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THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

BROADCASTING LEGISLATION AMENDMENT (DIGITAL DIVIDEND AND OTHER MEASURES) BILL 2011

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Broadband, Communications and the Digital Economy, Senator the Hon. Stephen Conroy)
OUTLINE

The Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Bill 2011 (the Bill) amends the Broadcasting Services Act 1992 (the BSA) and the Radiocommunications Act 1992 (the Radiocommunications Act) to provide the Australian Communications and Media Authority (ACMA) with improved planning and enforcement powers for the implementation of the re-stack of digital television channels and the realisation of digital dividend spectrum.

On 24 June 2010, the Minister for Broadband, Communications and the Digital Economy (the Minister) announced that the Australian Government has decided to release 126 Megahertz of broadcasting spectrum as a digital dividend. The digital dividend will be released as a contiguous block of spectrum in the upper ultra-high frequency (UHF) band, comprising the frequency range 694 to 820 MHz inclusive.

This spectrum will become available as a result of the switch to digital-only television broadcasting, and the return of spectrum capacity currently used for analog television, which will be completed in Australia by 31 December 2013. UHF spectrum currently used for broadcasting services is highly valued for delivering wireless communications services, including super-fast mobile broadband. It is able to carry signals over long distances, penetrate buildings and carry large amounts of data.

The dividend will maximise the benefit that use of the spectrum will over time bring to the Australian community and economy, while at the same time ensuring continuation of the current, high quality, free to air television services.

The government aims to auction the digital dividend spectrum in the second half of 2012, allowing successful bidders ample time to plan and deploy the next generation networks that are likely to utilise the spectrum.

In order to release this highly valued spectrum, broadcasting services will need to be relocated out of the digital dividend spectrum and organised more efficiently within their remaining spectrum allocation. This process is known as ‘re-stacking’. The government intends that the digital dividend spectrum be cleared as soon as possible after the switch-off of analog television services is completed.

The government’s intention is to complete the re-stacking of digital dividend spectrum by 31 December 2014, so this spectrum can be re-allocated to other uses.

On 9 July 2010, the Minister made the Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010 (the Direction) under section 14 of the Australian Communications and Media Authority Act 2005 (the ACMA Act), subsection 25(3) of the BSA, and clauses 15 and 29 of Schedule 4 to the BSA.

The Direction is concerned with the ACMA’s exercise of its planning powers and performance of its broadcast planning under the BSA and its spectrum functions.
under the Radiocommunications Act, as needed to facilitate the release of broadcasting spectrum as a digital dividend in accordance with the government’s policy objectives.

The purpose of the Direction is to give effect to the government’s primary policy objective in realising the digital dividend. To give effect to these objectives, the Direction requires that the ACMA consider exercising its planning powers under the BSA to achieve specified Commonwealth policy objectives and to take account of those objectives when undertaking its spectrum management functions under the Radiocommunications Act and its planning functions under the BSA.

To enable the ACMA to undertake efficient planning and stacking of the radiofrequency spectrum used to deliver television services needed to achieve the digital dividend, a number of amendments to the BSA and the Radiocommunications Act are required to enhance the ACMA’s broadcasting services related spectrum planning functions and powers. These amendments are set out in Schedule 1 to this Bill.

The Bill also makes amendments to the BSA, the Radiocommunications Act, the Copyright Act 1968 (the Copyright Act) and the ACMA Act to improve the operation of the digital television services provided by the satellite service licensed under section 38C of the BSA and for other related digital television matters. These amendments are set out in Schedule 2 to the Bill, and include:

- amending the conditional access scheme provisions in Part 9C of the BSA to:
  - create an additional category of reception area for the conditional access scheme that applies in the Western Australia TV3 licence area that reflects the special circumstances of television broadcasting there,
  - require the ACMA to declare an area to be service-deficient if the ACMA is satisfied that the number of terrestrial digital commercial television broadcasting services provided in that area is less than the number of commercial television broadcasting services required to be provided by a section 38C licensee,
  - ensure continued access to satellite television services provided by a section 38C licensee for viewers who have not moved location since initially obtaining access to the services,
  - enable industry to formulate a conditional access scheme to replace a scheme developed by the ACMA;
- fixing an anomaly regarding the start dates for core/primary and multi-channelled commercial television services, and the local news service, required to be provided under a section 38C licence;
- enabling commercial and national broadcasters to apply to the Minister for exemption from obligations to convert particular analog terrestrial television services to digital at sites serving areas with small populations (fewer than 500
people) or in under-served areas (where not all licensed commercial services and national broadcasting services are provided);

- requiring the Minister to have regard to whether there are other means by which people in a coverage area can view an adequate and comprehensive range of commercial or national broadcasting services and whether other commercial and national broadcasters operating in a coverage area have converted or will convert their terrestrial services to digital when deciding whether to approve or reject an implementation plan submitted by a national broadcaster;

- permitting incidental or accidental analog television transmissions in an area that is a digital-only local market area, and making complementary modifications to the policy objectives for the digital conversion schemes;

- authorising commercial television broadcasters in remote licence areas to broadcast only standard definition digital television multi-channelled services before the end of the simulcast period; and

- making technical amendments regarding the scope of the captioning requirements applying to commercial television broadcasting licensees and the effect of a declaration by the ACMA about the primary commercial television broadcasting service.

Schedule 2 also includes amendments to:

- clarify the application of the statutory copyright licences in Parts VC and VD of the Copyright Act in relation to programs re-transmitted by a satellite commercial television broadcasting service; and

- enable the ACMA to delegate the power to issue particular notices to ACMA officers (by amending the ACMA Act).

Schedule 3 to the Bill contains transitional provisions.
FINANCIAL IMPACT STATEMENT

The amendments in this Bill will not of themselves result in any direct financial impact on the government.
NOTES ON CLAUSES

Clause 1 – Short title

1. Clause 1 is a formal provision specifying the short title for the Act. When enacted, the Act is to be cited as the Broadcasting Legislation Amendment (Digital Dividend and Other Measures) Act 2011.

Clause 2 – Commencement

2. Clause 2 specifies when the various provisions of the Act commence. The provisions specified in column 1 of the table will commence, or will be taken to have commenced, on the day or at the time specified in column 2 of the table.

Clause 3 – Schedule(s)

3. Clause 3 provides that each Act specified in a Schedule to the Bill is amended or repealed as set out in the Schedule concerned. There are three Schedules to the Bill. Schedule 1 contains amendments to the Broadcasting Services Act 1992 and the Radiocommunications Act 1992 relating to the realisation of the digital dividend. Schedule 2 contains amendments to the Broadcasting Services Act 1992, the Radiocommunications Act 1992, the Australian Communications and Media Authority Act 2005 and the Copyright Act 1968 relating to digital television generally. Schedule 3 contains transitional provisions.
Schedule 1 – Digital Dividend

Broadcasting Services Act 1992

4. Items 1 to 28 inclusive would amend the Broadcasting Services Act 1992 (the BSA).

Item 1 – Subsection 6(1) (definition of broadcasting services bands)

5. This item would repeal and replace the definition of broadcasting services bands (the BSBs). 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 paragraphs (a)(ii) and (b)(ii) (which are 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 which occurs in accordance with section 31 of the Radiocommunications Act.

Item 2 – Subsection 6(1) (definition of designated re-stack day)

6. This item would insert a definition of designated re-stack day. The defined term directs the reader to the date determined under subsection 26(1K) of the BSA (Item 6 refers).

Item 3 – Subsection 6(1) (definition of licence area plan)

7. This item would insert a new definition of licence area plan. The new defined term directs the reader to those plans prepared by the ACMA under subsections 26(1) (licence area plans) or subsection 26(1B) (television licence area plans) of the BSA (Item 6 refers).

Item 4 – Subsection 6(1) (definition of television licence area plan)

8. This item would insert the definition of television licence area plan. The new defined term directs the reader to a plan prepared under subsection 26(1B) of the BSA (Item 6 refers).

Item 5 – Subsection 26(1A)

9. This item would amend subsection 26(1A) of the BSA to limit the application of the provision to licence area plans prepared under subsection 26(1) of the BSA (as distinct from television licence area plans prepared under proposed subsection 26(1B)). Television licence area plans will not deal with digital radio broadcasting services.

Item 6 – After subsection 26(1A)

10. This item would amend section 26 of the BSA to make provision for the making of the new television licence area plans (subsections 26(1B)-(1M)). Television licence area plans are intended to supersede:
   - existing licence area plans to the extent that those plans deal with the planning of television broadcasting services; and
digital channel plans made under the commercial television conversion scheme and the national television conversion scheme (Schedule 4 to the BSA refers). Digital channel plans allot channels for digital television services during and after the end of the simulcast period in a licence area or coverage area.

11. The ACMA’s powers that relate to the planning of television services in an existing licence area plan for a particular area will cease when a television licence area plan comes into force under new subsection 26(1H). Under new subsection 26(1H), when a television licence area plan for a particular area comes into force, the licence area plan in force for that area ceases to have effect, to the extent that it relates to television broadcasting services. The commercial, national and other television broadcasting services operating in that licence area will be exclusively regulated by the television licence area plan. However, some licence area plans deal with both radio and television services provided in a licence area, and in these situations new subsection 26(1H) provides that the licence area plan would continue to have effect to the extent that it relates to services other than television broadcasting services.

12. The new provisions for preparing and varying television licence area plans would give the ACMA greater flexibility to plan and implement the re-stacking of digital television channels to free up spectrum for the digital dividend.

13. Under new subsection 26(1B), the ACMA would prepare, by legislative instrument, new licence area plans – to be known as television licence area plans (paragraph 26(1C) refers) – 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 BSBs (see paragraph 26(1B)(a)).

14. The television licence area plan would allot, or empower the ACMA to allot, those channels to particular commercial television broadcasting licensees, national broadcasters and other providers of television broadcasting services (see paragraph 26(1B)(b)). The ACMA may also prepare a television licence area plan that determines the characteristics, including technical specifications, of the transmission of commercial and national television broadcasting services and other television broadcasting services using the allotted channels (see paragraph 26(1B)(c)). The television licence area plan would also determine, or empower the ACMA to determine, any technical limitations on the use of a particular channel, and whether the use of a particular channel depends on any event or circumstances (see paragraphs 26(1B)(d) and (e)).

15. The capacity for the television licence area plan 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. Alternatively, the television licence area plan could empower the ACMA to determine whether the use of the channel depends on an event or circumstance. The television licence area plan could set out principles or processes for the ACMA to follow when making those determinations. In carrying out its planning functions, the ACMA may need to determine final channel allotments for broadcasters before it is able to develop a timetable for when those allotments may be used by the broadcaster. The proposed television licence area plan arrangements are intended to provide this additional
flexibility to the ACMA by allowing for the plan to empower the ACMA to separately determine this timetable.

16. Proposed subsection 26(1D) allows a television licence area plan to allot, or empower the ACMA to allot, different channels for different periods to particular 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 television licence area plan or indirectly through the ACMA being conferred a power to allot channels in accordance with parameters or specifications set out in the television licence area plan.

17. Proposed subsection 26(1E) allows a television licence area plan to allot, or empower the ACMA to allot, two or more channels to particular broadcasters. This would enable the ACMA to plan and implement temporary digital television simulcasts to address anticipated technical implementation issues in some metropolitan and more populated regional licence areas, such as reconfiguring central antenna systems for multi-unit dwellings.

18. A television licence area plan need not identify a particular television broadcasting service by name (subsection 26(1G) refers). This means that multi-channelled digital television services provided by a commercial, national or other broadcasting service are not required to be dealt with separately in a television licence area plan. Technical specifications and other matters relating to a particular broadcaster can cover all digital television services provided by that broadcaster within an allotted frequency channel.

19. Proposed subsection 26(1J) provides that a television licence area plan 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 licence area; and
   - must come into force before the designated re-stack day for that licence area.

20. The intention is for digital channel plans and extant licence area plans to continue to operate (and for the ACMA to continue to allot channels under those plans) until the television licence area plan for a particular area comes into force. The commencement of a television licence plan may coincide with the end of simulcasting in a licence area; however it is more likely that a television licence area plan will not come into force until after the end of the simulcast period or simulcast-equivalent period. In any case, the television licence area plan must come into force before the designated re-stack day for the licence area concerned.

21. Proposed subsection 26(1K) provides that the designated re-stack day for a licence area is 31 December 2014, or a later date specified by the Minister (paragraph 26(1K)(b)). The Minister’s power under paragraph 26(1K)(b) is not enlivened unless he is satisfied about the likely result of a failure to specify a later designated re-stack day in a licence area – that is, one or more broadcasters would likely encounter significant difficulties of a technical or engineering nature (subsection 26(1L)). While subsection 26(1L) would limit the circumstances in which the Minister may extend time, it is important to note that the Minister is not legally obliged to specify a later designated re-stack day even if he is satisfied that the failure to do so will likely cause significant difficulties of the specified kind. The Minister’s power is a discretionary one. The Minister would closely
consider the likely extent and gravity of the difficulties and other relevant facts and considerations when deciding whether or not to defer the designated re-stack day for any length of time in a licence area.

22. Proposed subsection 26(12) (Item 7 below refers) confirms that the Minister’s instrument specifying a later date for the designated re-stack day is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is merely declaratory and is included for the avoidance of doubt. It is not an exemption from the *Legislative Instruments Act 2003*.

23. Proposed subsection 26(1M) provides that sections 23 and 27 of the BSA apply to the ACMA’s performance of a function or exercise of a power conferred on it by the television licence area plan. Section 23 of the BSA specifies key planning criteria that are to apply to the ACMA’s performance of its planning functions under Part 3 of the BSA. In order to facilitate the realisation of the digital dividend, the key planning criteria will be modified for a limited time (see proposed subsection 26(7); Item 7 below refers). Section 27 of the BSA provides that the ACMA must undertake wide public consultation when performing its planning functions under sections 24-26 of the BSA. In order to facilitate the realisation of the digital dividend, these consultation requirements will be modified for a limited time (see proposed subsections 27(1A)-(1B); Item 13 below refers). Accordingly, proposed subsection 26(1M) provides for the resumption of normal planning activities (including wide public consultation) after the designated re-stack day for the licence area concerned.

24. When the ACMA exercises powers or performs functions that are conferred on it by a television licence area plan, subsection 26(1M) provides that the ACMA will be taken to be performing a function under section 26 of the BSA. This in turn has implications for the application of sections 23 and 27 of the BSA, both before and after the designated re-stack day for the licence areas, as these sections apply to the performance of functions under section 26. For example, if the television licence area plan empowers the ACMA to allot channels to particular broadcasters, the allotment of those channels will be taken to be the performance of a function under section 26, and therefore within the scope of the application of sections 23 and 27 in accordance with this subsection.

25. As an aid to readers, the note under proposed subsection 26(1M) provides for the insertion of a sub-heading (Variation) before subsection 26(2) of the BSA.

**Item 7 – At the end of section 26**

26. This item would amend section 26 of the BSA to add new subsections 26(7) to 26(13).

27. Proposed subsection 26(7) provides that the statutory planning criteria in paragraphs 23(a) and (b) of the BSA would not apply to the ACMA’s preparation or variation of a television licence area plan or the performance of a function, or the exercise of a power, by the ACMA under a television licence area plan, before the designated re-stack day for the relevant licence area. Normally the ACMA must have regard to all of the statutory planning criteria listed in section 23 of the BSA when performing broadcasting planning functions under Part 3 of the BSA. Paragraphs 23(a) and (b) require the ACMA to have regard to demographics, and to the social and economic characteristics within a licence area, neighbouring licence areas and within
Australia generally. These particular criteria will not be relevant for the purposes of planning and reorganising the spectrum to be used for digital television services. This is because re-stack is primarily a technical and engineering exercise concerning the technical specifications for existing television broadcasting services. As a result, the ACMA is not required to have regard to these criteria before the designated re-stack day.

28. Proposed subsections 26(8) and (9) empower the Minister to issue a written direction to the ACMA about the exercise of its powers to make or vary a television licence area plan, and impose an obligation on the ACMA to comply with such a direction. The Ministerial direction may be of a general or specific nature.

29. Subsection 26(8) declares this Ministerial direction to be a legislative instrument for the purposes of the *Legislative Instruments Act 2003*. This provision has substantive operation because not all Ministerial directions are ordinarily characterised as legislative. In this instance, it is anticipated that Ministerial directions made under this section would tend towards the legislative, by setting out binding parameters for the ACMA’s television licence area planning activities. Making this Ministerial direction a legislative instrument ensures transparency because any such direction will need to be lodged on the Federal Register of Legislative Instruments and tabled in Parliament. However, the *Legislative Instruments Act 2003* provides that a Ministerial direction made under this section will not be disallowable (see section 44 of that Act, item 41 of the table).

30. Proposed subsection 26(10) provides that the Minister’s power to issue a direction, and the ACMA’s obligation to comply with it, will sunset on the designated re-stack day for the relevant licence area. The intention is that the Minister’s power to issue such directions be limited to the timeframe in which the ACMA will be undertaking planning activities relating to the freeing up of the broadcasting services bands spectrum for the purposes of realising the digital dividend. The usual licence area planning framework would resume in a licence area after the designated re-stack day. These planning activities are largely free from Ministerial intervention, although a direction of a general nature could still be made under section 14 of the *Australian Communications and Media Authority Act 2005* with respect to the ACMA’s exercise of its licence area planning powers).

31. For the avoidance of doubt, subsection 26(11) provides that a determination in writing made by the ACMA when exercising a power conferred by a television licence area plan (see paragraph 26(1B), described at Item 6 above) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is declaratory of the law and does not amount to an exemption from the *Legislative Instruments Act 2003*. It is also important to note that if the ACMA were empowered by a television licence area plan to make an instrument in writing that allots one or more channels to a particular broadcaster (which is contemplated by paragraphs 26(1D) and 26(1E), described at Item 6 above) such an instrument would also not be a legislative instrument.

32. Proposed subsection 26(12) confirms that the Minister’s written instrument setting a later designated re-stack day (described at Item 6 above) is not a legislative instrument within the meaning of section 5 of the *Legislative Instruments Act 2003*. This provision is declaratory of the law and does not amount to an exemption from the *Legislative
Instruments Act 2003. The Minister’s instrument does no more than apply the law to the particular facts.

33. Where the television licence area plan empowers the ACMA to make decisions of an administrative character, such decisions will not be subject to merits review by the Administrative Appeals Tribunal (AAT). This is consistent with the general approach to spectrum planning and spectrum management – the ACMA’s exercise of its planning powers under the BSA and its spectrum planning functions under the Radiocommunications Act are generally not subject to merits review by the AAT (other than decisions by the ACMA which would affect a person’s interests, such as decisions to vary or cancel a licence or a decision to refuse to allocate a licence under the BSA or Radiocommunications Act).

Item 8 – Subsection 26A(2)
Item 9 – Subsection 26A(3)
Item 11 – Subsection 26B(2)
Item 12 – Subsection 26B(3)

34. These items would amend sections 26A and 26B of the BSA, so that a licence area plan made by the ACMA under subsection 26(1) would not be required to deal with SDTV or HDTV multi-channelled national or commercial television broadcasting services after the end of the simulcast period or simulcast-equivalent period. Multi-channelled national and commercial television broadcasting services will be dealt with (albeit not separately) in the television licence area plans made by the ACMA under new subsection 26(1B) (Item 6 above refers).

Item 10 - After section 26A

35. This item would insert a new section 26AA into the BSA. This section would create a compliance obligation for commercial television broadcasting licensees, national broadcasters, and other television service providers designed to ensure that broadcasters comply with digital channel allotments and associated technical specifications contained in a television licence area plan. (The Bill also proposes that injunctive remedies be available for contravention of this obligation – Items 15 and 16 refer).

Item 13 – After subsection 27(1)

36. Section 27 of the BSA normally requires the ACMA to undertake wide public consultation when performing its licence area planning functions under Part 3 of the BSA.

37. This item would insert new subsections 27(1A) and 27(1B) to modify the consultation requirements relating to the preparation or variation of television licence area plans or to the performance of a function, or the exercise of a power, by the ACMA under a television licence area plan, and to particular variations to frequency allotment plans, until the designated re-stack day for the relevant licence area.

38. Proposed subsection 27(1B) sets out the modified consultation requirements for the preparation or variation of television licence area plans or to the performance of a
function, or the exercise of a power, by the ACMA under a television licence area plan, until the designated re-stack day.

39. The modified consultation requirements set out in proposed subsection 27(1B) will also apply until the designated re-stack day for variations to a frequency allotment plan to the extent that the variation relates to the determination of the number of channels that are to be available in a particular area to provide television broadcasting services and is made in connection with the preparation or variation of a television licence area plan for the area. Instead of undertaking wide public consultation the ACMA must consult with those commercial, national, or community broadcasters who are likely to be affected by the proposed television licence area plan (including its variations). The ACMA may also consult other persons as it considers appropriate. Other people whom the ACMA might consult include other television services providers who may operate in the licence area concerned, and operators of transmission towers and associated facilities in the licence area concerned.

40. It is anticipated that the preparation or variation of a television licence area plan, the variation of a frequency allotment plan (as described in paragraphs 27(1A)(d) and 27(1B)(d)), and the performance of functions or the exercise of powers by the ACMA under a television licence area plan for the purposes of planning and re-organising the BSB spectrum used to deliver television services will largely be a technical and engineering exercise concerning the transmission specifications of existing broadcasting services. Accordingly wide public consultation is not considered necessary.

41. Proposed subsections 27(1A) and 27(1B) do not affect the ACMA’s obligations to consult widely when exercising its planning powers in relation to radio broadcasting services.

Item 14 – Subsection 29(1)

42. This item would amend section 29 of the BSA so that the ACMA is able to designate an area that is covered by an applicable licence area plan 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).

43. Transitional provisions related to this item are in item 1 of Schedule 3 to this Bill.

Item 15 – Section 205PA
Item 16 – Section 205Q

44. These items would amend Part 14C of the BSA to include contravention of section 26AA (Item 10 above refers) as a matter that may be subject to injunctive relief ordered by the Federal Court, on the application of the ACMA. Item 15 amends the simplified outline in section 205PA, while Item 16 amends section 205Q to add a reference to section 26AA.

45. When granting injunctive relief (including interim injunctive relief) under Part 14C of the BSA, the Federal Court may issue orders to restrain a person from engaging in the contravening conduct, or require the person to do something so as to avoid engaging in contravening conduct.
Item 17 - At the end of subclause 7(1) of Schedule 2
Item 18 - At the end of subclause 9(1) of Schedule 2

46. These items complement the new compliance rules and remedies provided by Items 10, 15, and 16. Items 17 and 18 would insert new statutory licence conditions into Parts 3 and 5 respectively of Schedule 2 to the BSA. These new licence conditions apply to commercial television broadcasting licensees and community television broadcasting licensees where a television licence area plan is in force in the licence area. The licence condition requires each commercial television licensee to comply with new subsection 26AA(1) of the BSA and each community television licensee to comply with new subsection 26AA(3) of the BSA.

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

Item 19 - Paragraph 6(3)(ha) of Schedule 4
Item 21 – At the end of subclause 6(5B) of Schedule 4

48. Item 19 would repeal paragraph 6(3)(ha) of Schedule 4 to the BSA and insert new paragraphs (ha), (hb), and (hc) to modify the policy objectives for the commercial television conversion scheme relating to the allotment of channels to commercial television broadcasters after the end of the simulcast period. Under the existing objective in paragraph 6(3)(ha), a commercial television broadcaster would transmit its service in digital mode using a channel allotted in the relevant digital channel plan in force.

49. Under new paragraphs 6(3)(ha), (hb), and (hc) if a television licence area plan comes into force immediately after the end of the simulcast period, a commercial television broadcaster would transmit its services in digital mode using the channel allotted by the television licence area plan. If a television licence area plan is not in force by the end of the simulcast period, the commercial broadcaster would transmit its services using a channel allotted by the relevant digital channel plan until such time as a television licence area plan comes into force – when the television licence area plan comes into force the commercial television broadcaster will transmit its services using a channel allotted by the television licence area plan.

50. Similar changes are proposed to the statutory policy objectives for the national television conversion scheme that applies to the Australian Broadcasting Corporation and the Special Broadcasting Service (Item 25 refers).

51. Item 21 would similarly modify 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.

52. Transitional provisions related to these items are in Items 2 and 6 of Schedule 3 to this Bill.
53. These items make technical amendments consequential to Items 19 and 21.

54. Item 23 would insert new clause 7AA into Schedule 4 to the BSA to re-state that a television licence area plan, 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 television licence area plan) ceases to have effect. 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.

55. Item 27 would make a substantially similar amendment in relation to the national television conversion scheme.

56. Item 24 would repeal subclause 8(4) of Schedule 4 to the BSA as a consequence of amendments to the Radiocommunications Act proposed by Items 42 to 46. Subclause 8(4) requires the commercial television 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 made by Items 42 to 46 would make the surrender and re-issue of transmitter licences unnecessary.

57. Item 28 makes substantially similar amendments in relation to the national television conversion scheme. The repeal is consequential to amendments to the Radiocommunications Act made by Items 38 to 41.

58. These items would amend the statutory policy objectives for the national television conversion scheme in substantially the same way as Items 19-20 would amend the objectives for the commercial television conversion scheme (noted above).

59. Transitional provisions related to these items are in Items 3 and 7 of Schedule 3 to this Bill.

Radiocommunications Act 1992

60. Items 29 to 53 would amend the Radiocommunications Act.
Item 29 - Section 5 (definition of BSA coverage area)
Item 30 - Section 5 (definition of BSA television licence area plan)

61. These items would insert new defined terms into section 5 of the Radiocommunications Act. Item 29 inserts a definition of BSA coverage area. A BSA coverage area means a coverage area within the meaning of Schedule 4 to the BSA. This defined term is used in the context of amendments proposed by Items 38 and 39 relating to NBS transmitter licences.

62. Item 30 inserts a new defined term of BSA television licence area plan into section 5 of the Radiocommunications Act. It has the same meaning as in the BSA.

Item 31 - After subsection 31(1)
Item 32 - After subsection 31(1B)
Item 33 - Subsection 31(7)
Item 34 - Subsection 31(7)

63. Section 31 of the Radiocommunications Act empowers the Minister to 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 known as the broadcasting services bands (BSBs). Designated spectrum is referred to the ACMA for planning under Part 3 of the BSA.

64. The current Ministerial designation for the BSBs was made in 1992. There is some legal uncertainty about whether the Minister may vary a BSB designation. Items 31 and 32 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 vary each of the BSBs as needed to realise the digital dividend.

65. Items 33 and 34 would amend section 31 of the Radiocommunications Act to provide that an instrument that varies a BSB designation is not a legislative instrument within the meaning of section 5 of the Legislative Instruments Act 2003. This provision is declaratory of the law and does not amount to an exemption from the Legislative Instruments Act 2003.

Item 35 - After subsection 32(2)

66. Item 35 would amend section 32 of the Radiocommunications Act to give the ACMA greater flexibility when planning frequency bands. It does so by allowing a frequency band plan that relates to spectrum within the BSBs to be inconsistent with a frequency allotment plan (made specifically for the BSBs under section 25 of the BSA). Inconsistent planning documents will only be permitted if there is a direction in force under section 14 of the ACMA Act which requires the ACMA, when performing its spectrum management functions, to act in accordance with policy objectives that are expressed to be digital dividend policy objectives, and the ACMA is satisfied that the inconsistency between the frequency band plan and the frequency allotment plan is likely to facilitate any or all of the digital dividend policy objectives.
67. For example, the ACMA may make a frequency band plan for the digital dividend spectrum before the Minister excises that spectrum from the BSBs (through making or varying a BSB designation under section 31 of the Radiocommunications Act). 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 use of the band for international mobile telecommunications. Therefore, the frequency band plan will not be consistent with the current frequency allotment plan for that part of the 700 MHz band that is within the BSBs as the former will not make provision for the allotment of channels for broadcasting services or restricted datacasting services.

68. On 9 July 2010, the Minister made the Australian Communications and Media Authority (Realising the Digital Dividend) Direction 2010 (the Direction), directing the ACMA in relation to some of the government’s policy objectives for realising the digital dividend. The Direction included specifying the size and location of the spectrum to be cleared of broadcasting services and datacasting services. The Direction also specified some planning parameters for the ACMA to consider when undertaking planning activities under the BSA.

69. The reference to ministerial directions in the amendments to section 32 of the Radiocommunications Act is intended to capture the Ministerial direction of 9 July 2010 and any future direction that may be made under section 14 of the ACMA Act that relates to spectrum planning or broadcasting spectrum planning.

**Item 36 – After subsection 100(3A)**

70. Subsection 100(2) of the Radiocommunications Act provides that the ACMA must not issue an apparatus licence authorising the operation of a radiocommunications transmitter in spectrum that has been designated as BSB spectrum (under subsection 31(1) of the Radiocommunications Act) unless specified preconditions are met, including where the issue of the licence is in accordance with a determination made by the ACMA under subsections 34(1) or 34(3) of the BSA.

71. This means that for the ACMA to issue NBS transmitter licences to a national broadcaster under section 100 of the Radiocommunications Act, it must first make a determination under section 34 of the BSA that broadcasting spectrum is available for allocation (unless the Minister has previous reserved capacity under section 31 of the BSA: see subsection 100(3) of the Radiocommunications Act). National broadcasting services are already planned for in licence area plans made under section 26 of the BSA and so there is no real need for the ACMA to make a further determination about spectrum availability under section 34 of the BSA before issuing a NBS transmitter licence.

72. Item 36 would amend section 100 of the Radiocommunications Act so that the ACMA is authorised to issue NBS transmitter licences in accordance with a licence area plan made under section 26 of the BSA, without needing to make a determination under section 34.

73. Where apparatus licences are issued for temporary broadcasting or other purposes, where broadcasting bands spectrum has either not been planned through the licence area
planning process or has not been allocated for its planned purpose, the issue of the licence under section 100 of the Radiocommunications Act will remain subject to a prior determination being made under section 34 of the BSA.

Item 37 - Subsection 100(5)

74. Subsection 100(5) of the Radiocommunications Act provides that in deciding whether to issue an apparatus licence, the ACMA may have regard to whether an applicant previously held an apparatus licence that had been cancelled within the preceding two years. However apparatus licences cancelled as a result of a spectrum re-allocation process under Part 3.6 of the Radiocommunications Act – that is, through operation of law - are disregarded. Such a cancellation is disregarded because it does not go to the merit of the applicant’s application for a licence.

75. Item 37 would amend subsection 100(5) to add other apparatus licence cancellations that are to be disregarded by the ACMA. The additional cancellations to be disregarded cover apparatus licences held by commercial television broadcasters and national broadcasters as required by the respective conversion schemes. These licences will be cancelled by operation of law at the end of the simulcast period (Items 39 and 42 refer).

Item 38 – After section 100
Item 39 – After subsection 100B(2B)
Item 40 – Subsection 100B(3)
Item 41 – Subsection 100B(3)
Item 42 – At the end of section 102A
Item 43 – Subsection 102AC(1)
Item 44 – Subsection 102AC(2)
Item 45 – Subsection 102AC(2)
Item 46 – After section 102AC

76. 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 (section 102), and issue a commercial television broadcasting licensee a transmitter licence as required by the commercial television conversion scheme (section 102A). National broadcasters are issued NBS transmitter licences under section 100 of the Radiocommunications Act for the transmission of a national broadcasting service, or issued NBS transmitter licences under section 100B of the Radiocommunications Act where such licences are required by the national television conversion scheme.

77. Items 38 to 46 would amend the transmission authorisations for certain transmitter licenses held by national broadcasting services (issued under section 100), and commercial television broadcasting service licensees (issued under section 102). The revised 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.

78. Item 38 inserts a new section 100AA into the Radiocommunications Act. The new section amends the transmission authorisation of an NBS transmitter licence that was issued before the end of the simulcast period in relation to a particular coverage area, so that the NBS transmitter licence authorises 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 television licence area plan, or national television conversion scheme (including digital channel plan) is in force. Where an NBS transmitter licence is issued after a television licence area plan comes into force in relation to the particular coverage area, new subsection 100AA(2) provides that the NBS transmitter licence authorises the operation of the transmitter in digital mode using channels allotted to the national broadcaster concerned under the television licence area plan.

79. New subsection 100AA(3) deals with NBS transmitter licences that may be issued during the interim period between the end of the simulcast period (or simulcast-equivalent period) and the commencement of a television licence area plan. Subsection 100AA(3) provides that the NBS transmitter licence authorises digital transmission during that period using the channels allocated to the national broadcaster concerned under the national television conversion scheme or digital channel plan.

80. Item 39 inserts a new subsection 100B(2C) into the Radiocommunications Act. This subsection would operate to cancel those NBS transmitter licences that were required to be issued under the national television conversion scheme for digital transmission at the end of the simulcast period or the simulcast-equivalent period for a BSA coverage area.

81. Items 40 and 41 insert defined terms for simulcast period and simulcast-equivalent period into section 100B. Each term has the same meaning as the corresponding defined terms in Schedule 4 to the BSA.

82. Item 42 amends section 102A in a similar fashion to the amendment made to section 100B by Item 39. Transmitter licences required to be issued to commercial television broadcasters under the commercial television conversion scheme would be cancelled at the end of the simulcast period or the simulcast-equivalent period for the relevant BSA licence area.

83. Item 43 repeals and replaces subsection 102AC(1) of the Radiocommunications Act. The new subsection would amend the transmission authorisation of a transmitter licence issued under section 102 to a commercial television broadcasting licensee before the end of the simulcast period or simulcast-equivalent period for a licence area. The new transmitter authorisation would provide that transmitter licences issued under section 102 continue to authorise transmissions – but only in digital 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 television licence area plan or the commercial television conversion scheme (which includes the digital channel plan) is in force from time to time.

84. Items 44 and 45 insert defined terms for commercial television conversion scheme and digital channel plan into section 102AC. The terms have the same meaning as used in Schedule 4 to the BSA (see clauses 6 and 7A of that Schedule).
85. Item 46 inserts a new section 102AD into the Radiocommunications Act which provides that a transmitter licence issued under section 102 after the end of the simulcast period or simulcast-equivalent period for a licence area authorises the operation of a transmitter in digital mode only using the channels allotted under whichever of the television licence area plan or the commercial television conversion scheme (which includes the digital channel plan) is in force from time to time.

**Item 47 - Paragraph 109(1)(d)**
**Item 48 - Paragraph 109(1)(d)**
**Item 49 – After paragraph 109(1)(d)**
**Item 50 – At the end of section 109**

86. 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.

87. Item 49 would insert a new transmitter licence condition into section 109 of the Radiocommunications Act that requires the transmission of any television broadcasting service to comply with any applicable technical specifications specified in a BSA television licence area plan (a term defined in section 5 of the Radiocommunications Act: refer Item 30 above).

88. Items 47, 48, and 50 would make amendments consequential to Item 49.

**Item 51 – At the end of subsection 153H(1)**

89. Part 3.6 of the Radiocommunications Act sets out the rules that apply when encumbered spectrum is to be re-assigned. The Minister identifies the spectrum to be re-assigned by making a spectrum re-allocation declaration under section 153B of the Radiocommunications Act. At the end of the re-allocation period specified in the Minister’s declaration, apparatus licences that are operating in declared spectrum are generally cancelled by operation of law (section 153H of the Radiocommunications Act refers).

90. Broadcasting transmitter licences are a category of apparatus licence. Part 3.2 of the Radiocommunications Act imposes several duties on the ACMA to ensure that particular broadcasters are issued apparatus licences for so long as the related broadcasting licence (under the BSA) is in force. This duty appears to conflict with section 153H of the Radiocommunications Act, because the spectrum re-allocation process in Part 3.6 of the Radiocommunications Act does not affect the operation of the related broadcasting licence. Accordingly the ACMA remains duty bound to keep in force an apparatus licence authorising the transmission of these broadcasting services.

91. Item 51 would codify the position of broadcasting apparatus licences that are affected by a spectrum re-allocation process. The amendment to section 153H of the Radiocommunications Act makes clear that NBS transmitter licences, commercial broadcasting transmitter licences issued under sections 101B, 101C or 102 of the Radiocommunications Act, and community broadcasting transmitter licences issued under section 102 of the Radiocommunications Act are not cancelled at the end of the spectrum re-allocation period.
Item 52 – After paragraph 153P(2)(da)
Item 53 – At the end of section 153P

92. Where the Minister has specified a spectrum re-allocation in a spectrum re-allocation declaration made under section 153B of the Radiocommunications Act, subsection 153P(2) of that Act generally prohibits the ACMA from issuing new apparatus licences in spectrum covered by the Minister’s declaration (declared spectrum) during the re-allocation period. This general prohibition is subject to specific exceptions (paragraphs 153P(2)(c)-(e) refer).

93. While the BSBs are being reorganised during the re-allocation period, there may be a need for some existing broadcasting services to be temporarily issued additional apparatus licences that authorise the transmission of the service using declared spectrum.

94. Item 52 would amend subsection 153P(2) to add an exception to the general prohibition. New paragraph 153P(2)(db) would allow the ACMA to issue an apparatus licence during the interim period if that licence authorises the operation of a transmitter in declared spectrum for the purpose of transmitting one or more broadcasting services in digital mode in a BSA licence area.

95. This exception covers the transmission in digital mode of any broadcasting service that uses declared spectrum, including a re-transmission service within the meaning of section 212 of the BSA. A re-transmission service is a broadcasting service within the meaning of section 6 the BSA, although re-transmission services are not otherwise regulated by the BSA (that is, no broadcasting licence is required).

96. Item 53 would insert a new subsection 153P(4) to define the interim period as starting from the commencement of this subsection and ending on the designated re-stack day for the BSA licence area (Item 6 above provides for the designated re-stack day).

97. All BSA licence areas have the same designated re-stack day of 31 December 2014 (proposed paragraph 26(1K)(a) in Item 6 refers). Thus there will be a common interim period for the purposes of new subsection 153P(4). However, the Minister is empowered to set a later designated re-stack day for a particular BSA licence area in limited circumstances (proposed paragraph 26(1K)(b) in Item 6 refers). If the Minister changes the designated re-stack day the interim period would be similarly adjusted.
Schedule 2 – Other amendments

Australian Communications and Media Authority Act 2005

Item 1 – Paragraph 53(2)(k)

98. Section 53 of the ACMA Act imposes limits on the ability of (a) the ACMA to delegate certain powers, and (b) a Division established by the ACMA to sub-delegate certain powers delegated to it by the ACMA under section 50 of the ACMA Act. The delegation limits relate to the ACMA’s powers to make, vary or revoke legislative instruments (subsection 53(1) of the ACMA Act refers), and numerous powers conferred by the BSA (subsection 53(2) of the ACMA Act refers).

99. Item 1 would amend the delegation limit that relates to the power to issue particular notices under the BSA (paragraph 53(2)(k) of the ACMA Act refers). The amendment would allow the ACMA to delegate its power to issue notices under Part 9C of the BSA. The requirements imposed on the ACMA to issue various notices under Part 9C are in respect of administrative or routine matters relating to the operation of a conditional access scheme for satellite services provided under a licence allocated under section 38C of the BSA. There may be numerous notices issued where the ACMA directs a scheme administrator to issue a reception certificate pursuant to a complaint regarding an application under a conditional access scheme (see section 130ZF of the BSA) or where the ACMA performs the function of scheme administrator (see section 130ZCA of the BSA). It is unnecessary for these notices to be issued by the Authority itself instead of a delegate or sub-delegate and, given the potentially large number of notices that may be processed by the ACMA, the process would be more effectively and efficiently dealt with if delegated.

Broadcasting Services Act 1992

100. Items 2 to 52 inclusive would amend the BSA.

Item 2 – Subsection 6(1) (definition of scheme administrator)

101. This item is related to amendments made by Item 22 below. This item would repeal and replace the definition of scheme administrator. The revised definition directs the reader to subsection 130ZB(8) in relation to a conditional access scheme for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area, and to subsection 130ZBB(9) in relation to a conditional access scheme for the Western Australia TV3 licence area.

Item 3 – After subsection 41B(1A)
Item 4 – After subsection 41B(2A)
Item 5 – After subsection 41B(2D)
Item 6 – Subsection 41B(4)

102. Subsection 41B(1) of the BSA currently provides that commercial television broadcasting licences in force immediately before 1 January 2009 (other than, after the commencement of section 38C, eligible parent licences or eligible section 38A licences
– as defined in section 41B(2E)) are authorised during the simulcast period or simulcast-equivalent period to provide a core commercial television broadcasting service, a HDTV multi-channelled commercial television broadcasting service, and a SDTV multi-channelled commercial television broadcasting service.

103. Subsection 41B(2) of the BSA currently provides that commercial television broadcasting licences allocated on or after 1 January 2009 (other than particular eligible parent licences, eligible section 38A licences, or eligible 38B licences defined in section 41B(2E)) are authorised during the simulcast period or simulcast-equivalent period to provide one HDTV multi-channelled commercial television broadcasting service and two SDTV multi-channelled commercial television broadcasting services.

104. Items 3 to 6 would amend the service authorisations set out in section 41B of the BSA to provide modified service authorisations for remote area licences. A definition of remote area licence is proposed by Item 6 – a remote area licence is a commercial television broadcasting licence for a remote licence area (within the meaning of Schedule 4 to the BSA).

105. The Broadcasting Legislation Amendment (Digital Television) Act 2010 amended the BSA to authorise commercial television broadcasters in the smaller, ‘underserved’ regional licence areas such as regional South Australia, Griffith and Broken Hill to elect to provide all digital multi-channelled television broadcasting services in standard definition only on two channels of spectrum until the end of the simulcast period. The amendments proposed in Items 3 to 6 will also authorise (but not require) commercial television broadcasters in remote licence areas to elect to provide all digital multi-channelled television broadcasting services in standard definition only on two channels of spectrum until the end of the simulcast period if they choose to do so. This may assist in achieving equalisation in the number of multi-channelled digital television services provided by commercial broadcasters in Australia.

106. Items 3 and 4 insert new subsections 41B(1B) and 41B(2AA) to the BSA. Proposed subsection 41B(1B) provides that the service authorisation set out in subsection 41B(1) does not apply to remote area licences. Proposed subsection 41B(2AA) provides that the service authorisation set out in subsection 41B(2) does not apply to remote area licences.

107. Item 5 inserts new subsections 41B(2DA) and (2DB) to the BSA.

108. Proposed subsection 41B(2DA) provides that remote area licences that were in force immediately before 1 January 2009 are authorised to provide during the remainder of the simulcast period or the simulcast-equivalent period the core commercial television broadcasting service, and either:
   - one HDTV multi-channelled commercial television broadcasting service and one SDTV multi-channelled commercial television broadcasting service; or
   - two SDTV multi-channelled commercial television broadcasting services.

109. Proposed subsection 41B(2DB) provides that remote licences allocated on or after 1 January 2009 but before the end of the simulcast period or simulcast-equivalent period for the licence area, are authorised to provide during the remainder of that period:
• one HDTV multi-channelled commercial television broadcasting service and
two SDTV multi-channelled commercial television broadcasting services; or
• three SDTV multi-channelled commercial television broadcasting services.

110. One of the SDTV multi-channelled commercial television broadcasting services
referred to in the above paragraph will be the primary commercial television
broadcasting service (see Item 60 below).

111. These provisions will operate in conjunction with other amendments in this Schedule to
the multi-channelling election provisions in clause 6 of Schedule 4 to the BSA (see
Item 45 below).

Item 7 – After subsection 43AA(3A)
Item 8 – Subsection 43AA(7)
Item 9 – After subsection 43AC(3)
Item 10 – Subsection 43AC(5)

112. Sections 43AA and 43AC of the BSA require regional and remote commercial
television broadcasting licensees to provide their local news programs to the relevant
section 38C licensee (for the purposes of the 38C licensee providing a local news
service as required under clause 7D of Schedule 2 to the BSA) from the date the
section 38C licence is allocated.

113. Item 7 would amend subsection 43AA to include a new subsection 43AA(3AA) to
provide that a regional commercial television broadcasting licensee is not required to
provide its local news programs to the relevant section 38C licensee until the start date
for the licence area of the section 38C licence. The start date for services required to be
provided in a licence area under a section 38C licence is determined by the ACMA
under clause 7H of Part 3 of Schedule 2 to the BSA.

114. Item 9 would amend section 43AC to include a new subsection 43AC(3A) to provide
that if a remote commercial television broadcasting licensee is required to provide its
local news programs to the relevant section 38C licensee under subsection 43AC(2), the
remote licensee is not required to do so until the start date for the licence area of the
section 38C licence.

115. Items 8 and 10 respectively would amend subsections 43AA(7) and 43AC(5) to insert a
definition of the start date in relation to the licence area of a section 38C licence. The
definition directs the reader to Division 2 of Part 3 of Schedule 2 to the BSA.

116. No amendment is necessary in relation to the metropolitan licensee’s obligation to
supply local news programming to a section 38C licensee as this obligation is triggered
by the section 38C licensee requesting such programming (section 43AB refers).

117. Related amendments to the licence conditions that apply to the holder of a licence
issued under section 38C of the BSA are proposed by Item 43, noted below.

118. Transitional provisions related to these items are in Item 8 of Schedule 3 to this Bill.
Item 11 – At the end of subsection 130ZB(1)

119. Item 11 would amend subsection 130ZB(1) as a consequence of amendments made by Item 22, so that the subsection applies only to conditional access schemes for the South Eastern Australia TV3 licence area and the Northern Australia TV3 licence area.

Item 12 – At the end of paragraph 130ZB(5)(b)

Item 13 – After paragraph 130ZB(5)(b)

120. Section 130ZB of the BSA currently sets out the statutory policy objectives that a conditional access scheme must be directed towards achieving in order to be registered by the ACMA under Part 9C of the BSA. A conditional access scheme sets out the rules relating to access to services provided under a commercial television broadcasting licence allocated under section 38C of the BSA.

121. One of the statutory policy objectives in section 130ZB is that a conditional access system must enable persons in Category A or Category B reception areas to receive the commercial television broadcasting services provided under the section 38C licence (see subsection 130ZB(5)(a) and (b)). Items 12 and 13 would amend section 130ZB(5) so that the conditional access system must also enable persons in a declared service-deficient area (Item 37 refers) to receive those commercial television broadcasting services.

Item 14 – Subsection 130ZB(9)

Item 15 – After paragraph 130ZB(10)(a)

122. These items make amendments consequential to Item 37. These amendments exclude declared service-deficient areas from the application of subsections 130ZB(9) and (10), so that a declared service-deficient area is outside the scope of a Category C reception area.

Item 16 – After subsection 130ZB(13)

123. One of the statutory policy objectives listed in section 130ZB is that the conditional access scheme must authorise the scheme administrator to revoke a reception certificate that has been issued to a person in a Category C reception area if the person is no longer eligible for a reception certificate (see subsection 130ZB(13)). A person in a Category C reception area may apply for, and must be issued with, a reception certificate if that person does not have adequate reception of all of the applicable terrestrial digital commercial television broadcasting services.

124. This item would amend section 130ZB to insert a new subclause 130ZB(13A) to specify that once a person in a Category C reception area has been issued a reception certificate, after that time they will be taken to remain eligible for that certificate (and not have it revoked), provided they do not subsequently move to another premises. If a person moves premises the intention is that that person’s access to satellite services would be determined from their new location in accordance with the registered conditional access scheme that applies at that time. If the person was to move to a location that is neither a Category A reception area, a Category B reception area, nor a declared service-deficient area, but still has inadequate reception of the applicable
terrestrial digital commercial television services, the person could again apply for a reception certificate to access the services (as a Category C reception area).

125. The qualification to the statutory policy objective about the revocation of reception certificates in Category C reception areas would ensure that once a person has been issued a reception certificate, and incurred the expense of buying and installing satellite reception equipment to access the satellite commercial television broadcasting services, that person should not have their certificate revoked because adequate terrestrial digital television reception is later provided in the Category C reception area.

126. Transitional provisions related to this item are in Item 9 of Schedule 3 to this Bill.

**Item 17 – After subsection 130ZB(15)**

127. One of the statutory policy objectives for a conditional access scheme is that a conditional access system that relates to the delivery of broadcasting services licensed under section 38C of the BSA must enable persons in Category A reception areas and Category B reception areas (as defined in subsections 130ZB(3) and (4) respectively) to receive the satellite services.

128. In relation to Category B reception areas, the BSA does not prescribe particular areas as Category B reception areas, or a method for determining those areas; this is a matter to be addressed in the conditional access scheme itself (subsection 130ZB(4) refers). The conditional access scheme may either specify one or more particular areas to be Category B reception areas, or specify a methodology for identifying Category B reception areas.

129. It is possible that a current Category B reception area could cease to be a Category B reception area at a later date. Such a scenario could arise either because the specification of Category B reception areas change when a replacement conditional access scheme is registered (compared to the previously registered scheme), or because a particular conditional access scheme sets out a method for identifying Category B reception areas and that method includes a variable in it that may change the boundaries of the area(s) over time. This could result in a Category B reception area changing even though the viewer has not moved.

130. For example, this could occur where the signal strength of a digital television service has been increased at a local terrestrial transmission site, or, where a new terrestrial digital television transmission facility is established in an area thereby providing that area with adequate terrestrial digital reception.

131. This item would insert new subsections 130ZB(15A) and (15B) which contain additional objectives for the conditional access scheme for Category B reception areas and declared service-deficient areas.

132. The new objectives in subsections 130ZB(15A) and (15B) for the conditional access scheme is to ensure that the broadcaster’s conditional access system enables the ongoing reception of the licensed services by a person who was located in a Category B reception area or a declared service-deficient area at the time access was enabled, and who remains in the same premises. If a person moves premises the intention is that that
person’s access to satellite services would be determined from their new location in accordance with the registered conditional access scheme that applies at that time. If the person was to move to a location that is not a Category A reception area or a Category B reception area, or a declared service-deficient area, but still has inadequate terrestrial digital television reception, the person could apply for a reception certificate to access the services (as a Category C reception area).

133. Transitional provisions related to this item are in Item 9 of Schedule 3 to this Bill.

**Item 18 – Subsection 130ZB(16) (paragraph (b) of the definition of related terrestrial licence area)**

**Item 19 – Subsection 130ZB(16) (paragraph (c) of the definition of related terrestrial licence area)**

**Item 20 – Subsection 130ZB(16) (notes 1 and 2 after the definition of simulcast period)**

**Item 21 – Subsection 130ZB(16) (after the definition of terrestrial licence area)**

134. Items 18, 19, 20 and 21 make technical amendment to subsection 130ZB(16) consequential to the amendments made by Item 22, to reflect that section 130ZB only applies to the South Eastern Australian TV3 and Northern Australia TV3 licence areas.

**Item 22 – After section 130ZB**

135. This item would provide modified statutory policy objectives for a conditional access scheme relating to commercial television services delivered by satellite under a licence issued under section 38C of the BSA for the Western Australia TV3 licence area.

136. The modified statutory policy objectives reflect, in part, the special circumstances in Western Australia where a number of parts of the remote licence area have similar characteristics of a regional licence area.

137. Currently section 130ZB(2) of the BSA provides that Category A reception areas for the South Eastern Australian TV3, Northern Australia TV3, and Western Australia TV3 licence areas are related terrestrial licence areas (that is, remote terrestrial licence areas) in the satellite licence area, and that persons in Category A reception areas also includes those people who access a commercial television service because they are entitled to the benefit of an ‘out of area’ permit held by the remote terrestrial broadcaster.

138. Proposed subsection 130ZBB(3) would provide that, for the Western Australia TV3 licence area, the first objective for the conditional access scheme is that Category A reception areas be:

a. the related terrestrial licence areas (column 3 of item 3 of the table in subsection 38C(1) of the BSA refers), and

b. areas outside the related terrestrial licence area where the licensee for a related terrestrial licence area is authorised by the ACMA to provide their service to one or more people (‘out of area’ permits granted under paragraph 7(2A)(d) of Schedule 2 to the BSA).

but excluding from Category A reception areas, areas that are Category D reception areas under the scheme (described below).
139. This means that a viewer located in a related terrestrial licence area that will not receive terrestrial digital television services from a transmission site converted under the commercial television conversion scheme would remain in a Category A reception area. These viewers would be deemed to be unable to receive adequate reception of all of the applicable terrestrial digital commercial television services, and in accordance with the third objective (see proposed subsection 130ZB(5)) would be able to access the section 38C satellite service from its commencement.

140. The second objective for the conditional access scheme for the Western Australia TV3 licence area (proposed subsection 130ZBB(4)) is to specify those areas that are to be Category B reception areas. Category B reception areas for the Western Australia TV3 licence area will be conceptually similar to Category B reception areas used in the other satellite television licence areas, but will be limited to reception areas within the Perth TV1 terrestrial licence area (which is not a related terrestrial licence area). The conditional access scheme may either specify one or more particular areas included in the Perth TV1 licence area to be Category B reception areas, or specify a methodology for identifying areas within the Perth TV1 licence area as Category B reception areas. Viewers in Category B reception areas are deemed to be unable to receive adequate terrestrial television services.

141. The conditional access system must not enable persons in a Category B reception area to receive services provided by the relevant section 38C licensee earlier than 6 months before the switch-over date in their related terrestrial licence area (as set out in proposed subsections 130ZBB(18) and (19)).

142. Once access is facilitated to a person in a Category B reception area, in accordance with the fifteenth policy objective the broadcaster’s conditional access system would be required to enable the ongoing reception of the licensed services by that person provided they remain located at the same premises. If a person moves to another premise, the intention is that the person’s access to satellite services would be determined in their new location.

143. The fourth policy objective of the scheme for Western Australia is that Category C reception areas are areas other than Category A, B or D reception areas. Viewers in Category C reception areas need to apply for a reception certificate before being able to access to satellite commercial television services. The scheme administrator will grant a reception certificate to a viewer who is in a Category C reception area (but not in a declared service-deficient area) if satisfied that the applicant is unable to adequately receive all of the applicable terrestrial commercial digital television services (proposed subsection 130ZBB(10) refers). For example, a viewer located within the Perth TV1 licence area (in an area that is not a Category B reception area) may not receive adequate reception of all available terrestrial commercial digital television services. In this situation, as the viewer is in a Category C reception area (as the area is not a Category A, B or D reception area) the viewer may apply to the scheme administrator to receive a reception certificate to access the relevant satellite commercial television service.

144. The conditional access system must not enable persons in a Category C reception area to receive services provided by the relevant section 38C licensee earlier than 6 months
before the switch-over date in their related terrestrial licence area (as set out in proposed subsections 130ZBB(18) and (19)).

145. The scheme administrator will revoke a reception certificate issued to a person in a Category C reception area if the viewer is no longer eligible for the certificate (proposed subsection 130ZBB(16) refers). However, a person in a Category C reception area who is issued a reception certificate will be entitled under proposed subsection 130ZBB(17) to retain the certificate, provided that person has not moved to another premises. Subsequent improvements to terrestrial digital television transmission will not provide a valid ground for the CAS administrator revoking the certificate.

146. Proposed subsection 130ZBB(8) specifies that the fifth objective of the scheme would be to specify areas that would be Category D reception areas, or specify a methodology for identifying those areas. Category D reception areas would be those areas within the related terrestrial licence areas that receive, or are expected to receive, adequate reception of terrestrial digital television services provided by the relevant commercial television broadcasting licensees as a result of the roll-out of digital television services under the commercial television conversion scheme.

147. In accordance with the tenth and eleventh objectives of the scheme (see proposed subsections 130ZBB(14) and (15)), viewers in Category D reception areas would be excluded from applying to access the section 38C satellite services in Western Australia until the earlier of whenever all of the commercial television broadcasting licensees in the Category D reception area have commenced providing core/primary digital terrestrial services in the area (as required under the commercial television conversion scheme), or the end of the simulcast period for that licence area. The date on which all of the core/primary digital terrestrial services commence in a Category D reception area would be the designated digital service day for the particular Category D reception area. The scheme must provide for the scheme administrator to notify the ACMA as soon as practicable of the occurrence of each designated digital service day. This is because the ACMA must maintain a register of designated digital service days (see Item 34 below).

148. After the designated digital service day, viewers in a Category D reception area would be able to apply to the scheme administrator to obtain a reception certificate to access the satellite commercial television services. The scheme administrator must grant a reception certificate to a viewer in a Category D reception area if satisfied that the applicant is unable to adequately receive terrestrial digital television services. The scheme administrator must revoke a reception certificate if a viewer is no longer eligible for the certificate.

149. Proposed subsection 130ZBB(17) provides that a person in a Category D reception area who is issued a reception certificate is entitled to retain the certificate provided that person has not moved to another premises. Subsequent improvements to terrestrial digital television transmission after the designated digital service day would not provide a valid ground for the scheme administrator revoking the certificate.

150. The sixth, seventh, eighth, ninth and twelfth policy objectives are about the administration of access to satellite commercial television services within a Category C or Category D reception area, principally the role of the scheme administrator. The
Conditional access scheme must nominate a company to discharge the function of the scheme administrator (or if the scheme is formulated by the ACMA, identify the ACMA as the scheme administrator). The scheme must authorise the administrator to deal with applications for reception certificates that are made in accordance with the scheme. The scheme must require the scheme administrator to make a decision on (formally compliant) applications received within 15 business days. The scheme administrator must also deal with the application without requiring the applicant to pay a fee or incur an expense.

151. Proposed subsection 130ZBB(21) is intended to ensure that viewers who are in areas that are declared by the ACMA to be service-deficient areas (as described in Item 37 below) are able to access the section 38C satellite services licensed for their area as soon as that area is so declared. Once access for a person in a service-deficient area is facilitated, the conditional access system must enable the ongoing reception of the licensed services for so long as the person remains in the same premises as at the time access was initially enabled. If the person moves, the intention is that the person’s access to satellite services would be determined afresh in their new location.

Item 23– Subparagraph 130ZC(1)(d)(iii)
Item 24– Subsection 130ZC(1) (note)
Item 25 – Subsection 130ZC(1)(da)
Item 26 – Paragraph 130ZCAA(1)(e)
Item 27– Paragraph 130ZCAB(1)(a)
Item 28– Paragraph 130ZCAB(1)(b)
Item 29– Subsection 130ZCAB(2)
Item 30– Subparagraph 130ZCAB(2)(a)(i)
Item 31– After subsection 130ZCAB(2)
Item 33– Subsection 130ZCA(7)

152. These items would amend sections 130ZC, 130ZCAB and 130ZCA to provide for a body or association representing commercial broadcasting licensees (‘industry’) to develop a conditional access scheme to replace a registered conditional access scheme that has been developed by the ACMA.

153. Item 23 amends subparagraph 130ZC(1)(d)(iii) to broaden the scope of section 130ZC so that industry may submit to the ACMA for registration a new scheme that is intended to replace a registered conditional access scheme that was formulated and registered by the ACMA under section 130ZCA of the BSA.

154. Items 24 and 33 make amendments that are consequential to those made by Item 23. Item 33 repeals subsection 130ZCA(7), which currently provides that where the ACMA develops and registers a conditional access scheme for a licence area, section 130ZC would cease to apply to that licence area (meaning that industry could no longer develop a replacement scheme). Item 24 would repeal the note beneath subsection 130ZC(1) which cross-references subsection 130ZCA(7).

155. Items 25 and 26 would make amendments consequential to Item 22. Item 25 amends paragraph 130ZC(1)(da) by specifying that before registering a conditional access scheme developed by industry, the ACMA must be satisfied that the scheme complies with section 130ZB where the scheme is for the South Eastern Australia TV3 licence
area or the Northern Australia TV3 licence area, or that the scheme complies with section 130ZBB where the scheme is for the Western Australia TV3 licence area.

156. Item 27 amends paragraph 130ZCAB(1)(a) to broaden the circumstances in which the ACMA may request that industry develop a replacement conditional access scheme. The proposed amendment would allow the ACMA to request that industry develop a conditional access scheme to replace a registered conditional access scheme that has been formulated and registered by the ACMA.

157. Item 28 amends paragraph 130ZCAB(1)(b) to clarify that the ACMA does not need to be satisfied that a conditional access scheme is not meeting one or more of the statutory policy objectives that applies to the particular scheme before requesting industry to formulate a conditional access scheme to replace a conditional access scheme that has been formulated by the ACMA. The intention is for the ACMA to have a broad discretionary power to request that industry develop a conditional access scheme to replace a registered conditional access scheme that has been developed by the ACMA.

158. Items 29 and 30 make technical amendments to subsection 130ZCAB(2) that are consequential to the amendment made by Item 27.

159. Item 31 defines the term appropriate body or association for the purpose of the amendment proposed by Item 29. Where the ACMA requests industry to formulate a conditional access scheme to replace a registered scheme that was formulated by industry, the appropriate body or association to which the ACMA makes the request will be the body or association that formulated the first scheme. Where the ACMA’s request is for the industry to formulate a scheme to replace a registered conditional access scheme that was formulated by the ACMA, the appropriate body or association will be one that the ACMA is satisfied represents commercial television broadcasting licensees.

Item 32 – Paragraph 130ZCA(3)(a)

160. This item would make amendments consequential to Item 22 by specifying that the ACMA must not formulate a conditional access scheme unless it is satisfied that the scheme complies with section 130ZB where the scheme is for the South Eastern Australia TV3 licence area or the Northern Australia TV3 licence area, or it is satisfied that the scheme complies with section 130ZBB if the scheme is for the Western Australia TV3 licence area.

Item 34 – After section 130ZE

161. This item is consequential to Item 22 and would insert a new section 130ZEA in the BSA. This section would confer a new function on the ACMA to maintain a Register of designated digital service days. The Register is an administrative instrument, and must be made available for public inspection on the ACMA’s website.

Item 35 – Paragraph 130ZF(1)(b)

162. This item would replace paragraph 130ZF(1)(b) to accommodate the making of service-deficient area declarations (Item 37 below refers) and the creation of an
additional category D reception area in relation to the conditional access scheme for the Western Australia TV3 licence area (Item 22 refers).

163. Subsection 130ZF(1) of the BSA sets out the circumstances in which the ACMA may direct the scheme administrator for a registered conditional access scheme to issue a reception certificate.

164. The amendments made by this item confer on the ACMA a power to issue a direction to the scheme administrator in relation to the administrator’s decision to not issue a reception certificate in relation to a category D reception area in the Western Australia TV3 licence area. As noted for Item 22 above, the scheme administrator cannot issue a reception certificate to an applicant in a category D reception area until the earlier of the designated digital service day, or the end of the simulcast period.

165. In addition, the amendments made by this item provide that the ACMA cannot issue a direction to the scheme administrator in relation to a declared service-deficient area. Accordingly, such declared areas are excluded from the scope of:
   a. a category C reception area for the purpose of a conditional access scheme that regulates access to services licensed under section 38C of the BSA in the Northern Australia TV3, South Eastern Australia TV3, or Western Australia TV3 licence areas; and
   b. a category D reception area for the purpose of the conditional access scheme that regulates access to services licensed under section 38C in the Western Australia TV3 licence area.

Item 36 – At the end of subsection 130ZF(13)

166. Subsection 130ZF(13) provides that where persons are taken to have received reception certificates under subsection 130ZF(11) or (12), those reception certificates are able to be revoked in the same way as any other reception certificate that has been issued under a conditional access scheme. Item 36 would amend subsection 130ZF(13) to make clear that, as for any other reception certificate, the scheme administrator would only be authorised to revoke a certificate taken to be issued under subsection 130ZF(11) or (12) where a person is no longer eligible for the certificate (see Items 16 and 22 regarding revocation of a reception certificate).

Item 37 – At the end of Part 9C

167. This item would insert new section 130ZH in the BSA. Proposed section 130ZH requires the ACMA to declare, by legislative instrument, a particular area within a licence area to be a declared service-deficient area. The ACMA must make a declaration if satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided in an area is less than the number of commercial television broadcasting services required to be provided by a section 38C licensee under the licence conditions set out in Schedule 2 of the BSA.

168. Proposed subsection 130ZH(5) clarifies that for the purposes of determining whether the number of services provided in the area is less than the number of services provided under a commercial television licence allocated under section 38C, the local news service provided by the 38C licensee is to be disregarded.
169. Proposed subsection 130ZH(2) clarifies that the particular area must be wholly inside or outside a local market area, which is necessary for the application of the timeframes in subsection 130ZH(3) which govern when the ACMA makes a service-deficient area declaration.

170. If the simulcast period for a television licence area has ended before these amendments commence, the ACMA must not declare the area to be a service-deficient area earlier than nine months after the day the simulcast period ended. If the simulcast period for a television licence area is in force at the time these amendments commence, the ACMA must not declare the area to be a service-deficient area earlier than three months after the end of the simulcast period.

171. If the service-deficient area is within a digital-only local market area, the ACMA must not declare the area to be service-deficient earlier than nine months after the local market area becomes a digital-only local market area. If the proposed service deficient area is within a local market area that has not yet become a digital-only local market area when these amendments commence, the ACMA must not declare the area to be service-deficient earlier than three months after the local market area becomes a digital-only local market area.

172. Proposed subsection 130ZH(4) requires the ACMA to revoke the declaration of a service-deficient area if the ACMA is not satisfied that the number of applicable terrestrial digital commercial television broadcasting services provided in that area is less than the number of commercial television broadcasting services provided under the section 38C licence.

173. For example, if the ACMA makes a service-deficient area declaration, and the relevant terrestrial commercial television broadcasting licensees subsequently roll out additional digital services so that the number of services provided terrestrially are the same as those required to be provided by the satellite service, the ACMA would then be required to revoke the declaration of a service-deficient area.

174. Subsection 130ZB(15B) (Item 17 refers) will ensure that the revocation of a service-deficient declaration will not affect the ability of a viewer who has accessed the satellite service licensed under section 38C as a result of being in an area previously declared to be service-deficient to continue to receive the service.

Item 38 – Paragraph 7(1)(ma) of Schedule 2
Item 39 – Paragraph 7(1)(mb) and (mc) of Schedule 2
Item 41 – Subclause 7(7) of Schedule 2
Item 45 – Subclause 6(7B) of Schedule 4

175. Presently, remote broadcasting licensees who are individually, or through a joint venture company, jointly allocated an additional commercial television broadcasting licence under section 38B of the BSA may give notice to the ACMA under subclause 6(7B) of Schedule 4 to the BSA of their intention to use multi-channelling transmission capacity. If made, a multi-channelling election allows the remote broadcasters concerned to rationalise the amount of transmission capacity needed to provide both the commercial television broadcasting service licensed under section 38B.
and the licensee’s related service(s) operating in that remote licence area. (The defined terms of exempt licence, parent licence and exempt remote area service refer).

176. The notice of intention made under subclause 6(7B) of Schedule 4 to the BSA is known as a multi-channelling election. Currently subclause 6(7B) requires a broadcaster to make an election ‘at or about the time’ the licence is allocated under section 38B.

177. In order to ensure all remote area broadcasters are able to use multi-channelling transmission capacity, and thereby transmit three digital services using only two 7 MHz channels of spectrum, Item 45 would amend subclause 6(7B) of Schedule 4 so that a multi-channelling election may be made within 12 months of the later of the date a section 38B licence is allocated or the commencement of this amendment.

178. Together with the amendments proposed in Items 3 to 6 of this Schedule, the amendments proposed by Item 45 would assist in achieving equalisation in the number of multi-channelled digital television services provided by broadcasters in Australia by allowing broadcasters in remote licence areas to provide their digital television services in standard definition only on two channels of spectrum. Those remote broadcasters who did not make a multi-channelling election at or about the time a section 38B licence was allocated may still be able to make an election as a result of the amendments made by Item 45.

179. Items 38 and 41 would amend the licence conditions applying to remote area broadcasters who make a multi-channelling election. Items 38 and 41 amend subparagraph 7(1)(ma) and subclause 7(7) of Schedule 2 to the BSA respectively so that where a multi-channelling election is made under subclause 6(7B) of Schedule 4 to the BSA, the remote area broadcaster will be exempt from the licence condition in paragraph 7(1)(ma) of Schedule 2 that requires the provision of a HDTV multi-channelled commercial television broadcasting service during the simulcast period.

180. As a result remote area broadcasters who make a multi-channelling election where there is a simulcast period in force are in the same position as those broadcasters who make a multi-channelling election in a non-remote licence area where there is a simulcast period in force. The latter broadcasters are already exempt from the requirement under the licence condition in paragraph 7(1)(ma).

181. Item 39 makes technical amendments to the licence conditions set out in paragraphs7(1)(mb) and (mc) of Schedule 2 that are consequential to the insertion of new subclause 7(4C) in Schedule 2 (Item 40 below refers), so that the obligation to provide a HDTV multi-channelled commercial television broadcasting service is subject to the new subclause 7(4C).

**Item 40 – After subclause 7(4A) of Schedule 2**

**Item 42 – Paragraph 7(8)(a) of Schedule 2**

182. Items 40 makes amendments to the licence conditions applying to commercial television broadcasting licensees in respect of simulcasting obligations and the obligation to provide a HDTV multi-channelled service during the simulcast period or simulcast-equivalent period.
183. As the digital switchover program progresses there may be circumstances where particular analog transmitters need to stop transmitting before the end of the simulcast period in a licence area (eg, for technical or interference management reasons).

184. Currently clause 5F of Schedule 4 to the BSA permits analog transmissions in particular areas (local market areas) to stop before the end of the simulcast period. If the Minister specifies a local market area, analog transmissions will stop in that area on the date specified by the Minister as the date that area is to become a digital-only local market area. Any part of a licence area that is not determined to be a local market will switch to digital-only transmission at the end of the simulcast period in accordance with clause 6A of Schedule 4 to the BSA.

185. In the absence of the Minister making a digital-only local market area determination, a commercial television broadcasting licensee would technically be in breach of its licence condition in paragraph 7(1)(m) of Schedule 2 to the BSA if, before the end of the simulcast period, the licensee ceased analog transmissions to a particular part of a licence area while continuing to transmit their service in digital mode in the same part of the licence area. A national broadcaster would similarly be in breach of its simulcast obligations in relation to its coverage areas under clause 35 of Schedule 4 to the BSA.

186. When multiple analog transmitters coincidentally cover the same geographic area it can be difficult to accurately specify a local market area for a digital-only local market area determination in such a way as to facilitate the cessation of analog transmission from one transmitter but not another.

187. Item 40 (together with related amendments to Item 44 and 49 below) would in part amend the effect of a digital-only local market area determination to minimise the risk of a disproportionate number of analog transmitters ceasing to operate in compliance with the digital-only local market area determination.

188. Item 40 inserts a new subclause 7(4B) in Schedule 2 to the BSA. The new subclause would excuse, for the purposes of determining compliance with the statutory licence conditions in paragraphs 7(1)(k) and (m), analog transmissions in a digital-only local market area if it occurs accidentally or as a necessary result of providing commercial television broadcasting services outside the digital only local market area. (Item 42 makes a technical amendment to clause 7 of Schedule 2 to the BSA).

189. Item 40 also inserts a new subclause 7(4C) in Schedule 2 to the BSA. The new subclause would provide that paragraphs 7(1)(ma), (mb) and (mc) of Schedule 2 (which require that a commercial television broadcasting licensee provide a HDTV multi-channelled commercial television broadcasting service) do not apply to a commercial television broadcasting service provided by a licensee to the extent to which the service provided in that area, has been declared to be an exempt digital transmission area in relation to that licence under proposed clause 9A of Schedule 4 to the BSA (Item 47 below refers).
Item 44 – Paragraph 6(3)(ga) of Schedule 4  
Item 49 – Paragraph 19(3)(ga) of Schedule 4  
Item 53 – Clause 35A of Schedule 4  
Item 54 – At the end of clause 35A of Schedule 4

190. Item 44 makes amendments to the commercial television conversion scheme policy objectives in paragraph 6(3)(ga) of Schedule 4 to the BSA. Currently paragraph 6(3)(ga) sets an objective for the conversion scheme that no analog transmissions of commercial television broadcasting services are to be made in an area that is a digital-only local market area. The amended objective of the conversion scheme is that no commercial television broadcasting services are to be transmitted in analog mode using transmitters that are located in an area that is a digital-only local market area. In other words, transmitters operating from a site in that part of the licence area still subject to a simulcast period would not be required to cease analog transmissions. The general intention is to confine the effect of a digital only local market area determination to those transmissions that originate from a local market area.

191. Items 49, 53 and 54 make corresponding amendments in relation to transmissions made by the national television broadcasting services in a coverage area that is subject to the Minister’s digital-only local market area determination.

Item 43 – At the end of clause 7D of Schedule 2

192. This item would amend the licence condition that applies to the broadcast of local news programs on satellite commercial television broadcasting services licensed under section 38C of the BSA.

193. Clauses 7B and 7C of Schedule 2 to the BSA set out licence conditions that apply to the holder of a licence issued under section 38C of the BSA. Clause 7B imposes a condition requiring the licensee to broadcast a core/primary service, while clause 7C imposes a condition requiring the licensee to broadcast particular HDTV and SDTV multi-channelled services. Each of these licence conditions operate subject to the declaration of a start date for the service, declared by the ACMA under clause 7H of Schedule 2 to the BSA.

194. However, the licence condition requiring the broadcast of local news programs (clause 7D of Schedule 2 to the BSA refers) is not subject to the declaration of the start date. This, in effect, means that the licensee must provide local news programs from the date the section 38C licence is allocated, instead of the declared start date for the licence area. This effect is unintended.

195. Item 43 would amend the licence condition in clause 7D of Schedule 2 to the BSA so that the local news programs are not required to be broadcast by a section 38C licensee until the start date is declared by the ACMA under clause 7H (new subclause 7D(4) refers).

196. This item is complemented by Items 7, 8, 9 and 10, which amend the licence conditions for regional and remote commercial television broadcasting licensees in a similar way.
197. Transitional provisions related to this item are in Item 8 of Schedule 3 to this Bill.

**Item 46 – Clause 6C of Schedule 4**

198. This item would repeal clause 6C of Schedule 4 to the BSA.

199. Clause 6C sets out a policy objective for Part A of the commercial television conversion scheme (which applies to non-remote licence areas) that is directed towards the digital conversion of particular analog self-help retransmission sites by commercial television broadcasting licensees.

200. When clause 6C was enacted in 2010, it was anticipated that commercial television broadcasters would convert a number of existing analog self-help transmission sites to digital, and that the commercial television broadcasters would be individually licensed to transmit their commercial television broadcasting services in digital mode from the converted sites.

201. Since clause 6C was enacted an alternative approach has been adopted by the commercial television broadcasting industry whereby the commercial broadcasting licensees are not proposing to individually hold the transmitter licences needed to deliver digital television at those analog self-help sites that are to be converted. Instead, the conversion process for particular analog self-help transmission sites is expected to see the analog self-help re-transmission service being replaced by a digital re-transmission service. A third party will then apply for a transmitter licence under section 100 of the Radiocommunications Act to provide an unaltered re-transmission in digital mode of programs provided by one or more of the commercial television broadcasting services in that area.

202. In this context, the policy objective set out in clause 6C of Schedule 4 to the BSA, and any amendments that would be made to the conversion scheme to achieve that policy objective, are unlikely to be used in the way originally intended. The existing provisions of the BSA and the Radiocommunications Act are sufficient to support the alternative approach to converting some analog self-help re-transmission sites to digital.

203. Transitional provisions related to this item are in Items 2 and 6 of Schedule 3 to this Bill.

**Item 47– After clause 9 of Schedule 4**

**Item 52 – After clause 21 of Schedule 4**

204. These items would insert respectively new clauses 9A and 21A into Schedule 4 to the BSA. Clause 9A would allow a commercial television broadcasting licensee to apply to the Minister to be exempt from requirements to comply with the commercial television conversion scheme or an implementation plan to transmit in digital mode in a specified area within a licence area. Clause 21A similarly would allow a national broadcaster to apply to the Minister to exempt a specified area within a coverage area from the requirement to transmit in digital mode under the national television conversion scheme or an implementation plan, or the requirement to submit an implementation plan under clause 20 of Schedule 4 to the BSA that relates to the specified area.
205. There are a number of transmitters licensed to national broadcasters and commercial broadcasters that provide analog television services to populations of 500 people or less. There are also a number of analog national broadcasting and commercial broadcasting transmission facilities in locations where less than all national and commercial television broadcasting services generally available in the licence area are transmitted at that location.

206. The introduction of new free to air satellite national and commercial digital television services (including commercial television broadcasting licences allocated under section 38C of the BSA) may mean that digital conversion of these more marginal broadcasting transmitters is no longer practical.

207. Proposed subclauses 9A(1) and 21A(1) provide that commercial television licensees and national broadcasters are to be exempt in particular areas (to be known as the ‘exempt digital transmission area’) from requirements imposed by the applicable digital conversion scheme or an implementation plan to start digital transmissions in that area.

208. Proposed subclauses 9A(2) and 21A(2) provide that the Minister may, on application by the commercial television licensee or national broadcaster, make a determination to exempt a specified area within a licence area or coverage area from the digital conversion requirements.

209. Applications by the commercial television licensee or national broadcaster would be dealt with on a case-by-case basis and, provided the criteria outlined below is met, it is the Minister’s discretion as to whether or not to grant a commercial or national broadcaster an exemption from their digital conversion requirements.

210. Proposed subclauses 9A(3) and 21A(3) provide that before making a determination the Minister must be satisfied that the applicant does not provide their television services in digital mode in the proposed exempt digital transmission area, and that:
   - fewer than 500 people reside in the specified area (paragraphs 9A(3)(b)(i) and 21A(3)(b)(i)); or
   - the area is an underserviced area (paragraphs 9A(3)(b)(ii) and 21A(3)(b)(ii)) – an underserviced area is defined in subclauses 9A(5)-(9) and 21A(5)-(9), noted below.

211. In addition proposed paragraphs 9A(3)(c) and 21A(3)(c) require the Minister to be satisfied that viewers in the proposed exempt digital transmission area have another way through which they can, or will be able to, access digital television, such as access in that area to national and commercial television services delivered by satellite.

212. In considering whether there are fewer than 500 people residing in a specified area, proposed subsections 9A(4) and 21A(4) require that the Minister have regard to the latest resident population statistics published by the Australian Statistician.

213. An area will be an underserviced area if the specified area does not have coverage of one or more of the commercial television or national television services that are generally provided in the licence area (or corresponding ABC or SBS coverage area) in analog mode or digital mode.
214. The concept of an analog underserviced area is intended to cater for the situation where the applicant seeking the exemption is either the only broadcaster or one of a few commercial and/or national television broadcasters operating in the area on their own account (with the rest made up of analog re-transmission services, if at all).

215. For example, in some remote and regional transmission sites, the ABC is the only free-to-air television service that is provided terrestrially to viewers in the local area. Even if the ABC converted its service at these sites to digital, there would still be a ‘deficit’ of terrestrial digital television services available in the local area and viewers would need to access the satellite services provided by a section 38C licensee in order to access the digital television services of all national and commercial broadcasters. In such a circumstance, the ABC may apply to the Minister for an exemption from its obligation to convert its analog service to digital. The Minister may consider granting an exemption if satisfied that viewers in the area concerned can, or will be able to, access all commercial and national television services in another way (such as by satellite).

216. The concept of a digital underserviced area allows the Minister to take account of previous Ministerial grant(s) of digital transmission area exemption(s) to someone other than the applicant broadcaster (that is, one of the other commercial or national broadcasters operating in the area), or where the Minister refuses to approve a national broadcaster implementation plan that covers all or part of the same area (clause 20 of Schedule 4 to the BSA refers). Subject to the special rules that apply to digital re-transmission services (noted below), if the Minister has made decisions that do not require digital conversion, then this may result in a future ‘deficit’ of terrestrial digital television services.

217. For example, an area may not be provided with all terrestrial digital services where one broadcaster has been previously granted an exemption by the Minister or where one of the terrestrial television services was provided in analog by a re-transmission facility which is not being converted to digital. In these situations, the Minister may consider exempting a particular broadcaster from their conversion obligations so as to avoid viewers in the area being required to purchase both terrestrial and satellite digital reception equipment.

218. Special rules apply to the treatment of re-transmission services depending on whether analog or digital television service coverage is being assessed. A re-transmission service refers to a service that does no more than re-transmit the programs that are either transmitted by a commercial television broadcasting service or transmitted by the ABC or the SBS.

219. For assessing coverage of analog television services in an area, the presence of analog re-transmission services will be disregarded (subclauses 9A(6) and 21A(6) refer).

220. Analog self-help re-transmission sites are not subject to the conversion schemes made by the ACMA under Schedule 4 to the BSA. Therefore, there is no obligation to upgrade these facilities to digital. If the Minister was to consider terrestrial television services provided by an analog self-help re-transmission site and does not grant an exemption to a broadcaster on this basis, then there is a risk that the analog self-help
re-transmission site will not convert to digital, such that viewers may need to purchase both terrestrial and satellite reception equipment to access all commercial and national television broadcasting services in that area.

221. For assessing whether a specified area has ‘coverage’ of digital television services, digital re-transmission services will be counted (subclauses-9A(7)-(9) and 21A(7)-(9) refer)).

222. The inclusion of digital re-transmission services in the coverage assessment is consistent with the government’s policy of recognising that, in some areas, existing analog re-transmission services will be converted to digital.

223. An area that has digital re-transmission service providers is not underserviced due to the mere presence of digital re-transmission services, unless the area otherwise has a digital ‘deficit’ of the commercial and national broadcasting television services. For example, an area where there are no SBS television programs provided in digital mode at all would be underserviced, but an area that has, or would have, all commercial or national broadcasting services available in digital mode through a combination of broadcaster delivered services and re-transmission services is not underserviced.

224. The intention in relation to the treatment of digital mode services is to enable the Minister to take account of those re-transmission services that are converted to digital on a voluntary basis by broadcasters, or by a person representing the broadcasters. Where such digital conversions of re-transmission services occurs (in relation to one or more commercial or national television services other than the applicant’s service), the Minister would consider the general state of play for digital television in an area, before deciding whether to exempt a particular broadcaster from their outstanding digital conversion obligation. If other services in the area have converted or are converting their terrestrial transmitters to digital, the Minister may be disinclined to exempt a particular broadcaster from their conversion obligations so as to avoid viewers in the area being required to purchase both terrestrial and satellite digital reception equipment.

**Item 50 – Subclause 19(7CA) of Schedule 4**

225. This item would repeal subclause 19(7CA) of Schedule 4 to the BSA. The inclusion of subclause 19(7CA) is considered unnecessary because national television broadcasting services are being delivered by satellite currently, in both analog and digital modes.

**Item 51 – After paragraph 20(4)(c) of Schedule 4**

226. Under clause 20 of Schedule 4 to the BSA, the Minister has the power to approve or refuse to approve an implementation plan submitted by a national broadcaster for the digital conversion of a particular area or areas, having regard to certain matters that are specified in sub-clause 20(4) and any such other matters as the Minister considers relevant.

227. This item would insert additional specific criteria to which the Minister must have regard to when considering whether to approve an implementation plan. The Minister will be required to have regard to whether there are other means by which people in the coverage area to which the implementation plan relates can view an adequate and
comprehensive range of commercial television broadcasting services in digital mode and national television broadcasting services in digital mode, which could include by means of a satellite. The Minister will also be required to have regard to the extent to which commercial television broadcasting services and national television broadcasting services are being, or will be, transmitted in digital mode in the coverage area to which the implementation plan relates.

**Item 48 – After paragraph 8(10)(a) of Schedule 4**

228. Subclause 8(10) of Schedule 4 to the BSA provides that Part B of the commercial television scheme (which applies to remote licence areas) may require the holder of a commercial television broadcasting licence to surrender one or more transmitter licences authorising analog transmission or authorising digital transmission if the holder does not comply with various requirements under the scheme or the BSA that apply to licensees in remote licence areas.

229. Item 48 proposes an amendment to subclause 8(10) to include a reference to paragraph 7(1)(ma) of Schedule 2, so that the commercial television conversion scheme may make provision for a licensee in a remote licence area to surrender a transmitter licence if the holder does not comply with the requirement to provide a HDTV multi-channelled service during the simulcast period for the licence area.

**Item 55 – Paragraph 38(4)(c) of Schedule 4**
**Item 56 – Paragraph 38(4)(c) of Schedule 4**
**Item 57 – Paragraph 38(4)(d) of Schedule 4**
**Item 58 – Paragraph 38(4)(e) of Schedule 4**
**Item 59 – Subclause 38(4A) of Schedule 4**

230. Clause 38 of Schedule 4 to the BSA sets out the captioning requirements that apply to commercial television broadcasting licensees and national broadcasters.

231. Items 55 to 58 would make minor amendments to paragraphs 38(4)(c), (d) and (e) to clarify that the references to SDTV multi-channelled commercial television broadcasting services or HDTV multi-channelled commercial television broadcasting services are to services other than the core/primary commercial television broadcasting service. This means that before the final digital television switch–over day the captioning requirements apply to the SDTV service that is the licensee’s core/primary commercial television service. The clarification is needed because most broadcasters currently broadcast multiple television services in standard definition digital mode, only one of which is the core/primary service. Subclause 38(4)(c) would apply to all additional SDTV and HDTV services other than the core/primary service.

232. Item 59 repeals clause 38(4A) of Schedule 4 because it is superfluous in the wake of amendments enacted by the *Broadcasting Legislation Amendment (Digital Television) Act 2010* that substituted references to the core commercial television broadcasting service with references to the core/primary commercial television broadcasting service.
**Item 60 – Subclause 41G(1) of Schedule 4**

233. This item would amend clause 41G of Schedule 4 to the BSA, which deals with the ACMA’s powers to declare primary commercial television broadcasting services.

234. Clause 41G requires the ACMA to declare a particular SDTV multi-channelled commercial television broadcasting service to be the licensee’s primary commercial television broadcasting service. Subclause 41G(1) requires the ACMA to make a declaration that applies during the remainder of the simulcast period for each commercial television broadcasting licence that is allocated on or after 1 January 2009.

235. This item makes a technical amendment to subclause 41G(1) of Schedule 4 to the BSA to broaden its application. As currently drafted, subclause 41G(1) unintentionally omits licences to which subsection 41B(2D) of the BSA applies (eligible section 38B licences). Item 60 rectifies this omission.

236. In addition, this item amends subclause 41G(1) to include a reference to the new subsection 41B(2DB) consequential to the amendment proposed by Item 5 (noted above). By adding such a reference, the ACMA would be required to declare a primary commercial television broadcasting service for remote area licences that are allocated on or after 1 January 2009.

237. Transitional provisions related to this item are in Item 10 of Schedule 3 to this Bill.

**Copyright Act 1968**

238. Item 61 would amend the Copyright Act.

**Item 61 – Subsection 135ZZJA(2)**

239. Part VD of the Copyright Act establishes a statutory licensing regime for copyright that is used by a section 38C licensee when delivering the licensed television broadcasting service.

240. Part VD was intended to establish a copyright licensing scheme purely for those services required to be provided by a section 38C licensee under its broadcasting licence.

241. If, besides those licensed services, the holder of the 38C licence were to re-transmit programs provided by another broadcasting service (within the meaning of section 212 of the BSA), the intention is for Part VC of the Copyright Act to apply to such re-transmission. For example, it is possible that 38C licensees will in future re-transmit an open narrowcasting service that delivers programs supplied by National Indigenous Television (NITV) (which is covered by paragraph 212(1)(c) of the BSA), or some other broadcasting service. It is intended that the re-transmission of NITV services in these circumstances will be covered by Part VC of the Copyright Act.

242. However, subsection 135ZZJA(2) in its original form may have the unintended effect of excluding any programs included in a service that may be re-transmitted by a section 38C licensee from the statutory copyright licensing scheme contained in
Part VC of the Copyright Act. Part VD of the Copyright Act, in turn, would not appear to apply to such re-transmissions of television programs because they are not required to be provided by a section 38C licensee (a satellite BSA licensee within the meaning of the Copyright Act).

243. This item amends subsection 135ZZJA(2) to clarify that Part VC of the Copyright Act applies to all re-transmissions of television programs by a section 38C licensee, but not to re-broadcasts that a satellite BSA licensee is required to make in accordance with its broadcasting licence conditions (for which Part VD would apply).

*Radiocommunications Act 1992*

244. Items 62 and 63 would amend the Radiocommunications Act.

**Item 62 – Subsection 100(5)**

**Item 63 – Sections 102AE and 102AF**

245. Item 63 would repeal sections 102AE and 102AF of the Radiocommunications Act consequential to the amendment proposed by Item 46.

246. Sections 102AE and 102AF currently require the ACMA to vary transmitter licences held respectively by commercial television broadcasters and self-help providers where a commercial television broadcaster had notified the ACMA of its intention to convert particular analog self-help transmission facilities to digital (consistent with the policy objective set out in clause 6C of Schedule 4 to the BSA). Under section 102AE the transmitter licence held by a commercial television broadcaster would be varied to authorise the operation of additional transmitters at or near the former analog self-help transmission sites. Under section 102AF, transmitter licences held by the self-help provider would be varied or cancelled (as applicable) to remove the authorisation to operate an analog transmitter where a commercial television broadcaster has agreed to convert to digital.

247. Item 62 makes a technical amendment to subsection 100(5) of the Radiocommunications Act consequential to the repeal of section 102AF by Item 63.
Schedule 3 - Transitional provisions

248. This Schedule contains transitional provisions.

249. Part 1 of the Schedule contains transitional provisions for the designation of licence areas. Part 2 of the Schedule contains transitional provisions for the commercial television and national television conversion schemes, and digital channel plans made under those schemes, which were in force before the commencement of the amendments contained in Schedule 1 to this Bill. Part 3 of this Schedule deals with other transitional matters.

Item 1 – Designation of licence areas

250. This item preserves the continuity of licence area designations made by the ACMA under section 29 of the BSA. Such designations identify the licence area (being specified in a licence area plan) to be served by particular commercial broadcasting licensees and community broadcasting licensees. By virtue of this item, extant designations made under section 29 of the BSA in relation to a commercial television broadcasting licence or a community television broadcasting licence will continue to apply by reference to a television licence area plan, to be made by the ACMA under new subsection 26(1B).

251. For the avoidance of doubt, sub-item 1(2) provides that the preservation of the licence area designation does not limit the ACMA’s power under subsection 29(2) of the BSA to vary the designation in conjunction with a variation to the licence area plan (defined to include both the licence area plan made under subsection 26(1) of the BSA, and the television licence area plan made under new subsection 26(1B) of the BSA).

Item 2 - Commercial television conversion scheme

Item 3 - National television conversion scheme

252. These items provide that amendments made by this Act to the policy objectives for each conversion scheme in Schedule 4 to the BSA regarding:

- the transition to television licence area plans (see Items 19, 21, 25 and 26 of Schedule 1 to this Bill); and
- digital conversion of particular analog self-help retransmission sites (see Item 46 of Schedule 2 to this Bill),

do not affect the continuity of the commercial television conversion scheme and national television conversion scheme in force immediately before the commencement of the amended laws. This continuity of the conversion schemes is subject to one exception, as set out in sub-items 2(4) and 3(4).

253. Sub-items 2(4) and 3(4) provide that the rules preserving the continuity of the conversion schemes do not apply with respect to subclauses 7AA(2) and 22AA(2) of Schedule 4 to the BSA (these new subclauses would be inserted by Items 23 and 27 in Schedule 1 to this Bill). Those new subclauses provide that, to the extent that the conversion schemes make channel allotments for a particular licence area, the
conversion schemes cease to have effect when the television licence area plan comes into force. The continuity of the conversion scheme is not maintained in that respect.

254. These items also provide that the Parliament intends the ACMA to take action within 90 days after the commencement of this Schedule to ensure that the conversion schemes comply with Schedule 4 to the BSA as amended by Schedules 1 and 2 to this Bill.

**Item 4 - Digital channel plan made under the commercial television conversion scheme**

**Item 5 - Digital channel plan made under the national television conversion scheme**

255. These items provide that amendments made by this Act to Schedule 4 to the BSA do not affect the continuity of the digital channel plans made under the commercial television conversion scheme and the national television conversion scheme.

256. Sub-items 4(3) and 5(3) provide that the rules preserving the continuity of the digital channel plans do not apply with respect to subclauses 7AA(1) and 22AA(1) of Schedule 4 to the BSA (see Items 23 and 27 in Schedule 1 to this Bill). These new subclauses provide that channel allotments made by the digital channel plans cease to have effect when the television licence area plan comes into force (to the extent to which it relates to a licence area covered by a television licence area plan). The continuity of the digital channel plan is not maintained in that respect.

**Item 6 - Variation of commercial television conversion scheme**

**Item 7 - Variation of national television conversion scheme**

257. These items excuse the ACMA from undertaking consultation in accordance with the commercial television conversion scheme and the national television conversion scheme in relation to variations to a conversion scheme that deal with transitional or consequential matters connected to the amendments made by this Act. Such variations to the conversion scheme must be made within 90 days after the commencement of this Schedule.

258. 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 10 business days.

259. In the case of the national television conversion scheme, Item 7 also provides that a variation to the conversion scheme 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.

**Item 8 – Transitional – pre-commencement contraventions of licence conditions**

260. This item relates to Items 7, 8, 9, 10 and 43 in Schedule 2 to this Bill.

261. Subject to one exception, this item will ensure a broadcaster who contravened a particular licence condition (specified in sub-item 8(1)) between 30 June 2010 and the commencement date for this item will be deemed not to have breached the condition. The exception is that the broadcaster’s conduct between 30 June 2010 and the
commencement date for this item must not have contravened the licence condition as amended by Items 7, 8, 9, 10 and 43 in Schedule 2 to this Bill. (This item will commence the day after the Act receives the Royal Assent).

**Item 9 – Transitional – conditional access schemes**

262. This item relates to Items 16 and 17 in Schedule 2 to this Bill.

263. Sub-item 9(2) would preserve the continuity of a conditional access scheme that was registered before the commencement of this item notwithstanding the amendments made to section 130ZB of the BSA by Items 16 and 17 in Schedule 2 to this Bill. (Items 16 and 17 would amend the statutory policy objectives for a conditional access scheme. Consequently a registered conditional access scheme will no longer meet the statutory policy objectives.)

264. Sub-item 9(3) requires the ACMA to, within 30 days after the commencement of this item, request industry to develop a replacement conditional access scheme that complies with the amended policy objectives. Sub-item 9(4) deems the ACMA to be satisfied that the conditional access scheme (where one is registered before the commencement of this item) is not meeting one or more of the objectives in section 130ZB of the BSA (that is, the policy objectives modified by amendments contained in Schedule 2 to this Bill).

**Item 10 – Transitional – declarations about primary commercial television broadcasting services**

265. Item 10 relates to Item 60 in Schedule 2 to this Bill.

266. This item will modify the application of paragraph 41G(1A)(a) of Schedule 4 to the BSA to a declaration that is within the scope of sub-item 10(1).

267. Paragraph 41G(1A)(a) of Schedule 4 to the BSA requires the ACMA to ensure that a declaration about the primary commercial television broadcasting service comes into force as soon as practicable after the later of two dates (being the time the licensee starts to provide a SDTV multi-channelled service, or 30 June 2010).

268. Since the amendments proposed by Item 60 of Schedule 2 to this Bill would create two additional situations (relating to eligible section 38B licences and remote area licences) in which the ACMA must make a declaration about primary commercial television broadcasting services, sub-item 10(2) will require the ACMA to ensure that such a declaration comes into force as soon as practicable after the latter of two dates:

- the date the licensee starts to provide a SDTV multi-channelled service; or
- the commencement date for this item (the day after the Act receives the Royal Assent).