for the automatic cancellation at the end of the simulcast period of any analog transmitter licence held by a self-help provider who re-transmits programs transmitted by commercial television broadcasting services.

**Amendment (79)**

This amendment adds Schedule 2 to the Bill. The new Schedule contains measures that relate to the Digital Dividend. The digital dividend is the spectrum that will be freed-up by the switch-off of analog television signals. When the switch-off of analog television signals is completed, a large amount of spectrum will be made available from the existing broadcast service bands potentially for other uses. This presents a once in a generation opportunity to encourage the introduction of new communications services and to improve existing services.

Schedule 2 – Digital dividend

Part 1 of Schedule 2 would amend the BSA and the Radiocommunications Act for the primary purpose of re-stacking digital television channels and achieving the Government’s intended digital dividend objectives.

Part 2 of Schedule 2 provides for transitional arrangements in relation to variations that may be required to the national and commercial television conversion schemes (made under Schedule 4 to the BSA) as a result of the amendments made by this Schedule.

Part 1 – Amendments

*Broadcasting Services Act 1992*

Items 1 to 31 would make amendments to the BSA.

**Item 1 - Subsection 6(1) (definition of broadcasting services bands)**

This Item would amend section 6 of the BSA to repeal and replace the definition of *broadcasting services bands*. The restated definition describes what the bands are and how they are determined (cross-referencing the relevant provisions in section 31 of the Radiocommunications Act). The revised definition would delete paragraph (a)(ii) (which is about the Minister referring the designated spectrum to the ACMA for planning),
because there is no need for the defined term to mention the subsequent referral of the designated bands to the ACMA for planning.

Item 2 - Subsection 6(1)

This Item would amend section 6 of the BSA to insert a definition of digital dividend policy objectives. The defined term directs the reader to new section 8AF (Item 5 refers).

Item 3 - Subsection 6(1)

This Item would amend section 6 of the BSA to insert a definition of licence area plan. The defined term directs the reader to those plans prepared under subsections 26(1) or (1B) of the BSA (Items 6 and 7 refer).

Item 4 - Subsection 6(1)

This Item would amend section 6 of the BSA to insert a definition of special licence area plan. The defined term directs the reader to a plan prepared under subsection 26(1B) of the BSA (Item 7 refers).

Item 5 – Before section 8B

Item 5 would insert a new section 8AF into the BSA. Section 8AF would provide for the Minister to make a written instrument – the digital dividend policy objectives – that specifies the Government’s policy objectives in relation to freeing up one or more specified parts of the radiofrequency spectrum for use for purposes other than the provision of broadcasting services.

The digital dividend policy objectives may include:

- a future variation of a designation of BSB spectrum under subsection 31(1) of the Radiocommunications Act to remove relevant parts of the radiofrequency spectrum from the BSB; and
- the reorganisation, over time, of channels used for the provision of commercial and national television services, and other broadcasting services as required (subsection 8AF(3) refers).

The purpose of the digital dividend policy objectives would be to give the ACMA, and industry, clear guidance as to the Government’s objectives and parameters for the re-stack of digital channels.

While the instrument is a legislative instrument, it will not be disallowable (subsection 8AF(7)).

Normally a legislative instrument would be subject to disallowance under section 42 of the Legislative Instruments Act 2003. However, the proposed instrument would be non-disallowable because the realisation of a digital dividend will result in a more efficient use of the spectrum and is expected to return a significant fiscal benefit.

Consumers will benefit from new and improved services and improved access to business, health, education and government services, as well as more qualitative benefits such as a sense of connection to family and community that can be achieved through greater
connectivity. Businesses, government and community organisations will benefit in the form of productivity and service improvements from being able to access the latest wireless communications services, and greater access to customers.

If this instrument were to be disallowed, there would be significant uncertainty and delay in the planning activities needed to realise the digital dividend which, in turn, could delay the auction of freed-up digital dividend spectrum and the expected benefits that would flow from more efficient spectrum usage.

Subsection 8AF(8) would provide for the Minister to issue a written certificate which states that, in the Minister’s opinion, the digital dividend policy objectives have been achieved in a specified area. This certificate would mean that the ACMA would no longer need to have regard to the digital dividend objectives when preparing or varying a special LAP in that licence area. Normal licence area planning principles and processes would resume.

Item 6 - Subsection 26(1A)

This Item is consequential to amendments made by Item 7, clarifying that subsection 26(1A) of the BSA (planning for digital radio) relates to a LAP made under subsection 26(1) and not a special LAP made under subsection 26(1B).

Item 7 – After subsection 26(1A)

This Item amends section 26 of the BSA to make provision for special LAPs. Special LAPs are intended to supersede digital channel plans under the commercial and national television conversion schemes for allocation of channels for digital television services after the end of the simulcast period in a licence area, and to eventually return overall planning of television services in a digital only environment to the general planning processes of Part 3 of the BSA. Existing LAPs that relate to the planning of analog television services cease when a special LAP comes into force.

The provisions for special LAPs would give the ACMA the flexibility required to plan and implement the re-stacking of digital television channels to free up spectrum for the digital dividend, by providing the ACMA with the power to determine progressive and/or sequential dates for the commencement of digital channel allocations across a licence area.

Under new subsection 26(1B), the ACMA would prepare, by legislative instrument, special LAPs that would specify the channels available in particular areas of Australia to provide commercial and national television broadcasting services and other television services using the BSB. A special LAP must be consistent with the relevant frequency allotment plan (new subsection 26(1F) refers).

The ACMA would have the power to allot those channels, under the relevant frequency allotment plan, to particular commercial television broadcasting licensees, national broadcasters and other television broadcasting services, and to determine the characteristics, including technical specifications, of the transmission of commercial and national television broadcasting services and other television broadcasting services using those channels.
The ACMA may include any technical limitations on the use of a particular channel it believes should be part of the special LAP and whether the use of a particular channel depends on any event or circumstances described in the plan. Enabling the special LAP to set out events or circumstances that determine whether or when a particular frequency channel may be used for transmitting the service is intended to facilitate changes to the transmission characteristics of a service by reference to a date or some other condition as may be set out in the plan.

Under new subsection 26(1D), a special LAP would allot, or provide the ACMA with the power to allot, different channels for different periods to particular commercial television broadcasting licensees, national broadcasters and providers of television services other than commercial television broadcasting licensees or national broadcasters. The intention is to allow for channel allotments to change from time to time within the licence area. Such a ‘forward plan’ for the allotment of channels could be provided for directly in the special LAP. Alternatively the special LAP could empower the ACMA to allot channels in accordance with specific parameters or specifications are set out in the special LAP. For example, the special LAP could set out the principles or processes that the ACMA would follow when subsequently allotting (or changing the allotment) of one or more of the channels used by particular broadcasters in the licence area.

Subsection 26(1E) provides that a special LAP may allot, or empower the ACMA to allot, two or more channels to particular commercial television broadcasting licensees, national broadcasters, or providers of other television services. This would enable the ACMA to plan and implement temporary digital television simulcasts to address large-scale re-stack issues in some metropolitan and regional markets, such as reconfiguring central antenna systems for multi-unit dwellings.

A special LAP need not identify a particular television broadcasting service by name (new subsection 26(1G)). This means that multi-channelled services provided by a commercial, national or other broadcasting service is not required to be dealt with separately in a special LAP. Technical specifications and other matters relating to a particular licensee or national broadcaster can cover all digital television services provided by a broadcaster within an allotted channel of spectrum.

New subsection 26(1H) provides that a LAP prepared under section 26(1) of the BSA ceases to apply when a special LAP comes into force for a particular licence area. The commercial, national and other television broadcasting services operating in that licence area will be exclusively regulated by the special LAP.

New subsection 26(1J) provides that a special LAP for a licence area of a commercial television broadcasting licence:

- must not come into force before the end of the simulcast period or simulcast-equivalent period for that area, and
- must come into force before the designated restack day for that licence area, and
- must be directed towards ensuring the relevant digital dividend policy objectives are achieved before the designated restack day.

The designated re-stack day for a licence area is to be 31 December 2014, or a later date specified by the Minister in writing. The Minister may only specify a later date if satisfied
that broadcasters in the area have encountered difficulties of a technical or engineering nature that were not reasonably foreseeable (new subsection 26(1L) refers).

The Minister’s instrument to set a later designated re-stack day is not a legislative instrument. This is because the Minister’s instrument does no more than applying the law to the particular facts.

Item 8 – At the end of section 26

This Item adds subsections 26(7)-26(14) to the BSA.

Subsections 26(7) provides that the ACMA must have regard to the digital dividend policy objectives in preparing or varying a special LAP, and any other matters as the ACMA considers relevant. Subsection 26(8) provides that the ACMA may disregard the digital dividend policy objectives for a particular area if the Minister has issued a certificate of achievement under proposed section 8AF (Item 5 refers).

Subsection 26(9) provides that the broadcasting planning criteria in section 23 of the BSA do not apply to preparing or varying a special LAP, if the sole or primary purpose is to facilitate any or all of the digital dividend policy objectives. Normally section 23 of the BSA requires the ACMA to have regard to a broad range of criteria in performing its planning functions. Most of these criteria would be irrelevant for the purposes of planning and implementing a re-stack of digital television channels.

Subsection 26(10) gives the Minister the power to issue a written direction of a general nature to the ACMA about the exercise of its powers to make or vary a special LAP. The ACMA must comply with such a direction. This Ministerial direction is declared to be a legislative instrument.

Item 9 – Subsection 26A(2)
Item 10 – Subsection 26A(3)
Item 12 – Subsection 26B(2)
Item 13 – Subsection 26B(3)

These Items amend sections 26A and 26B of the BSA, so that a LAP made under subsection 26(1) is not required to deal with SDTV or HDTV multi-channelled national or commercial broadcasting services.

Item 11 - After section 26A

Currently, LAPs determine the number and characteristics, including technical specifications, of broadcasting services that are to be available in particular areas of Australia with the use of BSB spectrum.

A national broadcasting service (NBS) transmitter licence issued to national broadcasters under sections 100B or 100C or a transmitter licence issued to commercial television broadcasters under sections 102 or 102A of the Radiocommunications Act is subject to the condition that the licensee must not operate a transmitter otherwise than in accordance with any relevant technical specifications determined by the ACMA as part of a LAP.
There are no corresponding provisions in the BSA which require a commercial television broadcasting licensee to comply with the technical specifications contained in the relevant LAP.

Item 11 inserts new section 26AA into the BSA. This section creates a compliance obligation for commercial television broadcasting licensees, national broadcasters and providers of television services other than commercial television broadcasting licensees or national broadcasters. This law is designed to ensure that broadcasters subject to a special LAP comply with digital channel allotments and associated technical specifications contained in the plan.

Item 14 – After subsection 27(1)

Section 27 of the BSA normally requires the ACMA to undertake ‘wide public consultation’ when performing its licence area planning functions.

Item 14 would insert new subsections 27(1A) and (1B) to modify the consultation arrangements relating to special LAPs.

Making or varying a special LAP for the sole or primary purpose of achieving the digital dividend policy objectives will largely be a technical and engineering exercise concerning the transmission specifications of existing broadcasting services. Wide public consultation is not necessary. Accordingly, consultation in these circumstances will be limited to affected broadcasters, owners of transmission infrastructure, and other people as the ACMA considers appropriate. The affected broadcasters are commercial television broadcasting licensees for that area, national broadcasters, community television broadcasting licensees for that area (if they area likely to be affected by the plan); and such other persons as the ACMA considers appropriate.

Item 15 – Subsection 29(1)

This Item amends section 29 of the BSA so that the ACMA is to designate an area that is covered by an applicable LAP made under subsection 26(1) or subsection 26(1B) as the licence area of the licence before allocating a new commercial television, commercial radio or community broadcasting licence (other than a temporary community broadcasting licence).

Item 16 – Section 205PA
Item 17 – Section 205Q

Items 16 and 17 respectively amend sections 205PA and 205Q of the BSA to include contravention of section 26AA as a matter that may be subject to an injunction by the Federal Court, on the application of the ACMA. The Federal Court may issue orders to restrain a person from engaging in the contravening conduct or to require the person to do something.
Item 18 - At the end of subclause 7(1) of Schedule 2
Item 19 - At the end of subclause 9(1) of Schedule 2

Items 18 and 19 complement the new compliance rules and remedies provided by Items 11, 16, and 17. Items 18 and 19 propose to insert new statutory licence conditions into Schedule 2 to the BSA. These conditions would apply to commercial television broadcasting licensees and community television broadcasting licensees where a special LAP is in force in the licence area. The proposed licence conditions would require a commercial television broadcaster to comply with proposed subsection 26AA(1) of the BSA and a community television broadcaster to comply with subsection 26AA(3) of the BSA.

If a licensee breaches the new licence conditions, civil or criminal penalties may apply (Division 3 of Part 10 of the BSA refers).

Item 20 - After subclause 6(1) of Schedule 4
Item 27 - After subclause 19(1) of Schedule 4

Item 20 requires the commercial television conversion scheme to make provision for the purposes of facilitating the digital dividend policy objectives, to the extent that those objectives affect commercial television broadcasting licensees. Item 27 requires the same of the national television conversion scheme, to the extent that the objectives would affect national broadcasters.

Item 21 - Paragraph 6(3)(ha) of Schedule 4
Item 23 - Paragraph 6(5B)(c) of Schedule 4

Item 21 repeals paragraph 6(3)(ha) of Schedule 4 to the BSA and inserts new paragraphs (ha), (hb) and (hc) to modify the policy objective of the commercial television conversion scheme relating to the allotment of channels for commercial television broadcasters after the end of the simulcast period. Under existing paragraph 6(3)(ha), a commercial television broadcaster is required to transmit its service in digital mode according to the relevant digital channel plan in force.

New paragraphs (ha), (hb) and (hc) provide that if a special LAP comes into force immediately after the end of the simulcast period, a commercial television broadcaster is required to transmit its services in digital mode according to the channel allotment in the special LAP. If a special LAP is not yet in force by the end of the simulcast period, the commercial broadcaster will transmit its services according to the relevant digital channel plan until a special LAP is made, at which point the commercial broadcaster must transmit its services according to the special LAP. Similar provision is made for national broadcasters (Item 28 refers).

Item 23 similarly modifies the conversion scheme policy objectives as they apply to a commercial television broadcaster who holds additional commercial broadcasting licences under section 38A or 38B and who has made a multi-channel election, using multi-channelling transmission capacity.
Item 22 - Paragraphs 6(5A)(c) and (5AA)(c) of Schedule 4
Item 24 - Subclause 6(5D) of Schedule 4

These Items make technical amendments consequential to Items 21 and 23 respectively.

Item 25 - After clause 7A of Schedule 4

This Item inserts new clause 7AA into Schedule 4 of the BSA to re-state that a special LAP, once in force, determines the allotment of channels for digital transmission such that a digital channel plan (to the extent to which it relates to a licence area covered by the special LAP) ceases to have effect, and the commercial television conversion scheme (to the extent to which it allots channels for a particular licence area) ceases to have effect for that licence area as well.

Item 26 - Subclause 8(4) of Schedule 4

This Item repeals subclause 8(4) of Schedule 4 to the BSA as a consequence of amendments to the Radiocommunications Act made by Items 45-49. Subclause 8(4) requires the conversion scheme to provide for the surrender of transmitter licences held by a commercial television broadcasting licensee at the end of the simulcast period or simulcast-equivalent period, and to provide for the ACMA to issue a new transmitter licence authorising transmission in digital mode. Amendments proposed by Items 45-49 would make the surrender and re-issue of transmitter licences unnecessary. Accordingly subclause 8(4) of Schedule 4 to the BSA is to be repealed.

Item 28 - Paragraph 19(3)(ha) of Schedule 4

This Item makes amendments in relation to the national television conversion scheme. These amendments are substantially the same as those proposed in Item 21 for the commercial television conversion scheme (noted above).

Item 29 - Subclause 19(5A) of Schedule 4

This Item makes a technical amendment consequential to Item 28.

Item 30 - After clause 22A of Schedule 4

This Item makes substantially similar amendments in relation to the national television conversion scheme as Item 25 (noted above).

Item 31 - Subclause 23(4) of Schedule 4

This Item makes substantially similar amendments in relation to the national television conversion scheme to those in Item 26 (noted above). The proposed repeal is consequential to amendments to the Radiocommunications Act made by Items 41-44.
Radiocommunications Act 1992

Items 32 to 55 make amendments to the Radiocommunications Act.

Item 32 - Section 5

This Item inserts the definition of BSA coverage area into section 5 of the Radiocommunications Act to mean a coverage area within the meaning of Schedule 4 to the BSA, for the purposes of amendments by Items 41 and 42 relating to NBS transmitter licences.

Item 33 - Section 5

This Item inserts a definition of BSA special LAP in section 5 of the Radiocommunications Act. It has the same meaning as in the BSA.

Item 34 - Section 5

This Item inserts a definition of digital dividend policy objectives in section 5 of the Radiocommunications Act. It has the same meaning as in the BSA.

Item 35 - After subsection 31(1)
Item 36 - After subsection 31(1B)
Item 37 - After subsection 31(7)
Item 38 - After subsection 31(7)

Under section 31 of the Radiocommunications Act, the Minister may designate part of the radiofrequency spectrum as being primarily for broadcasting services, or designate part of the radiofrequency spectrum as being partly for restricted datacasting services or digital radio broadcasting services. These spectrum designations are the BSBs. Designated spectrum is referred to the ACMA for licence area planning under the BSA.

The Ministerial designation for the existing BSBs for broadcasting services was made in 1992. There is some legal uncertainty about whether the Minister may vary the existing BSB designation. Items 35 and 36 would resolve this uncertainty by expressly empowering the Minister to vary the BSB designation to enlarge or reduce the part of the spectrum covered by the designation. As a result the Minister can adjust the size of the BSBs as needed to complete the re-stack of television channels and realise the digital dividend.

Items 37 and 38 would amend section 31 to provide that an instrument that varies a BSB designation is not a legislative instrument.

Item 39 - After subsection 32(2)

Item 39 would amend section 32 of the Radiocommunications Act to give the ACMA flexibility in planning frequency bands. It does so by allowing a frequency band plan that covers a part of the BSBs to be inconsistent with a frequency allotment plan (made for the BSBs under section 25 of the BSA. Inconsistent planning documents will only be
permitted if the ACMA is satisfied that it is likely to facilitate any or all of the digital dividend policy objectives (Item 5 refers).

For example, the ACMA may make a frequency band plan for the digital dividend spectrum before the spectrum is removed from the BSBs. Currently the Radiocommunications Act requires that if the frequency band plan relates to spectrum within the broadcasting services bands, then it must be consistent with the frequency allotment plan. A frequency band plan for the 700 MHz band in Australia will likely reflect the 700 MHz band plan for Region 3 of the International Telecommunications Union (of which Australia is a part), which is currently being negotiated. The frequency band plan will not be consistent with the current frequency allotment plan as the former will not make provision for the allotment of channels for broadcasting services or restricted datacasting services.

The intention is to allow inconsistency for the period between when the frequency band plan is made and when the Minister re-designates the BSB to excise the digital dividend spectrum.

Item 40 - Subsection 100(5)

Under subsection 100(5) of the Radiocommunications Act the ACMA, when issuing an apparatus licence under section 100, may have regard to whether an applicant previously held an apparatus licence that had been cancelled within the preceding two years. However the cancellation of an apparatus licence due to a spectrum re-allocation process under Part 3.6 of the Radiocommunications Act – that is, through operation of law - is disregarded. Such a cancellation is disregarded because it does not go to the merit of the applicant’s application for a licence.

Item 40 amends subsection 100(5) such that the ACMA is to also disregard those apparatus licences held by commercial television broadcasters and national broadcasters as required by the respective conversion schemes that are cancelled at the end of the simulcast period by operation of law (Items 42 and 45 refer).

Item 41 – After section 100
Item 42 - After subsection 100B(2B)
Item 43 - Subsection 100B(3)
Item 44 - Subsection 100B(3)
Item 45 – At the end of section 102A
Item 46 - Subsection 102AC(1)
Item 47 - Subsection 102AC(2)
Item 48 - Subsection 102AC(2)
Item 49 – After section 102AC

Under the Radiocommunications Act, the ACMA must issue a commercial television broadcasting licensee a transmitter licence in relation to provision of the licensed broadcasting service (see section 102), and issue a commercial television broadcasting licensee a transmitter licence as required by the commercial television digital conversion scheme (section 102A). National broadcasters are issued transmitter licences under section 100 of the Radiocommunications Act for the transmission of a national
broadcasting service (using NBS transmitter licences), and under section 100B where required by the national television digital conversion scheme.

Items 41-49 will amend the transmission authorisations for transmitter licenses held by national broadcasting services (issued under section 100 of the Radiocommunications Act), and commercial television broadcasting service licensees (issued under section 102 of the Radiocommunications Act). The revised transmitter licence authorisations will authorise the transmission of national or commercial services (as the case may be) in digital mode after the end of the simulcast period.

Item 41 inserts new section 100AA into the Radiocommunications Act. This section would amend the transmission authorisation of a NBS transmitter licence that was issued before the end of the simulcast period in relation to a particular coverage area, so that the authorisation extends to digital transmission after the end of the simulcast period in that coverage area using channels allotted to the national broadcaster concerned under whichever of the special LAP, or national television conversion scheme (including digital channel plan) is in force.

Item 42 inserts new subsection 100B(2C) into the Radiocommunications Act. This section would operate to cancel those NBS transmitter licences that were required to be issued under the national television conversion scheme for digital transmission. The cancellation would take effect at the end of the simulcast period or the simulcast-equivalent period for a BSA coverage area. Similarly, Item 45 would amend section 102A to cancel the transmitter licences required to be issued to commercial television broadcasters under the commercial television conversion scheme. The cancellation would take effect at the end of the simulcast period or the simulcast-equivalent period for a BSA licence area.

Items 43 and 44 insert defined terms for simulcast period and simulcast-equivalent period into section 100B. Each term has the same meaning as in Schedule 4 to the BSA.

Item 46 would repeal and replace section 102AC of the Radiocommunications Act. The new section would amend the transmission authorisation of a transmitter licence issued under section 102 to a commercial television broadcaster before the end of the simulcast period for a licence area, so that that licence continues to authorise transmissions – but in digital-only mode – after the end of the simulcast period or simulcast-equivalent period. The revised transmission authorisation would permit a commercial television broadcaster to transmit one or more HDTV multi-channelled commercial television broadcasting services, and one or more SDTV multi-channelled commercial television broadcasting services using the channel(s) allotted to the broadcaster under whichever of the special LAP or the commercial television conversion scheme (which includes the digital channel plan) is in force.

Item 47 and 48 insert defined terms for commercial television conversion scheme and digital channel plan into section 102AC. The terms have the same meaning as in the BSA.

Item 49 inserts new section 102AD into the Radiocommunications Act which authorises the operation of a transmitter licence issued after the end of the simulcast period or simulcast-equivalent period for a licence area in digital mode according to the related licence, using the channels allotted under the relevant BSA special LAP (if one is in
force), or otherwise according to the commercial television conversion scheme or relevant
digital channel plan.

Item 50 - Paragraph 109(1)(d)
Item 51 - Paragraph 109(1)(d)
Item 52 – After paragraph 109(1)(d)
Item 53 – At the end of section 109

Section 109 of the Radiocommunications Act sets out the conditions for transmitter
licences issued to commercial television broadcasting services under sections 101B,
101C, 102 or 102A.

Items 50-51 amend paragraph 109(1)(d) such that it is a condition of a licence issued
under sections 101B, 101C, 102 or 102A to comply with any relevant technical
specifications made by the ACMA under section 26 of the BSA. This would include
specifications relating both to LAPs made under subsection 26(1) of the BSA and special
LAPs made under subsection 26(1B).

Items 52 inserts new paragraph 109(1)(da) into the Radiocommunications Act so if a BSA
special LAP is applicable to the transmission of one or more television broadcasting
services under the authority of the licence, then operation of that transmitter must comply
with any relevant technical specifications determined under the plan.

Item 53 inserts a definition of television broadcasting service to have the same meaning
as in section 26 of the BSA.

Item 54 - After paragraph 153P(2)(da)
Item 55 – At the end of section 153P

Under section 153B of the Radiocommunications Act, the Minister has the power to
declare one or more parts of the spectrum are to be subject to reallocation (‘declared
spectrum’). Digital dividend spectrum would be declared under this provision. Currently,
the ACMA cannot issue new apparatus licences in declared spectrum. There may be a
need for some broadcasting services to be temporarily allocated a transmitter licence in
declared spectrum during the channel re-stack process.

Item 54 would amend section 153P to allow the ACMA to issue a transmitter licence for
transmitting broadcasting services in declared spectrum in a licence area for an interim
period.

Item 55 inserts new subsection 153P(4) to determine the interim period, which would be
from the commencement of the subsection until the completion of digital channel re-stack
in that licence area (the designated re-stack day – Item 7 refers).

Part 2 - Transitional provisions

Items 56 –61 provide transitional provisions for commercial and national television
conversion schemes, and digital channel plans made under those schemes and which were
in force before the commencement of the amendments contained in Schedule 2 to this Bill
(this schedule).
Item 56 - Commercial television conversion scheme
Item 57 - National television conversion scheme

Items 56 and 57 provide that amendments made by this schedule to Schedule 4 to the BSA do not affect the continuity of the commercial and national television conversion schemes in force under Schedule 4 to the BSA immediately before the commencement of this schedule with the following exception.

These Items also provide that the Parliament intends the ACMA to take action within 90 days after the commencement of this schedule directed towards ensuring that the conversion schemes comply with Schedule 4 to the BSA as amended by Items in this schedule.

Sub-items 56(4) and 57(4) provide that the rules preserving the continuity of the conversion schemes (sub-items 56(2) and 57(2) refer) do not apply with respect to subclauses 7AA(2) and 22AA(2) of Schedule 4 to the BSA, as amended by this Bill (see Items 25 and 30 in this schedule).

Those subclauses provide that channel allotments made by the conversion schemes cease to have effect when the special LAP comes into force; the continuity of the scheme is not maintained in that respect.

Item 58 - Digital channel plan made under the commercial television conversion scheme
Item 59 - Digital channel plan made under the national television conversion scheme

Items 58 and 59 provide that amendments made by this schedule to Schedule 4 to the BSA do not affect the continuity of the digital channel plans for commercial and national television broadcasting services.

Sub-items 58(3) and 59(3) provide that the rules preserving the continuity of the digital channel plans (sub-items 58(2) and 59(2) refer) do not apply with respect to subclauses 7AA(1) and 22AA(1) of Schedule 4 to the BSA, as amended by this Bill (see Items 25 and 30 in this schedule). Those subclauses provide that channel allotments made by the digital channel plans cease to have effect when the special LAP comes into force; the continuity of the plan is not maintained in that respect.

Item 60 - Variation of commercial television conversion scheme
Item 61 - Variation of national television conversion scheme

Items 60 and 61 excuse the ACMA from the requirement for public consultation in accordance with the commercial television conversion scheme and the national television conversion scheme in relation to variations to a conversion scheme that deals with transitional or consequential matters connected to the amendments made by this schedule. Such variations must be made within 90 days after the commencement of this schedule.

The ACMA must not make a variation to the commercial or national television conversion schemes unless a copy of the proposed variation is available on the ACMA website for at least 5 business days.
In the case of national television conversion scheme, Item 61 also provides that a scheme variation that deals with transitional or consequential matters connected to the amendments made by this schedule does not require the approval of the Minister under clause 32 of Schedule 4 to the BSA.